

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Crl. Misc. Appl. No.220 of 2021  
(Asadullah Khan v. The State and others)

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Date	Order with signature of Judge
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1. For hearing of main case
2. For hearing of MA No.3810/2021

**27.05.2024**

Mr. Waleed Khanzada, advocate for the applicant  
Mr. Farhan Khaliq Answer, advocate for the private respondent  
Mr. Mumtaz Ali Shah, Assistant Prosecutor General for the State

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The facts in brief necessary for the disposal of the instant Crl. Misc. Application are that the private respondent worked with Karachi Water and Sewerage Board; he was issued a cheque for the work done; it was bounced by the concerned bank when was presented there for encashment, for which he lodged an FIR with PS Nazimabad Karachi. The applicant was let off by the Investigating Officer of the case by placing his name in Column II of the report furnished u/s 173 Cr.PC; he was joined in trial by the learned IXth-Judicial Magistrate, Karachi, Central, vide order dated 06.03.2021, which is impugned by the applicant before this Court by making the instant Crl. Misc. Application under Section 561-A Cr. PC.

It is contended by learned counsel for the applicant that the applicant has nothing to do with the alleged incident, based on the honest investigation he was let off by the Investigating Officer of the

case and has been joined in trial by the learned Magistrate, without lawful justification by way of the impugned order, therefore, such order being illegal is to be set aside by this Court. In support of his contention, he relied upon the case of *Tayyab Tareen v. the State and others* (SBLR 2019 Sindh 918).

Learned APG for the State and learned counsel for the private respondent by supporting the impugned order have sought dismissal of the instant Crl. Misc. Application by contending that the applicant was let off by the Investigating Officer of the case based on dishonest investigation, ignoring the fact that he was vicariously liable for the commission of the incident.

Heard arguments and perused the record.

The applicant is named in FIR and whatever is stated by the private respondent in his FIR takes support from ancillary evidence. In that situation, the Investigating Officer of the case hardly has a jurisdiction to have let off the applicant by disbelieving the complainant and his witnesses in a summary manner, ignoring the fact the burden to make out a case for trial is light which could not be equated with the burden to prove the case at the trial. It is settled by now that the opinion of the police has no binding effect on the Courts. Based on material brought on the record, the learned trial Magistrate was right to take cognizance of the offence against the applicant by way of the impugned order; it is not found illegal to be interfered with by this Court by way of the instant Crl. Misc. Application.

The case law which is relied upon by the learned counsel for the applicant is on distinguishable facts and circumstances. In that case, an order passed by learned Ex-Officio Justice of Peace on application u/s 22-A/B Cr.PC was impugned. The instant case relates to cognizance of case.

Having discussed above, the instant Crl. Misc. Application is dismissed accordingly together with pending application, directing the applicant to prove his innocence by joining the trial.

**J U D G E**

Nadir\*