

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**CrI. Misc. Application No.S-794 of 2023**  
*(Ishfaque Ahmed Mallah Vs. The State & others)*

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
-----------------	-------------------------------

1. For Orders on office objection.
2. For Orders on MA No. 6658/2023 (Ex./ A)
3. For hearing of main case.
4. For hearing of MA No. 6659/2023 (Stay)

**26-01-2024.**

Mr. Riaz Hussain Khaskheli, advocate for the applicants.  
Mr. Rab Dino Makwal, advocate for the private respondent.  
Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

\*\*\*\*\*

1. Over ruled.

2. Granted.

3 &4. It was alleged by the private respondents that the applicants, who mostly are police officials are harassing and demanding *Bhatta* from him to run scrap business. By making such allegation, he sought for direction against the police to record his FIR, it was issued by learned Additional Sessions Judge/Ex-Officio Justice of Peace, Gambat, vide order dated 31-10-2023, which is impugned by the applicants before this Court by making the instant CrI. Misc. Application u/s 561-A Cr.P.C.

It is contended by learned counsel for the applicants that the private respondent is in habit to purchase the stolen public property by declaring him to be scrap dealer and in order to cover his wrong doing, he is intending to involve the applicants in a false case as they may not discharge their lawful duty against him as public servant. By contending so, he has sought for setting aside the impugned order.

Learned DPG for the State did not support the impugned order; however, learned counsel for the private respondent by supporting the impugned order has sought for dismissal of the instant Crl. Misc. Application by contending that the cognizable offence has taken place.

Heard arguments and perused the record.

No particular date and time of the alleged incident has been disclosed by the private respondent. At least, three FIRs against him have been registered for purchasing the stolen property and such aspect of the case has been lost sight of by learned Ex-Officio Justice of Peace while passing the impugned order, it could not be sustained and is set aside.

In case of *Rai Ashraf and others vs. Muhammad Saleem Bhatti and others* (PLD 2010 S.C 691), it has been held by Apex Court that;

*“The learned High Court had erred in law to exercise discretion in favour of the respondent No.1 without realizing that the respondent No.1 had filed application before the Additional Sessions Judge/Ex-Officio Justice of the Peace to restrain the public functionaries not to take action against him in accordance with the LDA Act 1975, Rules and Regulations framed thereunder, therefore, respondent No.1 had filed petition with mala fide intention and this aspect was not considered by the learned High Court in its true perspective.”*

The instant Crl. Misc. Application is disposed of accordingly.

**Judge**

