

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc. Application No.S-221 of 2023

[Wali Muhammad & another versus S.P Complaint Cell & Ors]

Applicants : Through Mr. Muhammad Hashim Leghari advocate
Complainant : Through Mr. Fakhruddin Dahraj advocate
The State : Through Mr. Siraj Ahmed Bijarani Assistant P.G
Date of hearing : 17.04.2023
Date of decision : 17.04.2023

ORDER

ADNAN-UL-KARIM MEMON, J.- Through captioned Criminal Miscellaneous Application, applicants have called into question the Order dated 01.04.2023, passed by learned Ex-Officio Justice of Peace Kotri, whereby, directions have been issued to SHO concerned to record the statement of Complainant under Section 154 Cr. P.C. and then proceed under law.

2. Facts of the matter are that Complainant moved an application under Section 22-A & B Cr. P.C. before learned Justice of Peace, alleging therein that she was / is the owner of 195 acres of land situated in Deh Kohistan, Tapo Jhampir, Taluka and District Thatta. She further complained that on 09.03.2023, when she along with her cousin Nawab Ali and daughter visited the subject land, she found the applicants / proposed accused attempting to occupy her land by force, upon which she tried to stop them, but the proposed accused pointed weapons upon them and issued threats of dire consequences, including threats of lives and also physically tortured and maltreated them and attempted to outrage the modesty of her daughter. The complainant approached the SHO concerned and narrated her ordeal, however noting concrete was done by the SHO, compelling her to approach learned Ex-Officio Justice of Peace, who upon police report, passed the impugned Order, whereby directions were issued to SHO concerned to record her statement under Section 154 Cr. P.C. and then proceed under law. The applicants / proposed accused being aggrieved moved the present application inter-alia on the ground that no such incident had taken place,

rather concocted facts have been narrated to malign the applicants to justify the illegal occupation of the subject land and just to pressurize them to bow before the illegal demand of the lady, which is not possible for them to fulfill under the law.

3. Mr. Muhammad Hashim Leghari learned counsel for applicants argued that the impugned Order is ex-parte and contrary to law; that no such incident has taken place as portrayed by the complainant; that there is a civil dispute between the parties over landed property and that the Complainant has attempted to convert the said dispute into criminal proceedings to fulfill her demand on the subject land; that the trial Court passed the impugned Order without issuing notice and hearing the applicants and without ascertaining the facts of the case; that no such incident had taken place and the entire story is managed one; that in the impugned order there is nothing mentioned about alleged ownership of the purported land of the complainant and that the impugned order is not speaking one, as no cogent reason and / or ground has been mentioned therein, as such same is liable to be set aside. He lastly prayed that the captioned application may be allowed and the impugned order may be set aside.

4. On the other hand learned counsel for Complainant submits that the order passed by learned Justice of Peace is under the law; that applicants are land grabbers and they tried to encroach upon the land of a widow lady and on resistance they physically tortured the Complainant party and also attempted to outrage the modesty of her daughter at the site by force; that malafide of applicants is evident from the fact that they have not made the Complainant as party in present proceedings and that applicants' counsel has failed to point out any illegality in the impugned order, as such captioned application is not maintainable and the same is liable to be dismissed with heavy cost; however, he submitted that if the applicants are aggrieved by the decision of the trial court they have the remedy before the concerned court under the law as the trial court has just directed the SHO concerned to record her statement which is her right to disclose the factual position before the SHO, which action is being resisted by the applicants without lawful justification.

5. Learned A.P.G adopted the arguments of learned counsel for the Complainant and prayed for dismissal of the captioned application on the

premise that there is no harm if the statement of complainant is recorded and it for the police to see the contents of the application whether the same narration falls within the ambit of cognizable offense or otherwise.

6. I have heard the parties and perused the record with their assistance.

7. The condition that is sine qua non for recording an FIR under Section 154 Cr.P.C. is that there must be information that must disclose the commission of a cognizable offense. The aforesaid provision is mandatory; and, the concerned police officer is duty-bound to register the FIR based on information disclosing the commission of a cognizable offense and if he fails to incorporate the complaint so made in a register, he fails to perform his statutory duty as a public servant and, therefore, renders himself to be dealt with by his superior officers for neglect of duty as well as to be proceeded under efficiency and disciplinary rules. Thus, it does not depend on the sweet will of a police officer who may or may not record the statement of the victim.

8. Having laid the basis that Section 154 Cr.P.C. does not permit for any other consideration but for those mentioned in the Section itself to be taken into account for recording of FIR; however, it must be kept in mind that mere registration of FIR could bring no harm to a person against whom it has been recorded.

9. The above is indeed true because an FIR does not always end up in a report under Section 173 Cr. P.C. After all, some FIRs are canceled, some are declared to have been lodged without lawful authority, some are compromised or not pursued and some are simply not investigated in terms of the powers available to the police under Section 157 of the Code of Criminal Procedure, 1898 and Rule 24.4 of Police Rules, 1934.

10. Having established that FIR is not an adverse order, the argument raised by the applicants' counsel about Section 154 Cr.P.C. being in derogation of the principle of audi alterm partem need not detain this court any further just to set aside the order passed by the trial court on the subject issue for the reason that if the statement is recorded there will be compliance of the law as the police has failed to adhere to the provision of law that's why the aggrieved parties approach the court of law for redressal of their grievances.

11. In view of the unequivocal ratio decidendi of Supreme Court of Pakistan in its various pronouncements, any argument based on Article 10-A of the Constitution may not be received well anymore. If an FIR is not an adverse order or action then Article 10-A of the Constitution has no applicability especially because it only speaks about a fair trial. The above legal position should be read because Section 154 Cr.P.C. does not envisage a right of hearing in the provision itself.

12. The counsel for the applicants, then complained that an FIR invariably resulted in the arrest of a person complained of, therefore, a hearing was/is necessary; and the mandatory registration of FIR leads to arbitrary arrest of the proposed accused.

13. This argument is indeed presumptive because the arrest of a person accused in an FIR is not a natural or obvious consequence of the registration of an FIR. While registration of FIR may be mandatory, arrest of the accused immediately after registration of FIR is not at all mandatory under the provision of law which depends upon the circumstances and nature of the offense.

14. The registration of an FIR and the arrest of an accused person are two different concepts under the law. There are, moreover, numerous safeguards available to an accused in this respect, conspicuous amongst which is the right to apply for anticipatory bail and even pre-arrest bail. In principle, no arrest can be made routinely under the relevant law recently made by the Provincial Assembly. There must be some reasonable justification in the opinion of the investigation officer to arrest the accused. Therefore, it is not correct to say that simply because an FIR is registered, an arrest automatically follows such action depending upon the circumstances of the case and offense as discussed supra.

15. It is indeed a figment of imagination rooted in the fear that just because an FIR has been registered, an arrest would automatically follow and loss of reputation, blameworthiness, hard treatment, and all kinds of inconveniences will fall.

16. Primarily, the remedy against registration of false FIR is not to refuse the registration of an FIR of a cognizable offense but to proceed against the delinquent informant under Section 182 PPC. Section 182 PPC

is intended to be a deterrent against the registration of false cases against innocent persons.

17. After having dealt with the arguments raised by the counsel for the applicants, it may be added here that it would be extremely unreasonable to suggest that while all law-abiding citizens of the country have to pass on information about the commission of a cognizable offense if committed in their presence, however, the S.H.O. doesn't need to register the report in every case and he has to apply his mind keeping in view the provisions of PPC and if in his opinion a cognizable offense is made out, he has to record the contents of the victim in the Book under the law without fail.

18. Seen from the above angle, the registration of an FIR neither requires a prior hearing or precedent inquiry nor is an FIR an adverse action as this is just information, and receiving the information of cognizable offense is mandatory under the law. However, the provision of Section 154 Cr.P.C. has to be liberally construed.

19. In view of the above, this Criminal Miscellaneous Application is found to be without any merit and is dismissed, leaving the Complainant to approach the SHO concerned to record her statement, however, SHO shall take action against the actual culprits under the law if there appears concrete material against them to justify the arrest.

JUDGE

Sajjad Ali Jessar