

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Misc. App. No. S – 526 of 2023

Date of hearing	Order with signature of Judge
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Hearing of case

1. For hearing of main case
2. For hearing of MA No.4450/2023 (S/A)

12.01.2024

Mr. Abdul Sattar Mahesar, Advocate for applicants.
Mr. Aftab Ahmed Shar, Additional Prosecutor General and
Mr. Imran Mobeen Khan, Assistant Prosecutor General.

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Muhammad Iqbal Kalhoro, J. – This application has been filed against impugned order dated 20.07.2023, whereby learned Magistrate, on a report of investigation disposing of the case bearing Crime No.49 of 2023, registered at Police Station Ahmedpur U/S 394 PPC by IO, took cognizance of the offence and registered the case against the applicants.

2. Learned Counsel for applicants has submitted that on 17.07.2023, the final report was submitted, as is evident from the submission note of District Public Prosecutor, and on the same date, applicants after seeking pre-arrest bail had also appeared along with IO before the learned Magistrate, who thereafter put off the case to 27.07.2023 for final report etc. after noting down presence of accused *et al.* But surprisingly, meanwhile on 20.07.2023, when none of the applicants was present, learned Magistrate proceeded to pass the impugned order. He has started the order with a word '**heard**' although no one was present before him. Learned Counsel further submits that the case was investigated by two Investigating Officers: one SIP Ameer Hussain Mahar and the other SIP Azam Hussain Makrani, and both have come to the same conclusion viz. case is a false one and was registered as counterblast to the case registered against the complainant party by the applicants, but learned Magistrate without noting all these points and discussing the material and in

absence of the applicants passed the impugned order, resulting in miscarriage of justice.

3. Learned Additional Prosecutor General and Assistant Prosecutor General have submitted that on 20.07.2023, the case was not fixed as per diary and no one was present before the learned Magistrate, yet he passed the impugned order; hence, the case may be remitted back to him to hear the parties and pass an appropriate order afresh.

4. In view of above and for the reasons as highlighted by the learned defence Counsel above, the impugned order is set aside. The case is remanded back to learned Judicial Magistrate, Pir-Jo-Goth with direction to hear IO, accused and complainant party, and pass a fresh order by discussing entire material justifying either disposal or taking cognizance of offence against the applicants within a period of one month.

The application stands **disposed of** in the above terms along with listed application.

J U D G E

Abdul Basit