

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Misc. Appln. No. S-59 of 2024

Date Order with signature of Judge

1. For order on office objection.
2. For hearing of main case.
3. For hearing of M.A No. 672/2024. (Stay Application)

20-06-2024

Mr. Zeb Hussain Pathan, advocate holding brief for Mr. Muhammad Afzal Jagirani, advocate for the applicant

Mr. Bahadur Ali Shahani, advocate for respondent No.1/ complainant

Mr. Ali Anwar Kandhro, Additional Prosecutor General for the State

1. As the matter has been concluded, the office objection may not be considered.

2. & 3. In the first round, learned counsel for the applicant requested for time to proceed with this case as the learned counsel for complainant required the matter to be proceeded.

On the second call, brief was held by Mr. Zeb Hussain Pathan advocate on part of learned counsel for the applicant, while firstly adjournment was denied, however on being informed that in the circumstances wherein the interim orders are operating and the matter was being taken up on this second call at the request, the same is required to be recalled if the date is required to be provided. Learned counsel holding brief on acquiring instructions proceeded with the matter although it is stated by him that his name is not present in the vakalatnama.

Learned counsel for the applicant as such contended that the impugned order whereby the learned Ex-Officio Justice of Peace/Sessions Judge, Jacobabad has passed the impugned order for

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statement of the complainant to be recorded and in case the cognizable offence is made out, the F.I.R be lodged; he has not considered that the sufficient material was not present as to the existence of cognizable offence. He further contended that the police report is also clear in the matter as it referred to a civil dispute only.

Learned Additional Prosecutor General, however, supports the impugned order.

Learned counsel for the complainant contends that the order has rightly been passed and the available relief has already been provided by the learned Ex-Officio Justice of Peace in the impugned order, whereby without availability of sufficient tangible material evidence, no arrest is to be taken place.

In rebuttal, learned counsel for the applicant contends that no sections were provided in the application U/S 22-A & B Cr.P.C and as such the impugned order is liable to be set-aside.

Heard learned counsel for the applicant, learned counsel for the complainant, learned Additional Prosecutor General and perused the material available on record.

The private respondent herein had filed the application U/S 22 A & B Cr.P.C alleging an incident as stated therein, whereby the present applicant along with the some other persons were specifically named who were heard by the learned Ex-Officio/Justice of Peace, it was alleged that they had held applicant and his sister-in-law at gun point and were physically abused as a result whereof the sister-in-law who was pregnant of 8/9 months lost her child.

Apparently the present applicant is one of the respondents therein, however, prima facie specific role is not attributed to him in the said application. The allegations undoubtedly made by the complainant in the matter being of serious nature has a right of redressal of his grievance by recording of his statement and collection of the required material available with him and in case required from the papers available with the police official and in case any offence by any of the respondents is made out, same apparently can not be made with proper

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investigation. No material has been shown whereby the impugned order is found liable to be disturbed as to the elements of sections being available, the matter is yet to be determined as to existence of the offence in the matter thereof and as such applicability of the sections is found to be determined only if the offence is came out on account of investigation as is yet required to be made in the matter.

In the said circumstances, the present application having no merits is hereby dismissed without disturbing the impugned order.

Abdul Salam
Judge

Abdul Salam/P.A ****