

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 225 of 2023

Date

Order with signature of Judge

Priority Cases

1. For orders on office objections
2. For hearing of main case
3. For hearing of MA No. 4255/23

24.11.2023

Mr. Abdul Qadir Mirza advocate for the applicant.

Nemo for respondent No.4.

Mr. Siraj Ali Khan APG

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant Syed Muhammad Adnan has assailed the legality of the order dated 31.03.2023 passed by the learned Additional Sessions Judge III /Ex-Officio Justice of Peace Karachi East in Criminal Miscellaneous Application No. 891 of 2023. Wherein the learned presiding officer allowed the application of the private respondent under Sections 22-A & B Cr. P.C., then the direction was issued to record the statement of the complainant by verifying the title documents of Plot No. 5K-E No.15, Old Ganna Mandi, Furqanabad, near Traffic Police Chowki, main University Road Karachi (subject property). For convenience's sake, the relevant portion of the order dated 31.03.2023 is reproduced as under:-

“ Issue direction to the SSP Karachi Eastt to depute any impartial Police Officer not below the rank of DSP, who shall record the statement of applicant and if from its contents cognizable offence is made out he shall incorporate the same in 154 Cr. P.C Book. In case a non-cognizable offense is constituted, the said DSP shall make entry under Section 155 Cr.P.C and submit the same before concerned Magistrate. However it may be noted here that while doing so, the DSP must ensure that he takes all precautionary measures by verifying the titles of both parties and probe into the allegations of the applicant to ascertain its genuineness. At the same time, accused shall not be arrested till availability of sufficient material connecting them with the alleged offence. Let the copy of this order be sent to the SSP Karachi East, for information and compliance. Order accordingly”

2. The Applicant, who is a Sub-Inspector in the Sindh Police, is aggrieved by an order dated 31-03-2023 passed by the Ex-Officio Justice of Peace East Karachi, whereby he has partially allowed the application of the Respondent No.4 by directing that Police Officer not below the rank of DSP to record the statement of the complainant under section 154 Cr.P.C., and from such statement, if a cognizable offense is made out the case shall be registered, subject to verification of title documents of the property allegedly occupied by the applicant by converting it to Police Station PIB

Colony on the plea that the subject property has been sanctioned by the City District Government Karachi.

3. I repeatedly asked Mr. Abdul Qadir Mirza, learned counsel representing the applicant as to how the Ex-Nazim/ City District Government Karachi was competent to allot the subject property, either to the applicant and/or to Sindh Police for the establishment of Police Station as claimed and also inquired what prejudice will be caused to the applicant and or Police Establishment if the statement of the complaint is recorded after verifying the documents of the subject property as mandated in the impugned order.

4. Learned counsel for the Applicant submits that the applicant had filed title documents of the subject property before the Justice of Peace to show that the land had been allotted to the Sindh Police in the year 2009 by the competent authority, whereas the respondent No.4 had no documents to show how he was claiming to have said piece of land. Per learned counsel, the Additional Sessions Judge has directed the DSP to make a probe into the title of the land, which was/is beyond the domain of the Justice of Peace under Sections 22-A & B Cr. P.C., learned counsel argued that the impugned order is perverse and passed in the gross and blatant abuse of the process of the Court and excessive exploitation, misuse, and abuse of Sections 22-A & B Cr. P.C., under the garb of statement. It was contended by learned counsel for the applicant that the remedy provided in Sections 22-A and 22-B Cr.P.C. is not speedy and effective, and the Ex-Officio Justice of Peace cannot exercise such powers when the dispute is of a civil nature. He argued that without verification of title documents by the concerned civil judge, this court cannot reach a conclusion, which exercise has already been undertaken and shortly, the issue will be resolved as such the instant Criminal Miscellaneous Application is liable to be allowed and the impugned order is liable to be set aside.

5. None present on behalf of the private respondent, though he has been served, however, he has chosen to remain absent, and the learned APG has insisted on the decision of the lis on merits.

6. On perusal of the impugned order, it appears that the learned Additional Sessions Judge has directed the DSP to make a probe into the title of the land, as both the parties claim ownership of the property in dispute which basically is a Katchi Abadi (temporary settlement). The subject property is governed by Sindh Katchi Abadies Authorities/Department The applicant being a police officer is alleged to

have encroached upon the property in dispute for his personal use and as per his claim, said land is now part and parcel of the Police Station, which was allotted to them by City District Government, Karachi in 2009, whereas, respondent's claim is that said land was purchased by him, hence, the applicant / proposed accused being Police Officer is the member of land grabber mafia, who intends to dispossess him with malafide intentions.

7. Keeping in view such stance of the parties, this court vide order dated 17.8.2023 directed learned District & Sessions Judge, Karachi (East) to appoint a Judicial Magistrate to conduct an inquiry into the matter however the aforesaid exercise has not yet been undertaken perhaps not finalized the reason best known to inquiry officer, however, this court needs to decide the present lis on merits, an excerpt whereof is as under:-

“Under these circumstances, it will be appropriate to go through the depth of the case. Accordingly, learned District & Sessions Judge, Karachi (East) is directed to appoint any Judicial Magistrate to conduct inquiry into the matter. The Enquiry Officer, after providing equal opportunity of hearing to either side and recording statement of all concerned, shall submit such report before this Court through MIT-II within four (4) weeks' time. The Enquiry Officer ought to be appointed, shall obtain documents from either side and after scrutinizing their authenticity/verification from the concerned, shall annex the same along with his report”

8. I have given due consideration to the submission made by the learned counsel for the applicant and have carefully gone through the contents of the instant Criminal Miscellaneous Application as well as the application addressed to the SHO and Additional Sessions Judge III /Ex-Officio Justice of Peace Karachi East.

9. 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.

10. 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 fairly deterrent against misuse of the provisions of Section 154, Cr.P.C.

11. The Constitution of the Islamic Republic of Pakistan prescribes important safeguards against depriving a person of his “life or liberty and property”. The Constitution also mandates a “fair trial and due process”. In the present case, the private respondent claims that he has been disposed by the Police officer from his lawful possession of the subject property as such judicial propriety demands that he must be allowed to produce his stance on the subject issue before the concerned officer having the mandate to record statement under section 154 Cr. P.C., in my opinion, no prejudice shall be caused to either party if the statement of the complainant is recorded.

12. For the reasons mentioned above no case is made out for indulgence of this Court on the subject issue, therefore, this Criminal Miscellaneous Application is dismissed.

13. These are the reasons of my short order dated 24.11.2023, whereby the captioned Criminal Miscellaneous Application was dismissed.

JUDGE