

IN THE HIGH COURT OF SINDH, KARACHI.**Cr. Misc. Application No.576 of 2023****(M/s. Sino-hydro Corporation vs. The State & others)****22.11.2024**

Mr. Ghulam Mustafa Hingorjo, advocate for applicant

Mr. Irfan Bashir Bhutta, advocate for respondent No.6

Mr. Mr. Muhammad Noonari, DPG

ORDER

MUHAMMAD IQBAL KALHORO J:- Applicant, a company, has impugned an order dated 13.05.2023 in Crime No.704/2022, u/s 380, 420, 468, 467, 471, 34 PPC at Police Station Darakshan, Karachi, whereby on the report u/s 173 CrPC learned Magistrate has postponed taking cognizance of the offences on the ground that the accused referred in the Challan for trial, namely, Abid Ali is absconder, by relying upon **2016 Sindh 238**.

2. The case of the applicant is that said person was employee of the company and was in use of company car bearing registration No.CZ-6291. He, meanwhile, got a false entry recorded at Police Station Mubina Town, Karachi regarding misplacement of original file of the vehicle and got the fake documents prepared in his favour. On the basis of those documents, he sold out the said car to Syed Muhammad Immad. When the company came to know of such facts, it registered the FIR as above, in the investigation of which, Syed Muhammad Immad (Respondent No.6) having been considered as a bonafide purchaser of the vehicle has been let off, whereas, the main accused Abid Ali has been declared as absconder.

3. Learned counsel for the applicant submits that the order is not sustainable in law as the Magistrate was required to take cognizance of the offences against both the accused and decide possession of the car at the same time, which admittedly after a thorough inquiry has been restored in the ownership of the company.

4. Learned counsel for the respondent No.6 (Syed Muhammad Immad) has opposed the arguments stating that he is a bonafide purchaser and has nothing to do with any fraud allegedly committed by Abid Ali.

5. I have heard both the parties and perused material available on record. In this case, there were multiple issues referred to the learned Magistrate through report u/s 173 CrPC to take notice of. Not only, the issue of abscondence of Abid Ali was before the Magistrate but the possession of the car and its ownership was also an issue to be decided by the learned Magistrate. But the Magistrate very conveniently postponed taking cognizance of the offences and simply directed the SHO to submit a fresh report in the

case fortnightly. This approach is patently against the law, which dictates that if the accused referred in the Challan is absconder, the Magistrate shall issue NBWs against him after taking cognizance of the offence, if the case is triable by it, so that the accused could be arrested and brought in the Court to face the trial. Learned Magistrate not only ignored such important dictate of the law but by postponing taking cognizance of the offences has abdicated his responsibility of deciding possession of the vehicle and the fact as to who shall be treated its genuine owner.

6. The order therefore being devoid of merit is set aside. The matter is remanded to the Magistrate to take cognizance of the offences against accused Abid Ali and issue NBWs against him to procure his attendance before the Court and decide the issue of possession of the vehicle and genuineness of its owner. Insofar as, exoneration of Syed Muhammad Immad is concerned, *prima facie* there is no evidence that he was in league with main accused Abid Ali and committed fraud with the complainant. To that extent the order is maintained. This application in hand is accordingly disposed of in above terms.

J U D G E

Rafiq/P.A.