

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

## Cr. Misc. Application No. S-337 of 2023

Applicants : Ali Gohar Khan and others,  
through, Jamshaid Ahmed Faiz,  
Advocate.

Respondent No.1 : Sayad Qamar Ali Shah in person.

Respondent No.2 : The State, through Mr. Kamran  
Mobeen Khan Assistant P.G.

Date of Hearing : 06.11.2023

### **ORDER**

**YOUSUF ALI SAYEED, J.** – The Applicants have impugned the Order made by the IInd Additional sessions Judge/Justice of Peace Mirpur Mathelo on 18.05.2023, allowing Criminal Misc. Application No.1197/2023 filed by the Respondent No.1 under Section 22-A Cr. PC, seeking that the Station House Officer of Police Station Sarhad be directed to record his statement so as to register a First Information Report against the persons nominated by him and arrayed as the proposed accused.

2. Without delving into unnecessary detail, the allegation advanced by the Respondent No.1 was that he, his son and some other relatives were *en route* to the Court of the 1<sup>st</sup> Additional Sessions Judge Mirpur Mathelo along with a driver and gunman on 04.05.2023, when they came under attack at about 8:05 AM near Colonel Sardar Moar Sarhad from a group of persons bearing firearms. Whilst a detailed account of the attack was narrated in the underlying Application and it was said that same was due to a longstanding dispute over the matter of a graveyard, suffice it to say that the present Applicants were not said to have actively engaged therein, with the allegation against them instead turning on the assertion that upon fleeing the scene while abducting the Respondent's son, the assailants had proclaimed that they were acting at their instigation.

3. Learned counsel for the Applicants argued that the allegations levelled against them by the Respondent No.1 were false. He submitted that the several FIRs had earlier been registered against the Applicants at the behest of the Respondent No.1 on allegations of abduction, which had then come to be disposed of in C-Class, albeit warranting disposal under B-Class. He stated that the matter was one of political rivalry, and the Respondent No.1 was habitual in making false accusations for ulterior motive in perpetuation of that vendetta. He prayed that the impugned Order be set aside.
  
4. Conversely, learned counsel for the Respondent No.1 submitted that the contents of the underlying Application were true and correct and disclosed the commission of a cognizable offence, with it thus being incumbent upon the police functionaries to have registered an FIR so as to set the criminal justice system in motion. He argued that the impugned Order had thus been rightly made.
  
5. For his part, the learned APG also supported the impugned Order and invited attention to the operative paragraph thereof, which reads as follows:

“11. In view of the above facts and circumstances, the applicant in hand stands allowed. The SHO concerned is directed to record statement of the applicant and if the cognizable offence is made out, he shall incorporate the same in the book u/s 154 Cr.P.C under intimation to this Court. It is also ordered that if FIR is registered, the accused will not be arrested until and unless tangible evidence is collected connected the accused with the commission of offence and in case the FIR is found to be false during investigation, the SHO may prosecute the applicant under section 182 PPC.”

6. Upon consideration of the matter, no illegality marking the proceedings before the learned Justice of the Peace has been brought to the fore. Nor has any discernible error otherwise afflicting the impugned Order been pointed out, with it simply being submitted that the accusation against the Applicants as to having instigated the attack was false. However, there too, on query posed, it was conceded by learned counsel appearing on behalf of the Applicants that they disclaimed knowledge as to whether the account otherwise given by the Respondent No.1 regarding the occurrence of such an attack was correct or not and it was acknowledged that the same could only be established following an investigation.
  
7. Furthermore, it is discernible from the impugned Order that adequate safeguards against unnecessary arrest have been specifically contemplated; as has the scope for proceedings to be initiated in the event the case is found to be one of false implication. Indeed, if the Applicants were of the view that the earlier FIRs were false, they ought to have contested the disposal orders at the relevant time. Needless to say in the same vein, in the event that the present FIR is found to be false or malicious, proceedings under Section 182 PPC should be brought to bear with full vigour and taken to their logical conclusion. That being said, the Criminal Miscellaneous Application stands disposed of in the foregoing terms.

JUDGE

Irfan/PA