

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Misc. Application No.S-291 of 2017

Date	Order with signature of Judge
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For hearing of main case

Mr. Iftikhar Ali Arain, Advocate for the applicant
Mr. Bakhshan Khan Mahar, Advocate for proposed accused
Mr. Shafi Muhammad Mahar, DPG

Date of hearing: 15.04.2019

Date of order: 15.04.2019

ORDER

ZAFAR AHMED RAJPUT, J:- Through instant Criminal Miscellaneous Application, the applicant has impugned the order dated 11.02.2016, whereby the learned Additional Sessions Judge/Ex-officio Justice of Peace, Kandiaro dismissed the Cr.Misc.Appl. No.223/2016, filed by the applicant under section 22-A and 22-B, Cr.P.C, leaving the applicant at liberty to file Direct Complaint, if so desires.

2. Learned counsel for the applicant states that the impugned order being contrary to facts and law is not sustainable. He further states that a cognizable offence was made out by the applicant in his Criminal Miscellaneous Application, which he filed before the Ex-Officio Justice of Peace but the same was dismissed by the learned Ex-Officio Justice of Peace without applying his judicious mind.

3. On the other hand, learned counsel appearing for the proposed accused while supporting the impugned order maintains that earlier to Criminal Miscellaneous Application filed by the applicant, Allah Warayo the brother of the applicant filed Cr.Misc. Appl.No.2828/2015 wherein he obtained an order for lodging of F.I.R from Ex-Officio Justice of Peace but later he died on 10.01.2016 without lodging the F.I.R. and thereafter the

present applicant filed Cr.Misc. Appl. No.223/2016 claiming therein that he was associate with Allah Warayo when the alleged incident took place.

4. Learned DPG also supports the impugned order and states that alternate efficacious remedy for filing Direct Complainant is available to applicant, which can be availed by the applicant.

5. Heard learned counsel for the parties and perused the material available record.

6. It appears that applicant had filed Cr.Misc.Appl.No.223/2016 alleging therein that his brother Haji Allah Warayo was contesting Local Government Election 2015 for the seat of Chairman on the ticket of P.M.L(N) scheduled on 19.11.2015 on which date after visiting Polling Station Mirzapur they were coming back and reached at Bhitai Shell Petrol Pump where proposed accused No.1 snatched golden chain from the neck of the brother of the applicant, while proposed No.2 ASI Ghulam Sarwar snatched golden ring, Proposed accused No.8 Ashique snatched Rado watch and proposed accused No.10 snatched Rs.27500/- and thereafter they caused butt blows and kicks and fists to Allah Warayo. Later an F.I.R was lodged against Allah Warayo bearing No.164/2015 at Police Station Kandiaro by the proposed accused No.8 (Ashique Ali), however, Allah Warayo was produced before the Medical Officer during investigation and the injuries which he received from the hands of proposed accused was subsequently declared as Ghyr-Jaifa Damiyah. Later Allah Warrayo filed Cr.Misc. Appl. No.2828/2015 before the Ex-Officio Justice of Peace, which was allowed directing the S.H.O. concerned to record the statement of Allah Warayo and in case a cognizable offence is made out, F.I.R. may be lodged. Subsequently, on 10.01.2016 Allah Warayo died, however, he did not appear before the S.H.O. concerned for recording of his statement and after his death, his

brother the present applicant filed Cr.Misc.Appl. No.223/2016 which was dismissed by the Ex-Officio Justice of Peace, Kandiaro vide impugned order, by observing that the applicant's version is not likely to be believed on account of the fact that Allah Warayo has already expired. It may be observed that deceased Allah Warayo after obtaining an order on 23.12.2015 for recording of his statement by the S.H.O. concerned and recording of the F.I.R. if a cognizance offence is made out from his statement, failed to appear before the S.H.O. concerned up to the day of his death i.e. 10.01.2016. The learned counsel for the applicant failed to satisfy as to how the successive application was maintainable when earlier the brother of the applicant already obtained an order from the Ex-Officio Justice of Peace in terms of section 22-A(6)(1) Cr.P.C but failed to appear before the S.H.O. concerned for recording of his statement.

7. Therefore, I do not find any illegality in the impugned order, this application is therefore, dismissed accordingly being devoid of merit.

JUDGE

Suleman Khan/PA