

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 762 of 2023

Date _____ Order with signature of Judge _____

Priority Cases

1. For order on office objection at 'A'
2. For hearing of main case

29.11.2023

Mr. Khalid Hussain Khoso advocate for the applicant
Syed Meeral Shah Bukhari, Additional P.G
M/s. Riaz Ahmed Bhatti and Syed Amir Ali Shah Jilani advocate for
Respondents No. 3 and 4

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant Muhammad Hafeez has assailed the vires of the order dated 26.09.2023 passed by the learned Sessions Judge/Ex-Officio Justice of Peace Malir in Criminal Miscellaneous petition No. 2660 of 2023 (re- Muhammad Hafeez v SP Complaint Cell Malir & others) under Section 22-A(6) whereby the matter was disposed of on the ground that the petitioner had to approach a competent Court of law for redressal of his grievance by filing direct complaint. An excerpt whereof is reproduced as under:-

“From the perusal of the record, it appears that earlier criminal petition No.2588/2023 filed by petitioner Ahmed Saad against the same proposed accused and which has been disposed of by this court vide order dated 19.09.2023, now the petitioner has filed the instant petition against the same proposed accused on the same set of allegations. An equally efficacious and alternate remedy is available with the petitioner to approach a competent Court having jurisdiction and file a direct complaint for redressal of his grievance if so advised. The petition in hand is accordingly disposed of.”

2. Mr. Khalid Hussain Khoso advocate for the applicant has contended that cognizable offenses have been committed by the proposed accused as such directions for FIR be given to the SHO of the concerned police station; that the registration of FIR is a basic right of citizen and victim, which unfortunately has been made like an unfulfilled dream for the poor citizens of the province of Sindh and due to the political influence and intervention the registration of the FIR is not less than a miracle for common people. He lastly prayed for allowing the instant Criminal Miscellaneous Application.

3. M/s. Riaz Ahmed Bhatti and Syed Amir Ali Shah Jilani for Respondent Nos. 3 & 4 have argued that efficacious and alternate remedy is available with the applicant to approach a competent Court having jurisdiction and file a direct complaint for redressal of his cause of action

still subsists. They 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 District & Sessions Judge/Ex. Officio Justice of Peace Malir Karachi in Criminal Miscellaneous Petition No. 2660 of 2023.

5. 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.

6. 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.

7. Both the parties have agreed to the disposal of the instant petition on the premise that the DIGP East concerned will hear the applicant as well as private respondents, take care of all the aspects of the case, and ensure due hearing of the parties, after hearing them if he finds a cognizable offense committed by the private respondents then directions may be issued to SHO concerned to lodge FIR against the culprits without discrimination. In the meantime, no harassment shall be caused to either party. The DIGP East shall also ensure that if he finds the complaint to be false action must be proposed under section 182 PPC.

8. The instant Criminal Miscellaneous Application is disposed of in the above terms.

JUDGE