

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

(1) Cr. Misc. Appln. No.S-317 of 2018

Applicants : 1. Jaffar s/o Kambeer Khan,
2. Khuda Bux s/o Wali Jan,
3. Mashooque alias Shah Bux alias
Shah Mohammad s/o Nabi Bux,
4. Ali Nawaz son of Khuda Bux,
All by caste Bangulani, through
M/s Asif Ali Abdul Razak Soomro &
Habibullah G. Ghouri, Advocates.

Complainant : Mst. Soomri w/o Master Manzoor
Ahmed, through Mr. Ahmed Bijarani

Respondent : The State, through Mr. Aitbar Ali Bullo,
Deputy Prosecutor General.

(2) Cr. Misc. Appln. No. S-94 of 2019

Applicant : Mst. Soomri wife of Master Manzoor
Ahmed Bangulani, Through Mr. Saeed
Ahmed B. Bijarani, advocate.

Respondents : SHO P.S Ghulam Sarwar Sarki/
Shabirabad & others

Mr. Aitbar Ali Bullo, Deputy Prosecutor
General for respondents No. 1 & 2

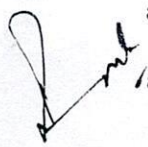
Mr. Habibullah G. Ghouri, Advocate for
respondents No.3 to 6

Date of Hearing: 13.01.2020

Date of Order : 20.03.2020

ORDER

ZAFAR AHMED RAJPUT, J.- By this common order, I intend to
dispose of aforementioned both the criminal miscellaneous
applications, as the same have arisen out of one and same incident
and between the same parties.



2. Briefly stated, the facts of the case are that, on 06.08.2018, SIP Muhammad Ayoub Bajkani of Police Station Ghulam Sarwar Sarki/Shabirabad lodged **FIR No.15/2018** under Sections 302, 311, 34, P.P.C. in a case of murder of a lady, namely, Mst. Fahmeeda, which was allegedly committed by her husband Barkat Ali. After usual investigation, police submitted the challan on 30.08.2018, showing accused Barkat Ali as absconder. Afterward, on 01.09.2018, Mst. Soomri, the mother of deceased Mst. Fahmeeda, lodged **FIR No.17/2018** for the same occurrence and at the same police station, wherein she along with accused Barkat Ali also nominated four other persons, namely, Jaffar, Khuda Bux, Mashooque and Ali Nawaz. Incharge Police Station after investigation submitted his final report under "C"/Cancel Class of Police Rules due to lack of evidence to Judicial Magistrate, Tangwani, who vide order dated **26.09.2018** approved the report. Thereafter, on 01.10.2017, Mst. Soomri filed Cr. Misc. Application No.1137 of 2018, praying therein for recording her and Mst. Sajjan's statements in Crime/FIR No.15/2018. The learned 1st Additional Sessions Judge, Kandhkot vide order dated **09.10.2018** disposed of said application by directing the I.O. of Crime/FIR No.15/2018 to record their statements under section 161/164, Cr. P.C and prepare such police record under Section 173, Cr. P.C to produce before the Magistrate having jurisdiction after getting proper submission of prosecutor within 15 days. After that, on 26.10.2018, the I.O. submitted another report u/s 173, Cr. P.C showing the names of Jaffar, Khuda Bux, Mashooque alias Shah Bux alias Shah Mohammad and Ali Nawaz as absconding accused. Thereafter, on **10.11.2018**, the learned 1st Additional Sessions Judge, Kandhkot

passed an order to issue NBWs against the above-named accused. **Criminal Misc. Application No.S-317 of 2018** has been filed by the said accused/applicants, assailing the orders, dated 09.10.2018 & 10.11.2018, while Mst. Soomri has impugned the order, dated 26.09.2018, in **Criminal Misc. Application No.S-94 of 2019**.

3. M/s Asif Ali Abdul Razak Soomro and Habibullah G. Ghouri, learned Counsel appearing for applicants in Cr. Misc. Application No.S-317 of 2018 and for the respondents No. 3 to 6 in Criminal Misc. Application No.S-94 of 2019 have contended that the impugned orders dated 09.10.2018 and 10.11.2018 are perverse and result of misreading and non-reading of the material collected during course of investigation; that NBWs being coercive process could not be issued in the matter, as the applicants were found innocent during investigation of the case/FIR No.17/2018; that the impugned orders are totally misconceived and at the most Mst. Soomri could have filed a direct complaint after disposal of her FIR under "C" class, hence impugned orders are liable to be set aside. While arguing Criminal Misc. Application No.S-94 of 2019, learned counsel have fully supported the order, dated 26.09.2018.

4. On the other hand, Mr. Saeed Ahmed B. Bijarani, learned Counsel appearing for applicant Mst. Soomri in Cr. Misc. Application No.S-94 of 2019 and for the complainant in Cr. Misc. Application No.S-317 of 2018, has maintained that the order passed by the Judicial Magistrate, Tangwani on 26.09.2018 approving the summary of Incharge P.S Ghulam Sarwar Sarki/Shabirabad for cancellation of FIR No.17/2018 is contrary to law and facts, hence the same being unsustainable in law is liable to be set aside; that

from a bare reading of the said FIR, a cognizable offence appears to have been made out and it is clear from the contents of FIR that accused persons named therein being armed with deadly weapons committed murder of an innocent lady; that the Incharge of P.S Ghulam Sarwar Sarki/Shabirabad submitted a biased report in favour of the accused persons on the ground that the case emanated from FIR No.15/2018 has already been challaned; that PW Mst. Sajjan has also fully supported the version mentioned in FIR No.17/2018 in her statement under Section 161, Cr. P.C, therefore, it was duty of the police to submit report under Section 173, Cr. P.C before the Court of law for taking cognizance of the offence against the nominated accused persons. He while arguing Cr. Misc. Application No.S-317 of 2018, fully supported the orders dated 09.10.2018 and 10.11.2018.

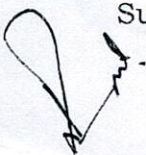
5. Learned DPG has; however, fully supported the orders impugned in both the Cr. Misc. Applications. He has also asserted that Cr. Misc. Application No.S-94 of 2019 has been preferred by Mst. Soomri against the order dated 26.09.2018 with the delay of 07 months i.e. on 22.04.2019; however, her grievances have apparently been redressed as her statement as well statement of her witness Mst. Sajjan have been recorded in FIR No.15/2018 and the accused nominated by her have been challaned in the Court of law in the said crime.

6. Heard learned Counsel for the parties, DPG and perused the material available on record.



7. It is an admitted position that for the one offence two FIRs were registered, one on behalf of the State being Crime No.15/2018 and the other by Mst. Soomri, the mother of deceased Mst. Fahmeeda being FIR No.17/2018. Accused persons, namely, Jaffar, Khuda Bux, Mashooque and Ali Nawaz implicated by Mst. Soomri in her FIR were not nominated in FIR No.15/2018, lodged on behalf of the State. It appears that after investigation, Incharge P.S Ghulam Sarwar Sarki/Shabirabad submitted his report in FIR No.17/2018 for the disposal of the case under "C" class, which was approved by the concerned Judicial Magistrate vide order dated 26.9.2018; however, in compliance of order dated 09.10.2018 passed by the learned 1st Additional Sessions Judge, Kandhkot in Cr. M.A. No.1137 of 2018, the statements of Mst. Soomri and her witness Mst. Sajjan were recorded by the I.O. and on the basis thereof, he submitted supplementary challan against the accused Jaffar Bangulani and others, the applicants of Cr. Misc. Application No.S-317 of 2018, before the Court concerned. There is no cavil to the proposition that police is competent to carry out multi investigation even after submission of report under section 173 Cr. P.C in Court. No legal bar exists on further investigation of the case even after submission of final report under section 173 Cr. P.C.

8. Now the position is that the learned trial Court has taken cognizance against the applicants in Cr. Misc. Application No. S-317 of 2018. In the case of *Director-General, Anti-Corruption v. Muhammad Akram Khan (PLD 2013 SC 401)*, the Honourable Supreme Court has held that:



"It goes without saying that if after taking of cognizance of a case by the trial Court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigors of a trial then the law has provided him a remedy under Sections 249-A/265-K, Cr. P.C to seek his premature acquittal if the charge against him is groundless or there is no probability of the conviction."

In view of above, Criminal Misc. Application No.S-317 of 2018, filed by applicants Jaffar Bangulani and others, having no legal substance is dismissed.

9. So far Criminal Misc. Application No.S-94 of 2019 is concerned, it is matter of record that the Judicial Magistrate, Tangwani approved the report of Incharge police station in subsequent FIR bearing No. 17/ 2018 for the disposal of same under "C" Class due to lack of evidence. However, the accused nominated in the said FIR by the complainant Mst. Soomri have already been challaned in earlier FIR bearing No.15/ 2018, lodged on behalf of the State for the same offence and now Mst. Soomri is one of the prosecution witnesses of said FIR. Hence, Criminal Misc. Application No.S-94 of 2019 is dismissed accordingly being devoid of merit.


JUDGE

Qazi Tahir PA/ *