

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Misc. Application No. S- 505 of 2022

Date of hearing	Order with signature of Judge
-----------------	-------------------------------

1. For orders on office objections.
2. For hearing of main case.

07.10-2024.

Mr. Rehmat Ali Shaikh, Advocate for applicant.

Mr. Shabbir Ali Bozdar, Advocate for respondents
Nos.4&5.

Mr. Shafi Muhammad Mahar, D.P.G.

.-.-.-.-.-.-.-.-.-.-.-

This is an application under section 561-A Cr.P.C wherein the applicant has impugned order dated 23.08.2022 as passed by Judicial Magistrate Daharki in FIR No. 101 of 2022 lodged under sections 302, 34 PPC at Police Station Dahariki wherein by way of the impugned order 'c' class report finally submitted in the matter was accepted and the complainant being aggrieved thereof has approached this Court.

2. Learned counsel for the applicant relying upon material considered by the concerned Magistrate by way of impugned order being the report contended that the material referred therein has not passed through the process of forensic and without the same it is not liable to be relied upon. He has referred to para No.2 of the said report contending that the contradictory material without explanation has been brought up. In respect to para No.3 of the report, learned counsel has contended that death seen report does not support the finding/conclusion made in the matter. Learned counsel has referred to para No.6 of the report contending that

Shahid Hussain said to be a witness therein is not a witness in the said FIR. Learned counsel also referring to para No.7 stated that two witnesses said to be present on the date of offence is beyond comprehension as they have failed to wake up despite the sound of the fire. Learned counsel has referred to para No.12 and 29 of the report further stating that the same are also contradictory and without required explanation.

3. Learned counsel for the private respondents Nos. 4 and 5, however, refers to para 5 of the said report along with paras 10, 12, 16 and 23 contending that the same have been rightly been considered by the learned Magistrate and as such report has rightly been accepted. He has also referred to concluding para No.2 of the report contending that I.O has stated therein that the weapon was foisted upon the accused and in this regard departmental proceedings should be pursued. Learned counsel also referred to post mortem report contending that the blackening and the charring of the wound establish the same to be from close range. He also contends that the eye witnesses are not supporting the complainant. He further contends that in the investigation it has come up that the complainant was not present at the spot and it may also be observed that the father and sister of the deceased have not turned up for lodging of the FIR and only the grandfather who was not happy from the marriage of the sister has stood up for the proceedings. Learned counsel lastly contended that the impugned order is not only speaking, the I.O thereof being highly reputable and said report is liable to be accepted. He also contended that the Arms Act case as was also foisted on the said respondent has since been dismissed. He places reliance upon the cases of Ali Asghar vs. The state and 6 others (2010 MLD 810),

Sudheer and 3 others vs. Family Judge and 4 others (2014 MLD 1477), Abdul Razaque Lashari vs. Government of Sindh through Chief Secretary and 3 others (2015 YLR 1082) and Javed Nisar vs. Jalaluddin (2023 YLR 621)

4. Learned D.P.G, however, contended that accused Azizullah is named in the FIR with specific role who is said to have shot Rashid Ali deceased on his chest being the vital part. Learned DPG also states that the witnesses supports the version of complainant. That the I.O had recovered one empty shell which was utilized in the weapon stands confirmed from the forensic report. That the accused was arrested on 04.04.2022 and on his pointation the weapon was recovered which is referred as fore given. Learned DPG lastly contended that the opinion of I.O is not binding on the Court and that the impugned order has been passed in a hasty manner. He has relied upon the case of Soomer vs. Civil Judge & Judicial Magistrate Khipro District Sanghar and 8 others.

5. Learned counsel for private respondents in rebuttal contended that earlier report of I.O referred by I.O has since been negated.

6. Learned counsel for applicant, however, submits copy of Arms Act case contending that the said case was kept in abeyance and not conclusively decided.

7. Having heard learned counsels and gone through the record. I prefer to refrain myself from passing any remark that may affect the trial of the proceedings and as such though the arguments have been referred the same are not found required to be discussed in detail providing any ground to create said understanding as this is a preliminary stage of the proceedings. in the matter. The impugned order is the finding at the very first

stage wherein judicial mind is to be applied and apparently the conclusion has been made. The said conclusion, however, is not found to be based upon definite material. The death of a young man unnaturally is present. By virtue of material present it cannot conclusively be determined as to whether the same was a murder or a suicide. It may be observed that it is not an order to discharge the accused, rather acceptance of 'c' class report. The determination in cases where the impossibility of conviction is available are opened for exercise of powers as available under section 265-K and 561-A Cr.P.C (as the case may be) however, present case is not found fitting to be the same. The material brought up in the investigation is found liable to go through the process of evidence and without the said exercise it is not found liable to be determined in a conclusive manner. The material present may even provide good material for acquiring bail for the accused, however, the conclusion of the case is not found available with the same. The Courts are burdened with the responsibility to hear and decide matters wherein evidence is to be recorded whenever a prima facie case is made out whereafter conclusion is to be made. In case a party is not successful in showing otherwise liable to obtain the process of criminal prosecution is to continue till the said conclusion is achieved after evidence. Without being provided the said opportunity the justice cannot be seen to be done let alone the same be considered to have been done.

8. Before concluding it may be observed that as findings/order is not in respect of discharge of the accused I have not discussed the said element also, as given in such an exercise right/s of the party is/are exposed.

9. In view of the discussion above, instant Criminal Misc. Application is allowed and the impugned order is found not sustainable in law and is set aside. The Investigating Officer is directed to submit the challan in the above matter before the concerned Magistrate as early as possible who shall sent up the same to the Court of Sessions for trial which shall be decided by the Court of Sessions in accordance with law.

10. The instant Criminal Misc. Application stands disposed of.

J U D G E

Irfan/PA

