

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 691 of 2023

Date	Order with signature of Judge
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Priority Cases

1. For hearing of main case
2. For hearing of M.A No. 1102/2023

10.11.2023

Mr. Ghulam Rasool Soho advocate for the applicant
Mr. Asharf Samoon Advocate for Respondents
Ms. Rahat Ehsan APG

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C, the applicant Allah Jurio Arfani has assailed the vires of the order dated 19.9.2023 passed by the learned Additional Sessions Judge-I/MCTC Thatta in Criminal Miscellaneous Petition No. 898 of 2023 whereby direction was issued to SHO to record the statement of complainant/respondent No.1 for registration of F.I.R against the applicant. For convenience's sake, the relevant portion of the order dated 19.9.2023 is reproduced as under:-

“7. I have also perused the relevant record. The perusal of the record reveals that even though the report received from the office of DSP Complaint Cell, district Thatta does not entirely support the contents of the application however, the instant application contains specific accusations, of assault and causing of serious injuries to the above mentioned injured by the above specified proposed accused; thereby prima facie transpiring the commission of cognizable offense (s). The perusal further reveals that the application is attached with Medico-legal Certificates of Mst. Sakina w/o Muhammad Raheem, Ashraf s/o Khamiso, Khan Muhammad s/o Muhammad, Muhammad Raheem s/o Mithoo, Ibraheem s/o Haji, Ali s/o Ahmed, Majeed s/o Haji, Qasim s/o Suleman, Mst. Bibi w/o Ahmed, Mst. Noori d/o Essa, Qasim s/o Bachoo, 1st. Khatto w/o Ali, Juman s/o Ghayoo, Mst. Najma d/o Bilawal, Mst Maryam w/o Soomar, Mst. Fatima w/o Usman, Mst. Basri w/o Essa, Mst. Beebal w/o Ashraf, Naseer s/o Ashraf, Mst. Sara w/o Bilawal, and of Mst. Sakina w/o Allah Dino. And all of these Medico-legal Certificates mention the time of the incident to be 10:40 am, of 19.07.2023, whereas according to the contents of the application, the alleged incident of assault was made at their house(s)

8. On the other hand, Crime No 27/2023, under sections 302, 324, 147, 148, 149, 114, 504 PPC of police station Keti Bunder mentions the place of incident to be in front of the office of Mukhtiarkar, Keti Bunder at 1300 hours. Such reveals that the time and place of both the incidents are different from each other. Therefore, in my humble view, the case of the present applicant does not fall within the parameters, as settled by the Honorable Apex Court, in the case law relied upon by the side of the proposed accused, and reported as PLD 2018 Supreme Court 595. In this regard. I rely upon the unreported Order dated 28.04.2023, passed by the Honorable High Court of Sindh, Circuit Court Hyderabad, passed in Cr. Misc. Appl. No S-226 of 2023. Resultantly, this application is hereby allowed. The SHO Police Station Keti Bunder is directed to record the statement of the applicant and if the commission of any cognizable offense comes on record, from the statement of the applicant, then the FIR be registered against the wrongdoer(s), and be proceeded, as per law.”

2. Mr. Ghulam Rasool Soho advocate for the applicant has argued that on 19.07.2023, one person Usman Khaskell and other numerous hooligans armed with guns and hatches had attacked the Applicant and his

family members wherein Applicant and his family members were severely injured, whereas brother of Applicant namely Lakhadino son of Dur Muhammad was murdered; that thereafter on the same day the applicant lodged the FIR bearing no. 27 of 2023, under sections 302, 324, 147, 148, 149, 114, 504 PPC at Police Station Keti Bandar, and proceedings were initiated; thereafter, Respondent No.4 filed a Cr. Miscellaneous Application against 42 proposed accused persons including the Applicant based on a counter-version arising out of the same incident/case as mentioned and narrated by the Applicant in FIR bearing No. 27 of 2023 whereby a report was called from DSP of complaint cell SSP District Thatta and inquiry report was submitted; that thereafter vide the Impugned Order dated 18.09.2023, the learned Justice of Peace, despite the existence of the aforesaid FIR and another F.I.R No.34 of 2023 lodged by the Respondent No.4 of the same subject incident, allowed his Miscellaneous Application without appreciating that the registration of a First Information Reports based on the counter-version arising out of the same incident is barred by dicta laid down by the Supreme Court, hence, he failed to apply a judicious mind to the facts and circumstances of the case at hand. He next submitted that the learned Justice of Peace has misread the law and has failed to apply it to the facts and circumstances of the case at hand; hence, the Impugned Order being perverse is liable to be set aside by this Court; that the learned Justice of Peace whilst handing down the Impugned Order has failed to appreciate the law laid down by a Full Bench of the Hon'ble Supreme Court of Pakistan in the case of Mst. Sughran Bibi v. The State **PLD 2018 SC 595**, wherein, it has been held that there shall be no separate FIR for any new version arising out of the same incident of the case at hand. It is settled law that judgments of the Supreme Court are binding on every organ of the State, including the learned Justice of Peace; that the learned Justice of Peace has failed to apply the aforesaid legal principle to the facts of the case at hand, therefore, the Impugned Order is liable to set aside on this score alone; that the learned Justice of Peace while penning down the Impugned Order has failed to appreciate the contention that seeking the registration of a second FIR about an Incident of which an FIR has already been registered, is not tenable in the eyes of law, thus Impugned Order is liable to be set aside by this Court; that the learned Justice of Peace has failed to give any cogent reasons whatsoever in allowing the Respondent No.4's application, hence, the Impugned Order being hit by section 24-A of the General Clauses Act, 1897, is liable to be set aside. He argued that the Impugned Order fails to correctly interpret and apply the relevant provisions of law to the facts of the subject, therefore, the Impugned Order, being per incuriam, is liable to be set aside by this Court; that the Impugned Order suffers from grave misapplication of the settled principles, doctrines,

norms, and objectives of criminal jurisprudence as laid down by various Courts of the country, hence, is liable to be set aside by this Hon'ble Court.

3. Mr. Asharf Samoon Advocate for Respondent No.4 argued that on 19.07. 2023, around 10.40 a.m., the applicant party duly armed with weapons attacked the house of the respondent and his family members, and during such attack, several family members were seriously injured. He further contended the police refused to register the FIR of the incident and instead registered an FIR by showing the incident at 1300 hours. He further contended that the applicant party has committed cognizable offenses and the learned Additional Sessions Judge-I/MCTC Thatta rightly directed to register a criminal case against the applicant party, as the offense, committed by the accused is separate and has no nexus with the criminal cases registered by and between the parties earlier. He supported the impugned order dated 18.09.2023 and submitted that this Court vide order dated 28.04.2023 passed in Criminal Miscellaneous Application No. S-226 of 2023 as well as order dated 12.10.2023 passed by this Court in Cr. Bail Application No. 2111/2023 whereby this Court has observed that there are two incidents one was at 10. a.m. and the other was 1.00 p.m and in the second incident all remaining injured received injuries at the hands of accused side. He further submitted that the applicant side has committed murdered as such the judicial propriety demands the accuses be brought to justice as such the impugned order is with the parameter of law and does not call for interference by this Court . He lastly prayed that the instant Application is liable to be dismissed.

4. I have given due consideration to the submission made and have carefully gone through the contents of the instant Criminal Miscellaneous Application as well as the application addressed to the SHO and learned Additional Sessions Judge-I/MCTC Thatta in Criminal Miscellaneous Petition No. 898 of 2023. It is settled law that even if there is no direction of the Court, the S.H.O. has no authority to refuse to record the statement of the complainant in the relevant register irrespective of its authenticity/correctness or falsity of such statement. In this context the Supreme Court in the case of Muhammad Bashir vs. Station House Officer, Okara Cantt. and others (PLD 2007 Supreme Court 539) in para-25 and 26 have categorically held that S.H.O. has no authority to refuse to register FIR under any circumstances. He may refuse to investigate a case but he cannot refuse to record FIR.

5. The check against the lodging of false F.I.Rs was not the refusal to record such F.I.Rs, but the punishment of such informants under Section 182, P.P.C., etc. which should be, if enforced, a fair deterrent against misuse of the provisions of Section 154, Cr. P.C, however, it is made clear that there can be no second FIR in respect of the same cognizable offense or the same occurrence or incident in terms of law laid down by the Supreme Court in the case of Sughra Bibi vs. The State **PLD 2018 Supreme Court 595**.

6. In my humble view, the case of the present applicant falls within the parameters as settled by the Supreme Court in the case of Sughran Bibi supra in paragraph 27 (IV) (V) and (VII) of the said judgment for the reason that the two FIRs i.e. 27/2023 and 34/2023 by and between the parties is already registered and the respondent No.4 has attempted to lodge the second FIR on the plea that this is separate incident and has no nexus with the aforesaid FIRs. This anomaly could only be resolved if respondent No.2 put his version before the Investigating Officer and if he finds the incident is separate, he shall put up the matter before the concerned Magistrate for appropriate order.

7. As a result, this Criminal Miscellaneous Application is hereby allowed. Consequently, the impugned order dated 19.9.2023 passed by the learned Additional Sessions Judge-IMCTC Thatta in Criminal Miscellaneous Petition No. 898 of 2023, is set aside; however, the Respondent No.4 may approach the Investigation Officer who may record his statement under Section 161 Cr. P.C. if not recorded earlier; and proceed further under law. If the investigation officer has collected some evidence, that constitutes a cognizable offense, he is at liberty to file the fresh report before the concerned Magistrate for appropriate orders on the plea of respondent No.4.

JUDGE