

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

Criminal Misc. Application No.S-480 of 2024
(*Ishtiaque Ahmed Vs. S.S.P Mirpurkhas and others*)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing and Order 25.09.2024

Mr. Mumtaz Ali Jarwar, advocate for the applicant a/w applicant.
Mr. Shoukat Ali Rahimoon, advocate for the respondent No.1.
Mr. Dhani Bakhsh Mari, Assistant P.G Sindh.
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ORDER

Adnan-ul-Karim Memon, J. The applicant Ishtiaque Ahmed, has filed a Criminal Miscellaneous Application under section 561-A Cr. P.C to overturn the order issued on August 3, 2024, by the Ex-Officio Justice of Peace/Additional Sessions Judge-I Mirpurkhas, whereby he dismissed applicant's request to register a police case against private respondents. The presiding officers' decision was/is based on the belief that Ishtiaque and the private individuals were involved in a trivial dispute and that applicant's accusations against a retired teacher, were not true.

2. The applicant wants to file a counter FIR against the private respondents based on the injuries mentioned in the Final Medico Legal Certificate. However, the private respondents submit that this is an attempt to manipulate the Medico-Legal Certificate after a considerable period, as respondents have already lodged FIR No.127/2024 against the applicant. The private respondents' FIR No.127/2024 was lodged under sections 506(2), 427, 504, and 34 of the P.P.C.

3. Learned counsel for the applicant has referred to the Final Medico Legal Certificate dated 02.07.2024 whereby injuries No.1, 2, 3, and 4 have been declared as Ghry-Jaifah Damiah and Munaqqillah which is cognizable offense and FIR cannot be refused. The aforesaid stance has been refuted by the learned counsel for the private respondents No.3 and 4 on the premise that private respondent No.3 had already lodged FIR No.127/2024 under section 506(2), 427, 504, 34 P.P.C at P.S Kot

Ghulam Muhammad and this is an attempt on the part of the applicant to lodge the counter FIR against the private respondents by manipulating the Medico legal certificate after considerable period.

3. The two parties in the case agreed that the injured party, Muhammad Arshad (father of the applicant), will record a statement with the investigating officer (IO) today in the case related to FIR No. 127/2024 in terms of ratio of the Sughra Bibi case. It involves a woman named Sughra Bibi who sought justice for the extrajudicial killing of her son, Mohsin Ali, by police officers. If the IO finds any material that indicates a crime has been committed, they will submit a supplementary report to the concerned Magistrate. The Magistrate will then decide on the appropriate course of action based on the supplementary report.

4. In 2018, the Supreme Court ruled a landmark judgment in the case of Mst. Sughra Bibi [PLD 2018 SC 595], which has had a significant impact on the criminal justice system. It has highlighted the issue of extrajudicial killings and the importance of accountability for such crimes. The case has also strengthened the rights of victims and their families to seek justice. Para No.3 of the order is as under:-

“ The issue before us, to put it very simply, is as to whether a separate FIR can be registered for every new version of the same incident when commission of the relevant cognizable offence already stands reported to the police and an FIR already stands registered in that regard or not. An ancillary issue is that if no separate FIR can be registered for any new version of the same incident then how can such new version be recorded and investigated by the police.”

5. After a detailed discussion of the previous judgments on the issue it was held in para No. 27 of judgment as under:-

27. As a result of the discussion made above we declare the legal position as follows:

(i) According to section 154, Cr.P.C. an FIR is only the first information to the local police about commission of a cognizable offence. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard.

(ii) If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.

(iii) Upon registration of an FIR a criminal "case" comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter.

(iv) During the investigation conducted after registration of an FIR the **investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161**, Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case.

(v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by 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. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

(vi) Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue.

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

6. In view of the above, this instant Criminal Miscellaneous Application stands disposed of.

JUDGE