

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No.728 of 2021
(Naeem Khalid v. The State and others)

DATE:

ORDER WITH SIGNATURE OF THE JUDGE

1. For order on office objection (Flag A)
2. For hearing of main case

03.05.2024

Mr. Abdullah Mahar, advocate for the applicant
Mr. Muhammad Juman, advocate for the respondents
Mr. Muhammad Anwar Mahar, DDPP

It is alleged by the applicant that the private respondents besides committing criminal intimidation, mischief and robbery encroached upon his house. Based on such allegation, he lodged an FIR (293/2021) with PS Korangi Industrial Area Karachi. On investigation, a report under Section 173 Cr. P C was submitted by the Investigating Officer for the trial of the accused involved therein; cognizance whereof was declined by cancelling the subject FIR under `C` Class by learned XXXth-Judicial Magistrate East Karachi vide order dated 28.10.2021, which is impugned by the applicant before this Court by making the instant Crl. Misc. Application under section 561-A Cr.P.C.

It is contended by learned counsel for the applicant that learned trial Magistrate was having no authority to have dismissed the positive report of the police for the trial of the accused involved in the incident; therefore, the impugned order being patently illegal is liable to be set aside by this Court with direction to learned trial Magistrate to take cognizance of the offence and then to proceed further with the case as per law.

Learned DDPP for the State did not support the impugned order; however, learned counsel for the private respondents by supporting the impugned order has sought dismissal of instant Crl. Misc. Application by contending that the applicant intends to involve the private respondents in a false case only to settle his dispute with them over the property.

Heard arguments and perused the record.

It is settled by now that the burden to make out the case for cognizance is light same could never be equated with the burden to prove the case at trial which requires evidence. It was a positive report of the police for the trial of the accused involved therein and was not to have been brushed aside by the learned trial Magistrate by making irrelevant and unnecessary observations concerning the merits of the case by disbelieving the applicant and his witnesses in a summary manner. By doing so, he has exercised his jurisdiction improperly and illegally which could never be appreciated.

In the case of *Said Jalal and 2 others Vs. The State and & another* (1972 SCMR 516), it has been held by Apex Court that;

“The Magistrate cannot dismiss the report submitted by the police under section 173 merely on the ground that result of the preliminary inquiry conducted by the Magistrate is otherwise. If a challan be submitted under section 173 of the Code it is the duty of the Magistrate to proceed to deal with it according to law, and this means that the Magistrate shall proceed to issue process under section 204 of the Code, and hold the inquiry of trial contemplated under Chapters XVIII, XX and XXI of the Code”.

Consequent to the above discussion, the impugned order is set aside with a direction to the learned trial Magistrate to pass the same afresh per law after conducting further inquiry if required.

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

JUDGE