

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
 CrI. Misc. Application No.S-465 2023
 (Mst. Sehtan Vs. The State.)

1. For Orders on office objection.
2. For hearing of main case.
3. For hearing of MA No. 4045/2023 (Stay)

30-10-2023.

Mr. Achar Khan Gabole advocate for the applicant.
 Mr. Riaz Ali Shaikh, advocate for respondents Nos. 5 & 6.
 Mr. Zulfiqar Ali Jatoi, Additional P.G for the State.

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1. Over ruled.
2. It is alleged by the applicant that the private respondents in furtherance of their common object by committing death of Fayyaz Ali thrown his dead body in a water canal in order to cause disappearance of evidence to save themselves from legal consequences. On the basis of such allegation, she lodged FIR of the incident with PS Padidan; the final report u/s 173 Cr.P.C therein was submitted by the police, for prosecution of the private respondents in accordance with law. Learned Family Judge & Judicial Magistrate Naushahro Feroze disposed of the said report under "B" class and then discharged the private respondents u/s 63 Cr.P.C vide order dated 07-07-2023, which is impugned by the applicant before this Court by preferring instant CrI. Misc. Application u/s 561-A Cr.P.C

It is contended by learned counsel for the applicant that on the basis of very honest investigation, the report u/s 173 Cr.P.C was submitted by the police, it was to have been sent up to the Court of Sessions for the trial of the private respondents in accordance with law, which was not accepted by learned trial Magistrate malafidely and with ulterior motives who then discharged the private respondents without lawful justification by disposing of the very report under "B" class; therefore, the

impugned order being patently illegal is liable to be set aside by this Court, which is not opposed by learned Additional P.G for the State by contending that it was a murder case; therefore, it was not have been disposed of in such a hasty and unwarranted manner by learned trial Magistrate. However, learned counsel for the private respondents by defending the impugned order has sought for dismissal of instant CrI. Misc. Application by contending that death of the deceased was accidental and it has been given cover of murder by the applicant in order to satisfy her dispute with them over property.

Heard arguments and perused the record.

The applicant in her FIR has expressly involved the private respondents of the alleged incident and she in that respect is supported by her witnesses, they have been believed by the police by submitting a final report u/s 173 Cr.P.C for the prosecution of the private respondents. Surprisingly they have been disbelieved by learned trial Magistrate in summary manner without providing the chance of hearing to the applicant being mandatory in terms of Article 10-A of Islamic Republic of Pakistan, 1973, by making unnecessary and irrelevant discussion of the circumstances, ignoring the fact that the accusation against the private respondents was well founded and their fate was to have been decided after full fledged trial that too by the Court of Sessions. In these circumstances, the impugned order being illegal is set aside with direction to learned trial Magistrate to pass the same afresh, after conducting further inquiry, if need be.

The instant CrI. Misc. Application is disposed of accordingly together with listed application.

Judge