

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Miscellaneous Application No.777 of 2023

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| Date | Order with signature of Judge |
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1. For hearing of main case
2. For hearing of MA No.12154/2023

06.12.2023

Mr. Khalid Hussain Chandio advocate for applicants along with applicants.

Mr. Saleem Akhtar Buriro, Additional PG

Mr. Taj Nabi advocate for respondent No.2

Through this Criminal Miscellaneous Application, applicants Zakir Khan and Azmat Khan have assailed the legality of the order dated 6/10/2023 passed by the learned Vth Additional Sessions Judge Karachi Malir, whereby, he entertained the application of the respondent No.2, and SSP Complaint Cell District Malir to initiate the inquiry into the allegations of respondent No.2 if found true, then take legal action to be taken under inquiry.

2. The learned counsel for the applicants has submitted that the learned trial court while passing the impugned order has committed an error, as the matter between the parties is of civil nature; and, the applicants have been defrauded by respondent No.2 and as such the impugned order is liable to be set aside. As per learned counsel, the trial court has failed to consider the factum that the applicants and respondent No.2 entered into a sale agreement dated 13-06-2023 regarding the sale of the vehicle bearing registration no.LXJ-269, Model 1999 Toyota Corolla, which was purchased through public notice. Per learned counsel, the applicants returned the vehicle to respondent No.2 on the premise that the subject vehicle was punched and they demanded their money back but respondent No.2 to save his skin has attempted to lodge FIR against them on the purported plea of issuing threats and succeeded to obtain such directions, which was/is called for.

3. Learned counsel representing respondent No.2 has refuted the allegations and supported the impugned order. He emphasized that even if there is no direction from the Court, the S.H.O. has no authority to refuse to record the statement of respondent No.2 / complainant in the relevant register irrespective of its authenticity/correctness or falsity of such statement. He further submitted that S.H.O. has no authority to refuse to register FIR under any circumstances. However, he may refuse to investigate a case but he cannot refuse to record the statement. He prayed for the dismissal of the instant Criminal Miscellaneous Application.

4. I have heard learned counsel for the parties and gone through the record with their assistance.

5. The above findings of the learned Additional Sessions Judge, prima facie are not questionable since it is only a direction to SSP Complaint Cell District Malir to conduct an inquiry and take action under the law.

6. 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 the statement.

7. The learned counsel for the applicants has attempted to refer to certain documents filed with the criminal Miscellaneous Application to prove the innocence of his clients and tried to argue that the alleged offense was/is not made out as they are bonafide purchaser of the subject vehicle and the respondent No.2 has committed fraud and forgery by selling his vehicle which was punched/tempered as such he cannot escape from punishment under Pakistan Penal Code.

8. This Court is not supposed to comment on the possible outcome of the inquiry and investigation which is to be conducted by DSP after recording the statement of respondent No.2. Whatever the stance of the applicants, it should first be brought to the notice of S.H.O to falsify the statement of respondent No.2, if any, incorporated in the FIR. If the statement of respondent No.2 after inquiry & investigation is found to be false, the S.H.O. can prosecute respondent No.2 under Section 182 of the PPC as held by the Supreme Court in the case of Muhammad Bashir (supra).

9. In my humble view, the Supreme Court has closed the door of this Court to entertain any grievance against the order of the Ex-officio Justice of Peace directing the S.H.O. concerned to register FIR.

10. A full bench of the Supreme Court in the case of Younas Abbas & others vs. Additional Sessions Judge Chakwal and others (PLD 2016 SC 581) while dealing with powers of Ex-officio Justice of Peace under

Section 22-A of the Cr. P.C. in para 21 has again approved the findings of the aforesaid decisions on the subject issue.

11. Since the parties have leveled allegations and counter-allegations against each other on the issue of the alleged sale and purchase of the subject vehicle which seems to be of a civil nature and is yet to be ascertained by the DSP concerned, however, he has to see who is responsible for such fraud and forgery, cheating and if he finds something fishy on the part of the any of the parties, he would issue direction for such action against them under the law, the aforesaid exercise shall be undertaken within one week after providing the opportunity of hearing to both the parties.

12. This Criminal Miscellaneous Application is disposed of in the above terms. Consequently, the impugned order dated 6/10/2023 passed by the learned Vth Additional Sessions Judge Karachi Malir in Criminal Petition No. 2609 of 2023 is modified to the aforesaid extent subject to the condition that if the parties succeed in showing a cognizable offense to DSP, he will direct the SHO to act accordingly.

13. For the aforesaid reasons, this Criminal Miscellaneous Application is disposed of.

JUDGE