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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA.
Cr.Misc.A No.S -59 of 2017.

Date of hearing	Order with signature of Judge
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Hg. orders on office objection.
For hearing of case.
For hearing of MA No.1301/2017.
Notice issued to respondent No.2 &3.

08.12.2017.

Mr. Imdad Ali Mashori Advocate alongwith applicants.
Mr. Khadim Hussain Khoharo Addl.Prosecutor General

Through this Criminal Miscellaneous Application, applicant Barkat Ali and Manzoor Ali both son of Khadim Hussain Kalhoro, have assailed the order dated 12.4.2017 passed in Criminal Misc. Application No.396/2017, filed by the respondents No.3, under section 22-A and 22-B Cr.PC, whereby Sessions Judge/Justice of Peace, Larkana, has directed the SHO, Police Station Hyderi to record statement of respondents No.3 and if any cognizable offence is made out further proceedings may be made in accordance with law with further directions not to arrest the accused unless some tangible evidence which could cause a reasonable suspicion of their involvement in the above offence.

It may be relevant to mention here that pursuant to order for issuance of notice to respondent No.3 on 28.4.2017 Mr. Mazhar Ali Magna advocate appeared on behalf of respondent No.3, who undertook to file his power on the next date of hearing but; thereafter, he failed to do so and even notice has been issued to respondent No.3 for today's date of hearing, which has received back served upon her, but she has been called absent.

Learned counsel for the applicants while inviting the attention of this Court towards prayer clause of the Cr.MiSc.A.No.396./2017, filed by the respondent No.3, has stated that even no prayer was made by the respondent No.3 for lodging of FIR against the applicant but the learned Sessions Judge/Ex. Officio Justice of Peace, Larkana has passed the impugned order which is even without assigning any reason for passing such order, which reflects that it has been passed by him without even examining the contents of the application of respondent No.3; as such the impugned order is not sustainable under the law.

Learned APG very candidly admits that the impugned order has been passed by the Sessions Judge/ Ex-Officio Justice of Peace, Larkana is illegal as the respondents No. 3 had not prayed in her application for the lodging of FIR against the applicants.

It may be relevant to reproduce the prayer made by the respondent No.3 in Cr.Misc.A.No.396/2017, which reads as under:-

- a) That this Honourable court may graciously be pleased to call upon the respondents No.1, 4 to 7 not to cause any harassment to the applicant as well as her parents and further the respondent No.1 may be directed to provide legal and lawful protection as guaranteed under the law.
- b) That further be respondents No.2 and 3 may be directed to provide complete details of the property situated in Ghalib Nazar Muhalla left by deceased Khadim Hussain s/o Shahban Kalhoro as well as property viz.1755/5-2 (132-4) ward-A, 1755/5-1(127-4) ward-A Ghlaib Nagar Muhalla so that the applicant may be able to approach the proper forum and avail the legal remedy.
- c) Award costs.
- d) Any other equitable relief be granted to the applicant.

The above mentioned prayer made by the respondent No.3 in her application to Sessions Judge/ Ex. Officio Justice of Peace, Larkana clearly indicates that she did not desire to lodge any criminal case against the applicants and even from the contents of the said application there appears nothing in relation to commission of any offence by the applicants. Hence the impugned order being outcome of misreading of the facts ^{on record} and unsustainable under the law, is hereby set-aside by allowing this Criminal Miscellaneous Application.

Criminal Miscellaneous Application stands allowed.


J U D G E