

HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-2491 of 2015

Present: Mr. Justice Ahmed Ali M. Sheikh.
Mr. Justice Abdul Maalik Gaddi.

Date of hearing : 08.05.2015:

Petitioner Mirza Sardar Baig: Through Mr. Shahnawaz, advocate.

ORDER

Abdul Maalik Gaddi, J: The petitioner is aggrieved by the order dated 30.4.2015 passed by the learned IVth Additional District and Sessions Judge, Karachi East, whereby he dismissed the Criminal Revision Application No.19/2015 filed by the petitioner against the order dated 24.4.2015 passed by the learned VIIth Judicial Magistrate, Karachi East in Criminal Case No.Nil/2015, dismissing the prayer made by Investigating Officer Ejaz Ahmed Jakhrani of Police Station Gulistan-e-Johar for police remand of accused Muhammad Akmal Paul (Respondent No.1) and remanded the said accused to jail custody in crime No.684/2013 registered under Section 448, 384, 506-B and 34 PPC at Police Station Gulistan-e-Johar Karachi East.

2. Facts necessary for the disposal of this petition are that petitioner Mirza Sardar Baig lodged F.I.R on 8.10.2013 being Crime No.684/2013 under sections 448, 384, 506-B and 34 PPC at Police Station Gulistan-e-Johar against Respondents No.1 to 4 alleging therein that in May 2007, he rented out flat No.B-109 situated in Decent Garden Block-7, Gulistan-e-Johar to respondent No.1 at the monthly rent of Rs.20,000/- but subsequently he became dishonest, stopped payment of rent and when he approached him for rent and to vacate the said flat, he along with co-accused issued him murderous threats and demanded huge amount of Rs.2,00,000/- for vacating the said flat.

3. We have heard the learned counsel for the petitioner and perused the record.

4. It is contended by the learned counsel for the petitioner that impugned orders passed by two courts below are against law and fact in as much as both the courts below have ignored the fact that respondent No.1 was arrested after about 18 months of the incident. He is involved in a case of serious in nature, co-accused are to be arrested to complete investigation but despite of these facts on 24.4.2015 when accused was produced before the learned Magistrate for police remand, the prayer of Investigating Officer of the case was declined and accused was remanded to jail custody which order was challenged before the Revisional Court by the complainant but the said order was maintained. During the course of arguments, he also reiterated the same facts and grounds pleaded in the instant petition and also prayed to revise/set aside the orders of two Courts below in respect of F.I.R.No.684/2013 of Police Station Gulistan-e-Johar and further prayed to grant the custody of respondents No.1 to Investigating Officer of the said FIR to complete the investigation and to submit challan against real culprit.

5. From the perusal of record it shows that on 24.4.2015 I.O of the case namely Ejaz Ahmed Jakhrani of Police Station Gulistan-e-Johar produced the accused namely M. Akmal Paul son of Aslam Paul (respondent No.1) before the learned Magistrate with an application under Section 167 Cr.P.C. praying therein for further remand of accused for the purpose to arrest other co-accused. The said prayer was declined being found not cogent as police had no tangible evidence against the accused and accused was remanded to jail custody till 07.5.2015 with directions to I.O to conduct fair investigation and submit final report under section 173 Cr.P.C.

6. Nothing wrong appears in the said order. Remand to police could not be granted on the ground that presence of accused is necessary to finish the investigation or to get forcible statement from accused. Remand could not also be granted on the wish and whim of the complainant. As

per contents of FIR, it reveals that the complainant, Mirza Sardar Baig with his consent had given subject flat on rent to accused on monthly rent of Rs.20,000/- per month in the year 2007 and accused paid rent upto May, 2012 and thereafter stopped the same, thus it appears that it is a case of civil nature. From the perusal of record it shows that the instant petition has been filed by the petitioner, who is a private person. I.O of the case has not challenged the impugned order either before Revisional Court or before this Court.

7. A plain reading of Section 167 Cr.P.C. provides procedure for the investigating officer, where the investigation is not completed within 24 hours. Thus it is the only investigation officer, who can furnish an application for grant of remand and assail orders passed on such application before appropriate forum. In our view, the petitioner in his private capacity cannot invoke the writ jurisdiction of this Court as having no nexus with the matter and no locus standi to file such petition.

8. In view of above facts and circumstances of the case, no perversity, illegality and incorrectness have been found in the impugned orders, learned Revisional Court while passing the impugned order has appreciated all facts involved in the case. No illegality has been pointed out. We, therefore, under the facts and circumstances of the case find no merit in this petition which is dismissed in limine alongwith all pending applications.

This petition was dismissed vide short order dated 08-05-2015 in limine, these are the detailed reasons for the same.

JUDGE

JUDGE