

ORDER SHEET
**IN THE HIGH COURT OF SINDH
CIRCUIT COURT HYDERABAD**

Criminal Miscellaneous Application No.S-178 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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<u>17-05-2023</u>	1. For order on office objection. 2. For hearing of main case.
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Mr. Ejaz A.Awan, advocate for applicant along with applicant.

Mr. Nazar Muhammad Memon A.P.G. Sindh along with Inspector Amir Hussain Shah on behalf of SSP Jamshoro, SIP Barkat Ali SHO PS Kotri, Inspector Mazhar Ali Soomro, Ex. SHO PS Kotri, SIP Abdul Aziz Khoso and SIP Ayaz Ahmed I.O. of the case.

Statements submitted by respondents No.4 and 6 are taken on record.

Through this criminal miscellaneous application, learned counsel for the applicant has impugned the order dated 28.02.2023, whereby the learned Additional Sessions Judge-II, Justice of Peace Jamshoro has dismissed the application, filed by the applicant in terms of section 22-A-6 (i) Cr.P.C. seeking direction to lodge the FIR. Hence, the learned counsel filed this criminal miscellaneous application.

2. Per learned counsel, initially the application under section 22-A & B Cr.P.C. being Criminal Miscellaneous Application No.S-58 / 2022 was filed by the applicant before this Court and vide order dated 11.11.2022, the SHO concerned was directed to record the statement of the applicant and if a cognizable offence is made out, same shall be taken care of by the police officer; however, no arrest shall be made until tangible evidence is brought on record. After passing such order, the applicant appeared before the concerned police officer, who recorded statement under section 154 Cr.P.C. and obtained signature and thumb impression of the applicant. The applicant present in Court also confirms his signature and thumb impression. Per learned counsel, after receiving order, the applicant appeared at PS concerned but his FIR was not registered as per his verbatim and tried to save the concerned persons, as such, SHO Mazhar Ali Soomro, Imran Qureshi, SSP Jamshoro and SHO PS Kotri complaint cell has committed the offence in order to save the real culprits. He further added that proposed accused are very much involved in the offence, as such, he filed a Criminal Miscellaneous Application No.225/2023 in terms of section 22-A-6 (i) Cr.P.C before the learned Ex-Officio Justice of Peace, Jamshoro; however, the same was dismissed. He,

therefore, prayed that the impugned order dated 28.02.2023 may be set-aside and SHO concerned may be directed to record statement of the applicant as per his verbatim. He further submitted that this is not second FIR but actually this is first FIR against police officers, who have joined their hands with the accused persons of FIR No.357/2022 registered against the unknown persons. Lastly, learned counsel has prayed that instant application may be allowed and SHO concerned may be directed to record statement of the applicant as per his verbatim.

3. On the other hand, proposed accused/Ex.SHO PS Kotri Inspector Mazhar Ali Soomro present in Court submitted that the applicant is not an aggrieved person nor he is concerned with the alleged offence. He further submitted that if any minor boy Asadullah died, the family members of deceased did not lodge FIR. He also submitted that he has shown the place of different persons who are stated to have been killed due to accident of Water-Tanker. He further added that the family members of deceased have not approached but in order to create pressure upon the police officers so also political persons, the applicant has approached this Court. He also pleaded that during course of investigation, nothing has been brought record even after registration of the FIR, the said advocate/applicant Aijaz has not appeared and the FIR being crime No.357/2022 was disposed in 'C' class. He further submitted that the compliance has been made as per direction of this Court and from the face of application, the FIR was registered. He has added that if any corruption has been made, the appropriate forum for the applicant is available; however, they have not joined the hands with anybody to save certain persons and they have acted in accordance with law. Another police officer, who is I.O. of the case of crime No.357/2022 namely, SIP Ayaz Ahmed submitted that during course of investigation even he has called report and visited the hospital to obtain the medical certificates or post mortem reports from the concerned Doctor but concerned Doctor informed him that no case has been reported, therefore, in such circumstances, a false case registered by the applicant. Lastly they prayed for dismissal of instant application.

4. Heard and perused.

5. Perusal of record reflects that vide order dated 11.11.2022 passed in Criminal Miscellaneous Application bearing No.S-58/2022, directions were issued to the concerned SHO to record the statement of the applicant as per verbatim and in compliance of said direction of this Court, the applicant approached to the concerned SHO, who recorded his statement as per his verbatim. Such application has been filed along with statement by SIP Aziz Khoso, wherein he has stated that main contention of the applicant has been incorporated in the FIR; however, he has not incorporated the version against the officials that they are involved in the corruption or embezzlement in

the funds. After registration of the FIR being crime No.357/2022 under section 279 and 320 PPC, a thorough investigation was conducted by the I.O. and he has visited the place of incident so also hospital to obtain the record if any incident has taken place in which the boys or other persons have lost their lives but he has found that no such incident had taken place during those days. After completion of the investigation, the I.O. submitted report suggesting the disposal of case under 'C' class before the concerned Magistrate. In the case of 'SUGHRAN BIBI v. The STATE' [PLD 2018 SC 595], the Hon'ble Supreme Court has held that during investigation conducted after registration of an FIR, the I.O. may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161 Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the I.O. during the investigation of the case. In the instant case, the applicant has brought new version or produces the legal heirs of minors to believe that whatever he has stated in the FIR is true and correct. Since no new offence has been committed and the learned trial Court after perusal of entire record has passed the appropriate order, which does not require any interference by this Court as no illegality or irregularity in the impugned order has been pointed out by the learned counsel for the applicant. Resultantly, instant criminal miscellaneous application is **dismissed**. However, the applicant is at liberty to approach the appropriate forum including Direct Complaint, is so he desires.

JUDGE

Abdullah Channa/PS