

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Miscellaneous Application No.697 of 2024

Date	Order with signature of Judge
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1. For orders on M.A No. 8830/2024
2. For hearing of MA No.12384/2022

Date of hearing and Order- 15.07.2024

Mr. Waqar Alam Abbasi advocate for the applicant
Mr. Shoaib Safdar, Assistant PG
Mr. Muhammad Hisham Mehar AAG along with ASI Saeed Mehboob, of
PS PIB colony DSP Abdul Ghaffar Shah, Gulshan-e-Iqbal, East.

ORDER

Adnan-ul-Karim Memon, J :- The applicants Fahad Ahmed Gulzar and Gulzar Ahmed have filed this Cr. Misc. Application under Section 561-A Cr. P.C against the order dated 26.06 2024 passed by the learned XXI Judicial Magistrate Karachi East on final report submitted by the Investigating Officer in Crime No. 151 of 2024 registered for offense under Section 353, 186, 269, 270/34 PPC of PS PIB Colony Karachi, whereby the report under Section 173 Cr. PC was returned to the Investigating Officer for presentation before the Intellectual Property Tribunal Forum/Court. It is inter alia contended that the trial Court failed to appreciate the documentary evidence and erroneously returned the report to the Investigating Officer for presentation before the Intellectual Property Tribunal. Learned counsel further submitted that the learned trial Court wrongly invoked Section 66-A of the Copyright Ordinance 1962 and referred the matter to the Intellectual Property Tribunal and added the sections of Copyright which are not attracted in the facts and circumstances of the case. Per learned counsel, the applicant obtained post-arrest bail in the subject crime, which was canceled without hearing the applicant. Learned counsel prayed for setting aside the order dated 26.06.2024 passed by the learned Judicial Magistrate Karachi East, which needs to be set at naught.

2. Learned Additional Prosecutor has narrated the story and submitted that on 08-04-2024 police during patrolling received spy information that in Mecasa Apartment, Block 12 Gulshan-e-Iqbal, Karachi, two persons had stocked different brands of Cigarette, injurious to health, on such information police reached the spot where they were deterred from performing their duties, however, they succeeded to arrest applicant Fahad, while other accused managed to escape. The case property was seized on the spot and the accused was produced before the Court of Area Magistrate, where they were released on surety of PR Bond of 10 Thousand each. After completion of the investigation, the investigating officer submitted a charge sheet to the trial Court, meanwhile, the trial court returned the chargesheet to the investigating

officer for presentation before the Intellectual Property Tribunal vide impugned order and recalled the bail granting order for want of jurisdiction.

3. I have heard the learned counsel for the parties and perused the record with their assistance.

4. This Court vide order dated 4.7.2024 while issuing notice to the respondents, framed the following questions:-

“To appreciate whether the trial Court can add and delete the Section of law in the final report not attracted in the present case, whether the report submitted by the Investigation Officer under Section 173 Cr. P.C. can be modified and subsequently returned to the Investigating Officer for presentation before the Intellectual Property Tribunal having jurisdiction in the matter and whether the bail already granted to the applicant in the subject crime can be canceled without resorting the grounds mentioned and Section 497 (5) Cr. P.C

5. On the aforesaid proposition, the learned counsel for the applicants contended that the Judicial Magistrate had no authority to interfere in the investigation and exceeded his jurisdiction while directing the Investigating Officer to present the chargesheet before the Intellectual Property Tribunal in Section 66-A of the Copyright Ordinance 1962. On facts, he contended that Sub Inspector PS PIB colony had lodged a false case against the applicants, as the alleged occurrence did not take place. The prosecution specifically alleged that the applicants had stocked different brands of Cigarettes, injurious to health but the same was never referred to the chemical examiner for verification. He maintained that in the peculiar circumstances of the case chemical examination of the purported case property was essential to corroborate the ocular account. The learned counsel further submitted that even if the prosecution version was assumed to be correct, Section 66-A of the Copyright Ordinance 1962 could not be invoked against them. The impugned order had thus seriously prejudiced the applicants.

6. The learned Additional Prosecutor General vehemently opposed this Criminal Miscellaneous Application and supported the impugned order. He contended that the Investigating Officer was obligated to place all the relevant papers before the Magistrate while seeking acceptance of the chargesheet against the accused. In turn, the Magistrate was required to act judicially while considering that request and in doing so if he found that a particular offence was made out he was competent to direct the Investigating Officer to add the relevant section in the FIR. On facts, he submitted that section Section 66-A of the Copyright Ordinance 1962. was very much attracted and no exception could be taken to the Judicial Magistrate's direction in this

regard. He contended that the Magistrate was the overall in charge of the criminal case. Hence, if circumstances required he could direct the Investigating Officer to add or omit a particular section thus the impugned order was valid and justified. I am not in agreement with the proposition so put forward by the learned Additional Prosecutor General that Section 66-A of Copyright Ordinance 1962, my tentative view is that Section 66-A provides a penalty for publishing collections or compendiums of work which have been adapted, translated, or modified in any manner without the authority of the owner of the copyright, whereas in the present case nobody has come forward to claim copyright and the offense if any committed could be tried by Court within local limits of whose jurisdiction it was committed in terms of Section 177 Cr. P C and if during the framing of the charge the trial Court finds the offense to be tried by another Court of law then he has to apply its mind whether, from the ingredients of the FIR and charge sheet, the said offense is applicable or otherwise, however in the present case the learned trial Court has invoked the provision of Intellectual Property Organization of Pakistan Act 2012 and referred the matter to the Tribunal for trial of the subject offense, prima facie the approach of the trial Court does not align with law laid down by the Superior Court on the subject issue, for the reason that there is no complainant on behalf of the certain companies to come forward to claim copyright to attract the jurisdiction of tribunal in terms of Section 15 and 18 of the Intellectual Property Organization of Pakistan Act 2012.

7. It is by now well settled that it is the duty of the police to investigate the FIR and collect evidence. The courts have no authority to interfere in their proceedings unless they are mala fide or without jurisdiction. Even the High Court cannot invoke section 561-A, Cr.P.C. to issue directions to the investigators for the reason that the accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offense with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of inquiry. There is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its function, always, of course, subject to the right of the Court to intervene in an appropriate case like habeas

corpus. However, if an investigation is launched mala fide or is clearly beyond the jurisdiction of the investigating agencies concerned then it may be possible for the action of the investigating agencies to be corrected by a proper proceeding under the law.

8. Further the only provision relating to the subject which is available in the Code of Criminal Procedure is section 173 which commands expeditious conclusion of the investigations and further ordains that on conclusion of every investigation, the concerned SHO shall submit a report of the result thereof in the prescribed manner to the Magistrate competent to take cognizance under section 190, Cr.P.C. No power vests with any Court including a High Court to override the said legal command and to direct the SHO either not to submit the said report or to submit the said report in a particular manner i.e. against only such persons as the Court desires or only to such offenses as the Court wishes.

9. Primarily, a criminal case that commences with the registration of FIR under section 154, Cr.P.C. has a long journey before it is decided and the accused is/are acquitted or convicted. FIR sets the law in motion. The police investigate the allegations of the complainant party, collect evidence, identify the offenses committed by the accused, and determine what penal provisions are attracted. After that, they draw a report under section 173, Cr.P.C. which is submitted to the court through the office of the District Public Prosecutor. Section 9(5) of the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2010 obligates the public prosecutor to scrutinize the said report and submit it to the court if it is in order. However, if it is defective he shall return the same to the officer-in-charge of the police station or the investigating officer (as the case may be) for correction.

10. The term "scrutinize" has a wide connotation and includes the power to add or delete a section. However, the trial court is neither bound by the opinion of the police nor the prosecutor regarding the applicability of a penal provision. At the time of indicting the accused, it is bound to go through the entire record, apply its judicial mind, and frame a charge against him for all those offenses which appear to be made out from the evidence collected by the police. Section 9(7) requires the prosecutor to assist the court in this matter. However, under section 227, Cr.P.C. the court is competent to amend the charge at any time before judgment is pronounced.

11. In a nub, during investigation the prosecution agency and after cognizance is taken it is the court that decides how the accused is to be

charged. Nonetheless, after the registration of FIR and before the commencement of trial there may be various stages when the matter may be brought to the court. Quite often a controversy arises as to whether during such proceedings the court is competent to direct the Investigating Officer to add or omit a particular section in the FIR. The Supreme Court in the case of Ch. Muhammad Anwar Samma and others v. The State (1976 SCMR 168) held as under:-

"We are also unable to agree that what has been done by the High Court, namely, importing a new offense with which the accused had not been charged, was proper."

12. In this regard, reference may be made to the case of Shahzeb and others v. The State (2016 SCMR 1740). Referring to the arguments of learned APG that the Magistrate is competent to direct addition or deletion of an offense from the FIR. In principle a Magistrate is the incharge of a criminal case who, even during the progress of an investigation, gets many opportunities to go through the record of the investigation conducted by the police and in an appropriate case and at an appropriate stage he can require the investigating officer to consider an addition or deletion of any penal provision. However, after submission of a report under section 173, Cr. P.C./Challan the Magistrate taking cognizance of the offense or the trial court taking cognizance of the case can take cognizance of any offense disclosed by the material available on the record of investigation even if the police have not invoked the relevant penal provision. Even at the time of framing of the charge, a trial Court can frame a charge in respect of an offense disclosed by the record even if the same finds no mention in the report submitted under section 173, Cr. P.C./Challan. With so many opportunities being available with the Magistrate and the trial Court regarding rectification of a mistake, deliberate or otherwise, committed by the police

13. Under the law, the Magistrate cannot ask the SHO/Investigation officer to submit the report under section 173, Cr.P.C. in a particular manner, i.e. against the persons he desires or in respect of such offenses that he wishes, however, it is made clear that if he finds that the Investigating Officer has not investigated the case on the subject point involved in the matter, he may direct the Investigating Officer to conduct further investigation and submit a report after its conclusion, but directly saying that the matter pertains to particular jurisdiction without taking cognizance and framing the point of determination, does not align with Sections 173 and 190 Cr.P.C., therefore, the impugned order dated 26.06.2024 to the extent of returning the report under

Section 173 Cr. P.C. to Investigating Officer for presentation before the concerned forum/Court is set at naught.

14. In view of the above, this Criminal Miscellaneous Application stands disposed of along with the listed / pending application(s) with direction to the trial Court having jurisdiction to proceed with the case and decide the fate of the case in accordance with law within reasonable time.

JUDGE

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