

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD.

Cr.Misc.Appl.No.S- 238 of 2012

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on MA 4732/2013.
2. For Katcha Peshi.
3. For hearing of MA 2060/2012.

05.11.2013.

Mr. Nadir Hussain Junejo, Advocate for applicant.  
Mr. Liaquat Ali Larik, Advocate for respondent No.2.  
Mr. Shahid Shaikh, A.P.G. for the State.  
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Through instant Criminal Miscellaneous Application, applicant Abdul Rehman has impugned the orders dated 16.04.2012 and 17.04.2012 passed by learned VIIIth Civil Judge & Judicial Magistrate, Hyderabad. Order dated 16.04.2012 passed in FIR No.50/2012 registered at Police Station Tando Jam U/s 17(3) H.O, 147, 148, 149, 427, 436, 337-H(ii), 337-A(i) F(i) PPC is reproduced as under:-

***“In this matter I/O submitted interim charge sheet and time was granted to him for final charge sheet on 16/4/2012 at 1130 am but it is now 1:50 pm final report u/s 173 Cr.P.C. not submitted. I have perused the record there is sufficient evidence available on record so interim charge sheet treated as final register the case against all nominated accused persons in FIR u/s 395/34 PPC. Call I/O to provide statements u/s 161 Cr.P.C. Issue NBWs of accused persons date fixed 26/4/2012.”***

On 17.04.2012 following order was passed in the same crime:-

***“In this matter on 16/4/2012 interim charge sheet was treated as final and case was registered. Now SIP Qadir Bux Behrani submitted this report before me. As per case law laid down in PLD 1962 Lahore Page 405 it is not possible for me to entertain this report so file on record. SIP Qadir Bux is directed to provide 161 Cr.P.C. statement forthwith.”***

Mr. Nadir Hussain Junejo, learned advocate for applicant submits that second investigation has been carried out by an honest Investigation Officer namely Inspector Siraj Ahmed Lashari in which accused were found innocent but the learned Civil Judge & Judicial Magistrate disagreed with second report/opinion submitted by Inspector Siraj Ahmed Lashari. Learned advocate for applicant submits that false FIR No.50/2012 was lodged by Mst. Shahnaz at Police Station Tando Jam against the accused persons. He submitted that there was dispute between the parties over the land. It is also submitted that relatives of Mst.

Shahnaz have the criminal record. He has submitted that orders passed by learned Judicial Magistrate are not sustainable under the law. In support of his contentions, learned counsel has relied upon the cases reported as Muzaffar Ali v. The State (2006 MLD 1837) and Peer Ghulam Dastagir and 2 others v. The State and another (2007 YLR 930).

Mr. Liaquat Ali Larik, learned advocate for respondent No.2/complainant Mst. Shahnaz has argued that case was investigated by SIP Qadir Bux Behrani and after usual investigation, accused Abdul Rehman, Abdul Ghafoor, Anwar, Immi Muhammad, Laiq Dino and Shamsuddin were challaned and accused Ameer Ali, DSP Ghulam Murtaza, SHO Rana Nasrullah, ASI Siraj Ahmed, HC Jumma Khan and 30/35 unknown were shown as absconders in the charge sheet. Such interim challan was submitted u/s 17(3) HO, 147, 148, 149, 427, 436, 337-H(ii), A(i), F(i) P.P.C. Subsequently, it was treated as final challan. He further submitted that second opinion of another investigation officer in the same crime was not binding upon the Magistrate and it is argued that Magistrate rightly disagreed with the second opinion. He has submitted that sufficient evidence was collected during investigation against the accused to connect them in this case and they were rightly challaned. It is also argued that a competent Court of law has already taken cognizance. It is for the trial Court to decide the case on merits.

Mr. Shahid Shaikh, learned A.P.G. submitted that both the orders of Civil Judge & Judicial Magistrate dated 16.04.2012 and 17.04.2012 are not speaking orders, the same may be set aside and Civil Judge & Judicial Magistrate may be directed to pass the speaking orders.

I have carefully heard the learned counsel for the parties and perused the relevant record.

Record reflects that Mst. Shahnaz lodged FIR on 21.03.2012 at Police Station Tando Jam. It was recorded by ASI Allah Obhayo Rajper vide Crime No.50/2012 U/s 17(3) HO, 147, 148, 149, 427, 436, 337-H(ii), 337-A(i), F(i) PPC. After usual investigation, challan was submitted against the above named accused persons. Thereafter, on the orders of SSP Hyderabad, Inspector Siraj Ahmed Lashari conducted re-investigation and he found the accused innocent and submitted such report before the learned Civil Judge & Judicial Magistrate. The learned Magistrate disagreed with the report of Inspector Siraj Ahmed Lashari and treated the interim challan as final. It is matter of record that the cognizance has

already been taken by Court. Case is pending before the competent Court of law. It is for the trial Court to decide the case on merits in accordance with law. The power given by Section 561-A Cr.P.C. certainly not be so utilized as to interrupt or divert the ordinary course of criminal procedure as laid down in the procedural statute. Justice requires that trial of the present case should be proceeded according to law as held down by Honourable Supreme Court in the case of A-Habib Ahmed v. MKG Scott Christen and five others, reported in PLD 1992 SC 353. No infirmity or illegality has been pointed out in the impugned orders. As such orders dated 16.04.2012 and 17.04.2012 passed by learned Civil Judge & Judicial Magistrate, VIII, Hyderabad require no interference. There is no merit in Criminal Miscellaneous Application, the same is hereby dismissed alongwith listed applications.

JUDGE

Tufail