

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
Cr. Misc. Appl. No. S- 489 of 2015

| DATE | ORDER WITH SIGNATURE OF JUDGE |
|------------|-------------------------------|
| 08.02.2016 | |

1. For Orders on MA 8766/15
2. For Katcha Peshi

Mr. Muhammad Zahid Chohan, Advocate for Applicant
Mr. Shahzado Saleem Nahiyoon, A.P.G.

Applicant is complainant of FIR No. 2 of 2012 registered on 2.1.2012 at police station Tando Yousif for offences under Section 448, 506(2) and 34 PPC.

It is the case of the applicant that she moved an application before the Trial Court viz. learned Civil Judge and Judicial Magistrate-VII, Hyderabad for summoning the witness namely Jafaruddin but her application was dismissed by the Trial Court vide order dated 15.5.2015. Against which she filed a Criminal Revision Application No. 14 of 2015 before the Sessions Judge, Hyderabad, but that too was dismissed by the learned IInd Additional Sessions Judge, Hyderabad vide order dated 07.10.2015.

Her counsel has argued that the evidence of said witness is essential for just decision of the case. He further states that the accused in their statement recorded under Section 342 Cr.P.C. have taken the name of this person who sold them the subject plot which is the bone of contention between the parties. He, however, admits that this person was neither a witness of the incident nor was so cited by the complainant in her FIR.

Learned APG has opposed this application and states that two orders passed by the subordinate courts are in accordance with law.

I have considered the submission of parties and perused the record.

Precisely the allegations levelled by the complainant against the accused are that they committed trespass over her plot and issued her threats. Admittedly, while this

alleged incident happened, the said witness namely Jafferuddin was not present at the spot. His evidence with regard to the allegations in the FIR does not appear to be essential. The question whether the applicant or accused purchased the said plot from the said person is not in controversy before the trial court, which is only seized with the criminal trial. It goes without saying that the burden to prove the allegations always lies upon the prosecution. The person sought to be examined has not been cited as a witness anywhere in the prosecution case and only his name was taken by the accused in their statement under Section 342 Cr.P.C. Just because of this fact, his evidence would not become essential. From the arguments of learned Counsel, it is apparent that he wants to establish ownership of the complainant over the plot by examining the said witness. Obviously, in a criminal case, such issue cannot be determined. I see no illegality or irregularity in the order passed by the two courts below. The applicant has failed to establish the necessity of examining this witness. This application is dismissed accordingly.

JUDGE

*Karar/-