

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

Criminal Miscellaneous Application No.S-257 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

For hearing of M.A. No.4197/2015.

13.12.2021.

Ms. Noreen Shaikh advocate for the applicant.

Mr. Nazar Muhammad Memon APG.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Complainant is real nephew of applicant against whom he got FIR bearing No.32/2015 registered under Section 392, 364, 449, 342 PPC 337-J.Q. at P.S. Airport for trespassing his house, committing robbery and abducting his father on account of dispute over House No.A/42 claimed by complainant to be joint property and alleging that applicant wanted to sell the same without his father's consent. In the investigation, the case was disposed of initially in "B" class as false one but when such papers were presented before the Magistrate he ordered for re-investigation. In re-investigation again the case was disposed of but this time under "C" class as there was no sufficient evidence against applicant. When such report was submitted before learned Magistrate he did not agree with the findings vide impugned order dated 15.05.2015 and returned papers to SHO concerned for recording statements of PWs as well as independent witnesses under Section 164 Cr.P.C. and thereafter in the light of such statements dispose of the case.

Learned counsel for the applicant has submitted that the case was falsely registered because applicant had got admitted his brother (father of complainant) in Sir Cowasji Jehangir Institute of Psychiatry Hyderabad for treatment which infuriated his son/complainant and he lodged FIR.

Learned APG while going through police papers has pointed out that alleged abductee himself admitted before police at the time of his appearance recorded vide memo dated 06.05.2015 that he got admitted by his brother in hospital and was not abducted by anyone. His statement under Section 161 Cr.P.C. was also recorded on the same day in which he reiterated the same facts and has denied allegations of his abduction and incident itself. Apart from above it has

been pointed out that independent witnesses living adjacent to the house of accused were examined but they also did not support the case against the applicant. In view of such facts, learned APG has not supported the impugned order and I do not see any reason to disagree with him when alleged abductee himself has denied his abduction, no case against the applicant is made out. Learned Magistrate's finding while disagreeing with the report and returning the material/ papers to SHO concerned to record statements of PWs and independent witnesses and dispose of the case in the light of such statements is not sustainable. For, either he can agree or disagree with the report and cannot order I.O. to dispose of the matter in the light of statements to be recorded by him in future. Accordingly, this criminal miscellaneous application is allowed and impugned order dated 15.05.2015 is hereby set-aside.

JUDGE

Irfan Ali