

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No.S-263 of 2023
Crl. Misc. Application No.S-268 of 2023

Date	Order with signature of Judge
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1. For Orders on Office objection.
2. For hearing of main case.
3. For Orders on MA No. 2789/2023 (Stay/A)

Mr. Achar Khan Gabole, advocate for applicant.

Mr. ShamsuddinKobhar, advocate for respondent No.3.

Syed Sardar Ali Shah Rizvi, Additional P.G for the State a/w Inspector Aftab Hussain Farooqi I/O Crime No. 94/2023 PS Daharki, SIP Zaheer Hussain Bhutto SHO PS Daharki and SIP Ghulam Akbar Mirani I/O Crime No. 93/2023 of PS Daharki.

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ORDER
04-09-2023.

KHADIM HUSSAIN SOOMRO, J;- By this single order, I intend to dispose of the above-mentioned Crl. Misc. Applications, by which the applicants have impugned the orders dated 19-04-2023 and 20-04-2023 passed by learned IInd Additional Sessions Judge/Ex-Officio Justice of Peace Ghotki in Crl. Misc. Applications No. 902/2023 and 966/2023 were filed by respondent No. 3, whereby the learned Ex-Officio Justice of Peace directed respondent No. 2/SHO PS Daharki to record the statement of respondent No. 3 as per his verbatim and then register FIR if the cognizable offence is made out; hence the applicants have preferred the instant applications for setting aside the impugned orders.

2. It is alleged that on 03-04-2023, the applicants abducted Akhtar Ali, Asad Ali and Rashid Ali. Asad Ali was released, but Akhtar Ali and Rashid Ali were not released. On 04-04-2023, the respondent party was informed that Akhtar Ali and Rashid Ali were murdered. Private respondents approached the police to record their statements, but their statements were not recorded; hence, they filed their separate Crl. Misc. Application against the applicant party, which were

allowed vide order dated 19-04-2023 and 20-04-2023, respectively, which are impugned by the applicants through the instant CrI. Misc. Applications.

3. Learned counsel for the applicant submits that private respondents filed CrI. Misc. Application u/s 22A & B Cr.P.C, before Ex-Officio Justice of Peace Ghotki for the registration of FIR against the applicants, who are police officials. The applicant party is being accused of committing the murder of Akhtar Ali and Rashid Ali after their abduction on 03-04-2023. It is alleged that Akhtar Ali, who had a criminal background and was involved in multiple FIRs, along with Rashid Ali Jatt, who was killed by his associates. It is further argued that the Ex-Officio Justice of Peace did not take into account the criminal record of the deceased Akhtar Ali and accepted the second version of the incident as true without assigning any cogent reason and has passed the impugned order, same is liable to be set-aside.

4. The counsel for respondent No. 3 argues that on 03-04-2023, Akhtar Ali Kobhar, Asad Ali, and Rashid Ali were unlawfully taken into custody by the police. Subsequently, Asad Ali Kobhr was released by the police, whereas Akhtar Ali and Rashid Ali were unlawfully killed in a fake police encounter. One Naveed Ahmed Rajri lodged an FIR crime number 93/2023 under sections 394, 302, 397, 398, and 392 of the Pakistan Penal Code (PPC) at the Daharki Police Station against Akhtar Ali Kobhar and Rashid Ali Jatt. Additionally, on 04-04-2023, another FIR with the number 94/2023 was registered at the PS Daharki, charging Akhtar Ali Kobhar, Rashid Jatt, and three unidentified individuals with offences under sections 324, 353, 399, and 402 of the PPC. It is alleged that these FIRs were initiated by the police to absolve themselves of responsibility for the murder of Akhtar Ali. The counsel for the respondent contends that the police have made an attempt to demonstrate their competence by falsely implicating

the deceased persons in criminal cases. The counsel for the respondent requests that the applications are liable to be dismissed.

5. Learned Additional P.G for the State supports the impugned orders and adopt the arguments advanced by learned counsel for the respondent.

6. I have heard learned counsels for the parties and have gone through the material available on record.

7. The record reflects that on 03-04-2023, one Naveed Ahmed Rajri lodged the FIR No. 93/2023 u/s 394, 304, 397, 398, 392 PPC at Police Station Daharki, against Rashid Ali Jatt and Akhtar Ali Kobhar (deceased), alleging therein that on 30-03-2023 at 1315 hours, accused persons committed the murder of his father, Amir Bux Rajri, and caused injuries to his paternal nephew Mansoor Rajri, and committed robbery of 3.5 million rupees. The record further reflects that on 04-04-2023, Inspector /SHO Muhammad Qabil Bhayo, applicant No.2, registered FIR No. 94/2023 u/s 324, 353, 399, 402 PPC at PS Daharki against accused Rashid Ali Jatt, Akhtar Ali Kobhar and 03 unidentified persons wherein both the nominated accused were killed in the firing of their accomplices. The criminal record of killed/slain accused Akhtar Ali son of Ali Gul Kobhar is as under:-

S#	Crime No.	Under section	Police Station	Status
01	98/2020	337F(vi) PPC	Daharki	Challan
02	205/2020	337F(v) PPC	Daharki	Challan
03	93/2023	302 PPC	Daharki	Pending
04	94/2023	324, 353 PPC	Daharki	Pending

The Criminal record of killed/slain Rashid Ali Jatt is as under:-

S#	Crime No.	Under section	Police Station	Status
01	127/2020	324, 353, 506/2 PPC	Daharki	Challan
02	93/2023	302 PPC	Daharki	Pending
03	94/2023	324, 353 PPC	Daharki	Pending

8. In the instant case, the police party is claiming that the deceased persons were hardened criminals and had a distasteful criminal history. They were killed at the firing of their accomplices, while the private respondents are claiming that the police party had abducted Akhtar Ali and Rashid, have committed their murder by showing false police encounter and lodged false FIRs against them in order to save their skin.

9. The private respondents have also obtained orders from the Ex-Officio Justice of Peace for recording their statements/for registration of FIR against the applicants who are police officials. In this situation, I have taken guidance from the Judgment of the esteemed Supreme Court of Pakistan in the case of *Sughran Bibi (PLD 2018 S.C 595)*, in which it has been held that during the investigation, the investigating officer is obliged to investigate the matter from all possible angles while keeping in view of all the versions of the incident brought to his notice. As per Rule 25.2(3) of the Police Rules, 1934, it is the duty of an investigating officer to find out the truth of the matter under investigation. The aims and objectives shall be to discover the actual facts of the case and arrest the real offender or offenders. The investigation officer should refrain from forming any premature opinions about the facts supporting or opposing any individual. It is an established principle of law that no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR until and unless there is sufficient material or evidence available on the record which, prima facie satisfying the investigating officer regarding the correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue. It was further held in the Judgment (supra) that upon conclusion of the investigation, the report to be submitted under section 173, Cr.P.C is to be based upon the actual facts discovered during the investigation irrespective of

the versions of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person.

10. Learned APG has suggested that in order to bring the truth on the record, an impartial and honest official not below the rank of DSP may be appointed to investigate the matter and submit such a report before the learned trial Court; such proposal is not opposed by both learned counsels for the applicants as well as learned counsel for the respondents.

11. In view of the above (Mr. Anwar Ali Shaikh), DSP Sukkur is directed to investigate the matter by making all efforts to record statements of persons which he feels necessary, and upon conclusion of the investigation, such report under section 173, Cr.P.C be submitted before the learned trial Court. Both the above Crl. Misc. Applications are disposed of accordingly in the above terms.

J U D G E

Nasim/P.A