

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
CrI. Misc. Application No.S-586 of 2022
(Mst. Farzana Vs. The State & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case

29-11-2023.

Mr. Shabbir Ali Bozdar, advocate for the applicant.
Mr. Imran Mobeen Khan, Assistant P.G for the State.

IRSHAD ALI SHAH, J;- The facts in brief necessary for disposal of instant CrI. Misc. Application are that the applicant by making an allegation that the private respondents on having become annoyed with her marriage with Allah Bachayo by making encroachment over her house, have misappropriated her belongings, by threatening her to be killed, lodged an FIR with PS Ubauro. On investigation, the report u/s 173 Cr.P.C was submitted by the police for trial of the private respondents for the said offence, it was turned down and consequently, the very FIR was disposed of under "C" class by learned Ist Civil Judge & Judicial Magistrate, Ubauro vide order dated 18-10-2022, which is impugned by the applicant before this Court by preferring the instant CrI. Misc. Application under section 561-A Cr.P.C.

2. It is contended by learned counsel for the applicant that learned trial Magistrate was having no authority to have disposed of the subject FIR under "C" class of his own on positive report of the police, which was based on honest investigation. By contending so, he sought for setting aside of impugned order with direction to learned trial Magistrate to take cognizance of the offence and to proceed with the case further in accordance with law.

3. None has come forward to advance arguments on behalf of the private respondents. However, learned Assistant P.G for the State did not support the impugned order.
4. Heard arguments and perused the record.
5. It is settled by now that burden to make out a case for cognizance is light; same could not be equated with the burden to prove the case at trial, which is somewhat heavy. In the instant case the police on the basis of honest investigation submitted report u/s 173 Cr.P.C for its cognizance, it was not accepted by learned trial Magistrate without lawful justification by making irrelevant and unnecessary discussion with regard to the merits of the case; consequently, he disposed of the subject FIR under "C" class and discharged the private respondents by way of impugned order, same being illegal is set aside with direction to learned trial Magistrate to pass the same afresh, after conducting further inquiry, if need be.
6. The instant Crl. Misc. Application is disposed of accordingly.

J U D G E