

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

Criminal Revision Application No.S-94 of 2011

Date of hearing: 22-05-2015.

Date of decision: 22-05-2015.

Applicant: Through Mr. Altaf Ahmed Shahid Abro, advocate.

Respondent: The State through Mushtaq Ahmed Abbasi,
D.D.P.P.

None for the respondents.

MUHAMMAD IQBAL KALHORO, J: -This revision application has been filed against the order dated 05-07-2011 passed by the learned Sessions Judge, Tharparkar @ Mithi on a direct complaint filed by the applicant against the respondents. The allegations narrated in the direct complaint are that while the applicant was present in Jungle on 14-04-2011 at about 02-00 p.m. grazing his cattles, the respondents armed with lathis including Bachal who was armed with gun came over there. No sooner they came than the respondent Bachal opened fire on the complainant due to previous enmity but he saved himself by ducking down on the ground.

During the preliminary enquiry the complainant examined himself and produced Dost Muhammad and Muhammad Sawan as his witnesses.

After evaluating the statements of the witnesses, learned Sessions Judge dismissed the direct complaint under section 203 Cr.P.C. vide impugned order.

Mr. Altaf Ahmed Shahid Abro advocate for the applicant in support of the instant application has argued that the learned Sessions Judge has not

properly evaluated the evidence of complainant as well as the witnesses produced by him and the impugned order has in fact has resulted into miscarriage of justice. He has further argued that the scope of preliminary enquiry is very limited wherein only prima facie evidence against the accused is to be seen for the purpose of bringing the direct complaint on the regular file, and only in the trial, the merits of the evidence are to be evaluated deeply. He further submits that there was no requirement to produce any medical certificate as a proof for the commission of offence under section 324 PPC as the contents of direct complaint itself show that the applicant was only caused kicks and fists blows by the respondents besides being fired at. In support of his arguments, he has relied upon case law reported in 1983 P Cr. L J 2241, 2000 Y L R 1603 and 2003 SCMR 1406.

On the other hand, learned D.D.P.P. has refuted the above contentions of learned counsel and has argued that earlier the applicant had registered an FIR bearing crime No.28/2011 for the same offence against the respondents which after due investigation was disposed of under “C” class mainly because the witnesses produced by the complainant had not supported him entirely over his version of the incident. He has supported the impugned order and has requested for the dismissal of the application.

I have heard the learned counsel for the parties and perused the material available on record. The allegations mainly are that all the respondents co-jointly came together at the place of incident where accused Bachal allegedly opened fire upon the complainant but he could save himself by ducking down on the ground. Against that allegation, applicant had registered a criminal case as stated above which after due investigation was disposed of under “C” class. The applicant however did not challenge that order before any Court of law but instead filed the direct complaint before the learned Sessions Judge, Tharparkar @ Mithi containing same facts. During preliminary enquiry the witnesses who were produced by the applicant have simply said that they only saw the respondents causing fists and kicks blows

to the applicant. No one of them has supported the applicant regarding his allegation of being fired at by the respondent Bachal. More so, in support of such contention no any supporting evidence was produced before the Investigating Officer of the crime No.28/2011 in the shape of empty nor before the learned Sessions Judge concerned who had held the preliminary enquiry in the direct complainant filed by the applicant.

Under the facts and circumstances, it appears prima facie that there is no material to conclude that the respondents had committed any cognizable offence for which cognizance should have been taken by the learned Sessions Judge. The impugned order does not suffer from any illegality or material irregularity, which need no interference of this Court. For foregoing reasons, the application is dismissed.

JUDGE

A.C