

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 273 of 2023

Date Order with signature of Judge

Priority Cases

For orders on M.A No. 5040/2023
For hearing of main case

16.11.2023

Mr. Akhtar Hussain Jabbar advocate for the applicant
Mr. Waleed Khanzada advocate for respondent No. 2
Mr. Siraj Ali Chandio Additional PG along with Inspector /I.O Zafar Ahmed of P.S Gulshan-e-Iqbal.

This Criminal Miscellaneous Application has been brought by the applicant Bilal Habib under Section 561-A of CR.P.C against the order dated 05.12.2022 passed by the learned XIVth Judicial Magistrate Karachi East in FIR No. 205/2022 under Section 354/504/506/337-A(i) PPC. For convenience sake, an excerpt of the order is reproduced as under:-

“The instant FIR was lodged by Dr. Sehrish Batool D/o Abdullah Jan against her husband Bilal Babib Sheikh and her mother in law namely Khursheed Begum on the allegation of verbally abusing and threatening her in public and also for assaulting her with intent to outrage her modesty. Brief facts of the case are already mentioned in the FIR so also in the summary in hand hence the same are not reproduced here for the sake of brevity.

After concluding the investigation in the above-noted FIR, first Investigation Officer SIP Samra Gulzar submitted charge sheet against the accused Bilal Habib Sheikh son of Habibullah Sheikh U/s 354/504/506/337-A(i)337-F(i) PPC whereas mentioned the name of his mother namely Mst. Khursheeda Bano Sheikh with blue ink in column No.2 of the charge sheet due to lack of evidence against her.

Upon submission of the charge sheet, both sides were called with opportunity to be heard. During argument, both the sides showed distrust upon the investigation. Upon which vide order dated 08.10.2022 the matter was remand back of further investigation by some other police officer not below the rank of police inspector.

In compliance of the said order the instant matter was assigned to Police Inspector Syed Zafar Ahmed of PS Gulshan-e-Iqbal who after conducting further investigation again submitted the charge sheet against the accused Bilal Bahib Sheikh son of Habibullah Sheikh U/s 354/504/506/337-A(i)/337-F(i) PPC and mentioned the name of his mother namely Khursheeda Bano Shekh with blue ink in second column of charge due to lack of evidence against her.

During argument, learned counsel for complainant did not raise any objection upon the instant report. Learned counsel for accused also did not argue any convincing reason against the instant report.

After hearing both sides and perusing the material on record, I find the accusation against the accused Bilal Habib Sheikh as well founded as sufficient material is available on record to take the cognizance against him U/s 354/504/506/537-A(i)/337-F(i) PPC. As for as the accusation against his mother Khursheeda Bano is concerned, I am in concurrence with the opinion of I.O and thus she is discharged.

With the above observation the instant charge sheet is accepted. Cognizance is taken. Let the case be registered accordingly.”

2. Mr. Akhtar Hussain Jabbar advocate has attempted to give brief history of the case and submitted that on 19.06.2022 the applicant along with his mother came to Alamgir Hotel situated at Alamgir Road, Karachi in his car No BJ-3480 and while they were having tea in their car, at 6 PM, his ex-wife Sehrish Batool/respondent No.1 along with her brother Amir Hamza and other persons came there and started beating and abusing him and his mother due to which he sustained injuries on his body. However, due to the public attention, the private respondents/accused persons fled away. After which the complainant went to the hospital for treatment and then lodged FIR No. 280 of 2022 registered for offenses under Section 337-A(i)/504,506-B and 34 PPC of P.S Bahadurabad, on 05.10.2022. Learned counsel submitted that I.O. initially submitted an "A" class report before the learned Judicial Magistrate with malafide intention as the statements of the independent witnesses and medical report of the applicant explicitly show injury. He further argued that the private respondents assaulted the applicant and his mother and he remained successful in obtaining a letter for medical treatment from the PS he went to the hospital and got his Medico-legal examination conducted which report is part of the record but when the complainant returned to PS he found that FIR No. 205/2022 under Section 354/504/506/337-A(i) PPC FIR No.205 had been lodged against him and later on charge sheet was submitted against him before the learned Magistrate who without looking into the real facts canceled his FIR No. 280 of 2022 and accepted the FIR No. 205/2022 lodged respondent No.2 in connivance with her brother who is an Army officer who kept him in illegal confinement for 10 days through Pak Rangers and subjected him to torture. Furthermore, he contended that sufficient material was available on record to take cognizance in FIR No. 280 of 2022 as the ipsi dixit of police is not binding upon the Court.

3. As to the query regarding the applicability of the **Sughra Bibi case** reported as ***PLD 2018 SC 595***, the learned Counsel for the applicant submitted that such a case is fully attracted in the present proceedings as the Investigation officer has disposed of his FIR No. 280 of 2022 under C Class vide order dated 02.12.2022; and, the applicant being injured in terms of Medical Legal Certificate issued by MLO JPMC Karachi dated 19.06.2022, the case of the applicant ought not to have been canceled under C Class, as the applicant has now been deprived of his version to be recorded by the Investigation officer in a counter case arising out of the same incident in the shape of FIR No. 205 /2022 registered for offenses under Section 354,504,506,337-A(i) PPC of P.S Bahadurabad lodged by

the respondent No.2, and the Investigating Officer has submitted charge sheet against the applicant and now the learned trial Court has taken cognizance against the applicant. He further submitted that since the offense alleged against the applicant required to be thrashed out and in this regard, his version needs to be brought on record as he reported to police against respondent No.2 prior in time which is supported by the Medical evidence and that evidence cannot be brushed aside by the Investigating Officer as well as learned trial Court in terms of law laid down by Supreme Court in *Sughra Bibi* case. Lastly, he prayed that this application may be allowed and direction may be issued to the concerned Investigation officer to record his statement.

4. Mr. Waleed Khanzada learned counsel representing respondent No.2 has raised the question of maintainability of the instant Criminal Miscellaneous Application by referring to the objections on the plea that the applicant has concealed the facts to obtain an order passed by the Justice of Peace and lodged a false and fabricated FIR against the respondent No.2, which was not canceled due to *Sugrah Bibi* case but it was canceled under C class due to lack of evidence against the respondent No.2. He further submitted that the order dated 02.12.2022 passed by the learned XIV Judicial Magistrate Karachi East whereby the case of the applicant was canceled has not been challenged by the applicant as such he is precluded from agitating the new point/version in terms of *Sughra Bibi case* as his plea has been discarded earlier and now he is attempting to create a fuss in the matter to confuse the things for ulterior motives which cannot be allowed under the law. He prayed for the dismissal of the instant Criminal Miscellaneous Application.

5. Learned Addl. PG representing the State, by supporting the impugned order dated 05.12.2022, submits that no illegality or infirmity has been pointed out in the impugned order and the same is liable to be maintained.

6. I have heard learned counsel for the parties and perused the material available on record and case law cited at the bar.

7. It appears from the record that the applicant lodged FIR No. 280 of 2022 registered for offenses under Section 337-A(i)/504,506-B and 34 PPC of P.S Bahadurabad, which was disposed of under C class by the learned XIV Judicial Magistrate Karachi East vide order dated 02.12.2022. An excerpt of the order is reproduced as under:-

“ I have heard both sides and perused the material available on record including the statements of witnesses and the medico-legal report of the complainant. It is a matter of fact that the incident took place on 19.06.2022 but the FIR was lodged on 05.10.2022 after an inordinate delay of three and half months. Secondly, the perusal of the statement of independent witnesses as annexed in the

police file shows that no one has mentioned about the accused persons being armed with weapons hence on this point I am in agreement with the opinion of I.O for removing Section 506-B PPC. The medico-legal report of the complainant also shows the injury falling U/S 337-A(i) PPC, which is also non-cognizable in nature. While the offences under the remaining Section of law are also non-cognizable in nature.

As far as the contention of the learned counsel from both sides regarding the interpretation of the Sughra Bibi case is concerned, I am in concurrence with the contention of the learned counsel for the complainant as in my humble opinion the guidelines enunciated in the said case by the Honorable Supreme Court of Pakistan pertains to different versions of the same incident but the FIR of the case in hand pertain to another offense allegedly committed by the accused persons with the complainant of his FIR, though alleged to be committed at the same time and place.

For what has been discussed above, I am of the view that the I.O. has wrongly opined the matter under "A" class as all the offences i.e. 506/504/337-A(i) PPC are non-cognizable in nature. Hence I hereby disposed of the summary in hand under the "C" class being non-cognizable. The accused persons who are present on bail are discharged. Their bail bonds stand cancelled and sureties are discharged.

8. Since the aforesaid order passed by learned XIV Judicial Magistrate Karachi East has not been called into question before this Court as such I refrain from discussing this issue for the time being, for the reason that the applicant has confined his submission to the extent that his version may be recorded by the Investigation officer so that the truth may come out for just decision of the instant case.

9. To appreciate the concern of the applicant, it is expedient to have a look at the case of *Sughra Bibi* whether applicable in the present proceedings or otherwise.

10. The circumstances as disclosed in the case of *Sughra Bibi* are prima facie, almost similar, and the same is mentioned in para No. 2 of the judgment which is reproduced as under:-

"On 21.03.2008, more than a decade ago, one Mohsin Ali had lost his life through the hands of the police, and FIR No. 177 was lodged by Zulfiqar, SI in respect of the said incident on the same day at Police Station Shahdara Town, District Lahore for offences under sections 324, 353 and 186, P.P.C. read with section 34, P.P.C. and section 13 of the Pakistan Arms Ordinance, 1965. It was alleged in that FIR that Mohsin Ali and others had launched a murderous assault upon a police party and in exercise of its right of private defence the police party had fired back resulting in death of Mohsin Ali. After completion of the investigation, a Challan was submitted in that case before the Court of Session, Lahore for trial of the accused persons implicated therein. On 12.01.2010 the present petitioner namely Mst. Sughra Bibi (mother of Mohsin Ali deceased) instituted a private complaint in respect of the self-same incident alleging that as a matter of fact Mohsin Ali had cold-bloodedly been murdered by the local police by managing and staging a fake encounter. On 19.05.2010 a learned Additional Sessions Judge, Lahore seized of the case and summoned 16 accused persons to face a trial in connection with the said private complaint. As per the legal norms, the private complaint filed by the petitioner was taken up first for trial and on 18.06.2015 a Charge was framed against the summoned accused persons and, we have been informed, no progress has so far been made in that trial of the complaint case. Now through the present petition filed as a Human Rights Case under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 Mst. Sughra Bibi petitioner has sought issuance of a direction to the local police to register a separate FIR containing the different version of the same incident being advanced by her."

11. The Supreme Court settled the point for determination in the said case of *Sughra Bibi* as per para No.3 as follows:-

“ The issue before us, to put it very simply, is as to whether a separate FIR can be registered for every new version of the same incident when commission of the relevant cognizable offence already stands reported to the police and an FIR already stands registered in that regard or not. An ancillary issue is that if no separate FIR can be registered for any new version of the same incident then how can such a new version be recorded and investigated by the police.”

12. After a detailed discussion of the previous judgments on the issue it was held in para No. 27 of judgment as under:-

“27. As a result of the discussion made above, we declare the legal position as follows:

(i) According to section 154, Cr.P.C. an FIR is only the first information to the local police about the commission of a cognizable offence. For instance, information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard.

(ii) If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.

(iii) Upon registration of an FIR a criminal "case" comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter.

(iv) During the investigation conducted after registration of an FIR the investigating officer 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 investigating officer during the investigation of the case.

(v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

(vi) Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules, a suspect is not to be arrested straight away or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the

investigating officer regarding the correctness of the allegations leveled against such suspect or regarding his involvement in the crime in issue.

(vii) Upon conclusion of the investigation the report to be submitted under section 173, Cr.P.C is to be based upon the actual facts discovered during the investigation irrespective of the version of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person.”

13. The result of the above-detailed judgment was that a request of Sughra Bibi in respect of the second FIR of the same incident was turned down by the Supreme Court and her petition was dismissed.

14. The Supreme Court in para No. 27 (ii) has declared that the **“version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.”** The definition of the word version is *“a particular form of something differing in certain respects from an earlier form or other forms of the same type of thing.”*

15. It is clear from the above that for every different version/plea for the offense under investigation if raised, no separate FIR is to be registered; however, for any version introduced after the first FIR, the same is to be investigated along with the first version.

16. Turning to the case in hand it appears that two FIRs bearing Nos. 205/2022 and 280/2022 were registered by the police of the same incident but in different ways by disclosing different offenses, however, one case of the applicant was disposed of as C Class and the second one was ordered to be challaned, the detailed reports have already been discussed in the preceding paragraphs.

17. It is observed that the applicant failed to file a direct complaint under section 200 Cr. P.C., and insisted that his version needs to be recorded in terms of the ratio of the Sughra Bibi case. Prima facie the version of the applicant has already been investigated by the investigating officer on the FIR registered by the police on his complaint, which after the FIR investigation was conducted and the version of the complainant of said FIR was found lacking sufficient material to attract the penal provision and the case was recommended under A-Class, however, the learned Magistrate disposed of the case under C Class vide order dated 02.12.2022, which has not been challenged.

18. During the investigation of second FIR lodged by the respondent No.2, no efforts were made by the applicant before the investigation officer for investigation of his version, as his earlier F.I.R was belatedly

lodged on 05.10.2022 after an inordinate delay of three and half months, when investigation report was called by the Magistrate from the police in the aforesaid cases, the applicant remained silent, and was not bothered to assail the vires of the order dated 02.12.2022 before this Court or any other forum, and waited for the case to be challaned against him and now at this stage raising hue and cry when the learned Magistrate has taken cognizance of the offences, prima-facie which is apathy on his part as the applicant has not been able to produce any independent evidence in support of his version; so far as the issue of non-cognizable offence, the permission of the Magistrate is necessary under the code, which has not yet been obtained, if at all the applicant was/is so aggrieved against such attitude of Investigating Officer and the learned Magistrate. Prima facie investigation reports supported the version of respondent No.2, which is yet to be thrashed out during trial, and the applicant will have a chance to defend his case by putting his version, which shall be considered by the trial Court on merit.

19. During the hearing of this Application, the Applicant insisted upon his version of the incident to be recorded, primarily when the challan has already been submitted in the subject case, the Investigating Officer cannot re-investigate the case without permission of the trial Court, in such a scenario until and unless the Magistrate grants permission to the Investigating Officer, either to order for reinvestigation or further investigation of the case, then the Investigating Officer would be able to record the version of the aggrieved party and not otherwise as he has to wait for the order of the learned Magistrate for offenses triable by him. Besides when the aggrieved party has the remedy to institute a private complaint containing his version of the incident and the accused person in his private complaint can be summoned by the concerned Court to face a trial if he/she can prove his/her allegations against him/her.

20. In response to that query the applicant had categorically stated that he wanted the accused persons in her version of the incident to be brought to book which was not possible through the medium of a private complaint. Such stance has been found to be erroneous and fallacious, for the reason that by provisions of Section 202(1), Cr.P.C. a Court in a private complaint can direct an inquiry or investigation to be made by any Justice of the Peace or by a Police Officer or by such other person as it thinks fit. If in a given case, the Court in a private complaint if filed deem it appropriate can direct an investigation to be carried out in respect of the allegations made then the powers available during an investigation, enumerated in Part V, Chapter XIV of the Code of Criminal Procedure, 1898 read with section 4(1) (1) of the same Code, include the powers to arrest an accused person and to effect recovery from his/her possession or

at his/her instance. Such powers of the Investigating Officer or the investigating person recognize no distinction between an investigation in a State case and an investigation in a complaint case.

21. The object of investigation under section 202 of the Code is to enable the Court to scrutinize the allegations to protecting a person complained against from being summoned to face frivolous accusations. Section 202 of the Code is an enabling provision to empower the Court to hold an effective inquiry into the truthfulness or otherwise of the allegations leveled in the complaint to form an opinion on whether there exist sufficient grounds to proceed further or not. Therefore, inquiry/investigation under section 202 of the Code is not a futile exercise and is to be taken into consideration by the Court while deciding whether the process is to be issued or not.

22. The object and purpose of registration of a criminal case is to probe and find evidence and place all such material before a Court of competent jurisdiction and not to satisfy the complainant/aggrieved person and if any such material is provided by the investigating agency, that would help the Court for arriving at just conclusion.

23. In the present case, nothing has been pointed out that the impugned order shall prejudice the case of the applicant, if he approaches and files a direct complaint against the alleged excess of police and private party and the Magistrate concern shall take care of all the points raised by the applicant after hearing the parties.

24. In view of the facts and circumstances as discussed above the order dated 05.12.2022 passed by the learned XIVth Judicial Magistrate Karachi East in FIR No. 205/2022 under Section 354/504/506/337-A(i) PPC is hereby maintained and the instant Criminal Miscellaneous Application of applicant is disposed of along with pending application(s) in view of discussion made hereinabove. However the Applicant is at liberty to approach the concerned Judicial Magistrate and file Direct Complaint for redressal of his grievances if so advised, and the same is required to be decided in accordance with the law, if filed.

JUDGE