

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Misc. Application No.S-806 of 2023
(Nadir Ali Vs. The State & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For Orders on office objections.
2. For Orders on CMA No. 6813/2023 (Ex./A)
3. For hearing of main case.
4. For hearing of MA No. 6814/2023 (Stay)

06-12-2023.

Mr. Abdul Rahim Mahar, advocate for the applicant.
Mr. Iqbal Hussain Joyo files power on behalf of the private respondent.
Mr. Imran Mobeen Khan, Assistant Prosecutor General.

1. Over ruled.
 2. Deferred.
- 3& 4. The private respondent by making an allegation with regard to of death of his wife and baby on account of negligence of the applicant lodged an FIR with PS Site Area Sukkur, on investigation it was recommended by the police to be cancelled under "C" class, such recommendation was declined and cognizance of the offence was taken by learned IIIrd Civil Judge & Judicial Magistrate (MTMC) Sukkur vide order dated 31-10-2023, which is impugned by the applicant before this Court by way of instant Crl. Misc. Application.

It is contended by learned counsel for the applicant that report was made by the police on the basis of honest investigation, it was not to have been ignored by learned trial Magistrate; therefore, the impugned order being illegal is liable to be set aside.

Learned Assistant P.G for the State and learned counsel for the private respondent by supporting the impugned order have sought for

dismissal of instant Crl. Misc. Application by contending that the case now is pending for trial before the Court of Sessions.

Heard arguments and perused the record.

The narration made by the private respondent in his FIR is supported by his witnesses; such narration cannot be brushed aside only for the reason that action is delayed considerably. It is settled by now that the burden to make out a case for trial is light; same could not be equated with the burden to prove the case at trial, which is somewhat heavy. The investigation officer of the case by disbelieving the private respondent has believed the applicant and then has furnished the report for cancellation of FIR under "C" class. By such an act, he acquired the status of the Court which alone is competent to form such conclusion. In such situation, on the basis of material brought on record, learned trial Court Magistrate was right to take cognizance of the offence by way of impugned order, which is not found illegal to be interfered with by this Court by way of instant Crl. Misc. Application; it is dismissed accordingly together with listed application directing the applicant to prove his innocence by joining the trial.

Judge