

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Criminal Miscellaneous Application No. S-386 of 2023

Applicant : Sikandar Ali Memon through Mr. Sarmad Qurban Jiskani, advocate.

Respondent No. 3 : Irfan son of Nawaz Ali, in person.

The State : Through Mr. Imran Ali Abbasi, APG Sindh.

Date of hearing : 10.07.2023

Date of decision : 10.07.2023

ORDER

KHADIM HUSSAIN TUNIO, J- Through this Criminal Miscellaneous Application under Section 561-A, Cr.P.C, the applicant Sikandar Ali Memon has assailed the order dated 02.05.2023, passed by the learned IInd Additional Sessions Judge / Ex-Officio Justice of Peace, Tharparkar at Mithi, whereby an application under Section 22-A(6)(i) & (iii), Cr.P.C of respondent No. 3 seeking directions to SHO, Police Station Diplo to register the FIR was allowed and FIA was ordered to conduct an inquiry into the matter, hence this application.

2. Briefly, the facts necessary for the disposal of the instant application are that the respondent No. 3 alleged that the applicant made a phone call to him through his cellphone number and issued murderous threats, used derogatory language against him and also threatened to kidnap the respondent No. 3 and his family members.

3. Mr. Sarmad Qurban Jiskani, counsel for the applicant has contended that the impugned order passed by learned Ex-Officio Justice of Peace is not warranted by law; that the learned Ex-Officio Justice of Peace did not consider the fact that no evidence was available on the record against the applicant; that the learned Ex-Officio Justice of Peace passed the impugned order in a hasty manner and without applying its judicial mind by ordering FIA to conduct an inquiry into the matter.

4. On the other hand, learned A.P.G for State along with respondent No. 3 in person have supported the impugned order.

5. Heard learned counsel for the applicant, as well as respondent No. 3 in person and learned A.P.G and perused the record with their assistance.

6. Perusal of record shows that the Ex-Officio Justice of Peace Mithi has ordered the Federal Investigation Authority to conduct an inquiry into the matter. The matter, on the face of it, involves the applicant threatening the respondent No. 3 over a cell phone and abusing him while doing so. The Ex-Officio Justice of Peace deemed that the act committed by the applicant fell within S. 21 of the Prevention of Electronic Crimes Act, 2016 which is reproduced hereunder for ready reference:-

21. Cyber stalking.- (1) A person commits the offence of cyber stalking who, with the intent to coerce or intimidate or harass any person uses information system, information system network, the Internet, website, electronic mail or any other similar means of communication to-

- (a) follow a person or contacts or attempts to contact such person to foster personal interaction repeatedly despite a clear indication of disinterest by such person;
- (b) monitor the use by a person of the Internet, electronic mail, text message or any other form of electronic communication;
- (c) watch or spy upon a person in a manner that results in fear of violence or serious alarm or distress, in the mind of such person; or
- (d) take a photograph or make video of any person and displays or distributes it without his consent in a manner that harms a person.

7. Besides the above, stalking or harassment is defined by the Black's Law Dictionary as "*repeated conduct that is not wanted*". The keyword here being repeated, it is the case of respondent No. 3 that he had received a single phone call which is not denied by the applicant. Not only this, a perusal of S. 21 of the PECA 2016 referred to by the Ex-Officio Justice of Peace shows that the act of the applicant does not fall within any of the provisions of S. 21 *ibid*. That being the case, it is a simple matter of a heated conversation over the phone and the confines of the conversation between the applicant and the respondent No. 3 are at dispute which can be, if the Ex-Officio Justice of Peace deems so, investigated by the police and does not require the FIA to waste their resources when there clearly are actual incidents of cyberstalking, be it of foreign tourists or the people of Pakistan that they ought to be investigating instead. In these circumstances, the impugned order dated 02.05.2023 was set aside and the matter was sent to the Sessions Judge Tharparkar at Mithi to proceed with himself and decide it fully in accordance with law after hearing the parties vide short order dated 10.07.2023. These are the reasons for the same.

J U D G E