

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No D- 461/2015

**Present: Mr. Justice Ahmed Ali M. Shaikh, &
Mr. Justice Muhammad Iqbal Kalhoro.**

Asif Azeem ShaikhPetitioner

Versus

The State and others..... Respondents

Date of hearing : 03.04.2015.

Mr. Muhammad Ali Ghous, Advocate for the Petitioner.
Mr. Ashiq Hussain Solangi, Advocate for the Respondent No.7.
Ms. Akhter Rehana, Additional Prosecutor General.

ORDER

MUHAMMAD IQBAL KALHORO, J: The petitioner is aggrieved by the order passed by the learned XVIII Civil Judge and Judicial Magistrate Karachi, East dated 10th December 2014 on a final report submitted by the Investigating Officer in Crime No. 483/2014 of police station Shahrah-e-Faisal karacchi disposing of the case under “C” class. He has prayed that instead of “C” class, the above FIR may be disposed of under “B” class. The factual background, as stated by him, leading to his grievance is that he was tenant of respondent No.7 (herein after referred as the respondent) residing at the first floor of his house No. B-80 Block 13, Gulstan-e-Juhar, Karachi. The respondent wanted to evict him of the house unlawfully by hook and by crook hence

his father Qamar Azim Shaikh had approached this Court through a constitution petition No.S-874/2014 for protection and he himself filed a civil suit No. 417/2014 for permanent injunction in the Court of learned XIX Civil Judge East Karachi against the respondent. During the pendency of all those proceedings, the respondent with connivance of certain police officials of police station Shahrah-e-Faisal karacchi was able to register above false FIR under section 319 PPC reporting murder of his mother against him and got him arrested by those police officials. While he was in custody in police remand, the respondent coerced and compelled him to withdraw the above civil suit under the garb of compromise and got the house vacated under duress and had plundered house-hold articles during eviction process with the help of certain private persons and police officials. Such highhandedness of the respondent and police officials was duly reported to this Court in above constitution petition as a result whereof an enquiry was entrusted to the learned District and Sessions Judge Karachi, East who submitted a report dated 14.10 2014 disclosing that the petitioner was in custody when the house was got vacated from him. The respondent along with his companions successfully did that by using illegal method and by designing a conspiracy.

2. In support of such facts, Mr. Muhammad Ali Ghous, Advocate for the Petitioner argued that impugned order was not based upon proper appreciation of attending facts and circumstances, which had resulted in miscarriage of justice. He was of the view that the enquiry report of learned Sessions Judge had unequivocally established that the FIR was false one and it was contrived with the connivance of police officials only to dislodge the petitioner and his family from the upper portion of house where they were living lawfully in the capacity of tenant. He next contended that learned Civil Judge ought to have disposed of the FIR under "B" class instead of "C" class exposing the respondent to legal consequences for the wrongs he had committed for ousting the petitioner from his house unlawfully and illegally.

3. Mr. Ashiq Hussain Solangi, Advocate's response, appearing for the respondent, was of denial. He stated that the matter was reported by the respondent without any malice against the petitioner who subsequently himself had voluntarily entered into compromise with him and vacated the house. No force or pressure was employed by the respondent to either get his house vacated or make the petitioner withdraw his civil suit was the contention emphatically voiced by him. He lastly prayed for dismissal of the petition in hand.

4. Ms.Akhter Rehana, Additional Prosecutor General stated that learned Magistrate had passed a very exhaustive order after considering every aspect of the case that could not be taken exception to in absence of strong evidence nullifying the same.

5. We heard the learned counsel for the parties and perused the material available on record. The question of disposal of a criminal case through the final report in terms of section 173 Cr.P.C either under "A", "B" or "C" class has been dealt with by this Court in the case of Muhammad Haroon and another versus the State reported in PLD 2009 K 120, according to which, police of Sindh province while following the Bombay Presidency Police Guide, that it (police) has been doing since the days Sindh was part of the Bombay Presidency, can dispose of a case under either of the classes. Class "A" has been defined as true cases (but accused untraced), "B" as maliciously false cases and disposal under "C" class would mean that the case is neither true nor maliciously false, or a non-cognizable case. The contention of the petitioner is that the case of respondent should have been disposed of in "B" class i.e. maliciously false case so that the legal repercussions contemplated under the law to meet such situation could follow against the respondent who maneuvered things in his favor to retrieve the possession of upper portion of his house that was under the tenancy of the petitioner. The dispute between the

parties over tenancy of the house is not denied. The parties went into litigation and the learned District and Sessions Judge concerned in an enquiry under the orders of this Court held the respondent responsible for causing eviction of the petitioner from his house by illegal method clearly tend to indicate that things were not normal between them and they were to a certain extent inimical to each other. The enquiry report also suggests that the respondent was able to take back possession of portion of his house from the petitioner only after the registration of above FIR against him. However to determine malice on the part of the respondent to supply false information to the police concerned about death of his mother to lodge a criminal case against the petitioner accusing him of that incident is altogether a different exercise in the eyes of law. It has to be ascertained by examining all the facts reported by the complainant of the FIR to the police officer on duty as well as the material collected during investigation and result whereof. Deciding that the information is false one and is aimed at setting the law at motion maliciously against accused requires facts pointing out to such conclusion which shall be irrefutable in nature. Only incontrovertible evidence collected during investigation against the informer would justify adverse action contemplated under the law against him. The contents of subject FIR show that mother of the respondent reportedly died due to an alleged shove to her by the petitioner in the heat of arguments that caused allegedly some

hidden head-injury to her. The evidence to that end was however not found by the Investigating Officer nor he inferred that such information was maliciously false and was used against the petitioner to gain possession of the house which otherwise was impossible for the respondent to achieve by adopting due course of law; therefore he recommended the disposal of the case under "C" class (neither maliciously false nor true). As the record goes, the death of the respondent's mother at the hands of petitioner was reported by him to be a result of an accident and not the result of a premeditated conspiracy or act on the part of the petitioner. The FIR was registered under section 319 PPC that provides punishment for Qatl-i-Khata, which is defined in section 318 PPC in succeeding words ***"whoever, without any intention to cause the death of, or cause harm to a person, causes death of such person, either by mistake of act or by mistake of fact, is said to commit Qatl-i-Khata"***. The very nature of accusations and the penal provision applied in the FIR suggest that even the respondent was sure that cause of death of his mother was an act carried out as a result of some mistake and without there being such intention by the petitioner to do so. The actions occurring afterwards which include arrest of the petitioner and sending his custody to police remand despite the offence being bailable and his withdrawing the suit under compulsion do not however establish conclusively that the information provided by the respondent for registration of the

FIR was maliciously false. The subsequent actions allegedly committed by the respondent to take possession of his house may be actionable and justiceable in due course of law, but would not be read to have proved information supplied by him concerning death of his mother as false one entailing a legal action against him. More so, the learned Magistrate concerned could not find any such clue and disposed of the case in "C" class, agreeing with the opinion of investigation officer which was not opposed by the petitioner at the time of hearing of arguments on the Final Report submitted before him, as is evident from the a perusal of impugned order. It appears that before the learned Magistrate, the respondent was opposing the disposal of the case and the petitioner was requesting for cancellation of the case under "C" class. Turning the leaf by the petitioner before this Court for cancelling the case under "B" class cannot be sanctioned, inasmuch as it is against the well-entrenched principle of approbate and reprobate at the same time.

6. Further recital of the case file shows that the petitioner has filed a direct complaint against the respondent and police officials in the Court of Special Judge Ant Corruption (Provincial), Karachi on the same set of accusations that are subject matter of this petition. The cognizance of offences in the said direct complaint has been taken by the learned Special Judge vide order dated

23.02.2015 and a case has been registered against the respondent and others. The law provides an adequate remedy to a person who is forced to withdraw his suit under the pretence of compromise with the opposing party and in the face of his dispossession from immovable property without due course of law, he can seek help of various relevant laws regulating determination of such dispute. From filing of the direct complaint, it is manifest that the petitioner has already set himself on the due course for redressal of his grievance and if advised, he would be at liberty to avail further remedy against the respondent in accordance with law. Under the circumstances, we find no merit in the instant petition and dismiss the same accordingly.

Judge

Judge