

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Miscellaneous Application No. 284/2010

Present: Mr. Justice Abdul Maalik Gaddi

Applicant: Abdul Sattar Arain through Mr. Amir Mansoob Qureshi, Advocate.

Complainant: Muhammad Zahid Riaz through Mr. Muhammad Muneer Ahmed Advocate

Respondent: The State through Mr. Muhammad Qasim, Standing counsel.

Date of hearing: 24-02-2015.

Date of Order: 09-03-2015.

ORDER

ABDUL MAALIK GADDI, J. -The Applicant has filed this Criminal Miscellaneous Application challenging the order dated 12-04-2010 passed by the learned District & Sessions Judge Karachi South, by which his Criminal Revision Application No.41/2009 was dismissed and the order dated 02-02-2009 passed by the Judicial Magistrate Karachi South, dismissing applicant's application under Section 249-A Cr.P.C was maintained.

2. Facts necessary for the disposal of this Criminal Miscellaneous Application are that the applicant/accused was sent up to stand trial for having committed offences in FIR No.694/2008 under Section 6(1)(a)(c)(f) Passport Act, 1947 R/W Sections 420/468/471/109 PPC at P.S. FIA AHT Circle, Karachi and mainly the allegation is that the applicant/accused and others fraudulently changed their date of birth in their NICs/CNICs and subsequently obtained passport on the strength thereof. It is further alleged that in fact the present

applicant/accused remained instrumental in committing and/or abatement of such offences.

3. I have heard the learned counsel for the Applicant/Accused and learned Standing counsel, who has been assisted by the learned counsel for the Complainant.

4. It is contended by the learned counsel for the Applicant/Accused that the impugned orders of the two courts below are illegal and against the principle of law, justice, equity and are not sustainable in the eye of law, which also suffer legal infirmity; that in order to establish the alleged Prima Facie case, the Prosecution has enable to examine the Complainant only without collecting any other coercive piece of evidence through Mushirnama as alleged and therefore in absence of any documentary evidence the conviction cannot be sustain in the alleged crime; that the learned Courts below failed to consider that from the bare reading of FIR of Crime No.694/2008, it appears that the date and hour of occurrence is shown as in the year 1998 and there is delay of more than 10 years in lodging the FIR; that the learned Courts below could not consider that FIR was registered as outcome of investigation of Crime No.139/2005 in which only accused Rubina Sattar was challaned and there was no mentioned of the names of present accused persons in any column; that both the Courts below failed to consider that from the perusal of final report, it is crystal clear that the applicant/accused did not make use of any false statement for obtaining passport but he has been dragged in court by the complainant, who was his ex-son in law; that accused namely Tehmina Sattar, who is daughter of the above named applicant/accused, filed suit No.1504/2007 before Court of Vth Senior Civil Judge Karachi East against complainant and NADRA Authorities, dropping the proceedings against her in which she has been succeeded; that the fact has not been considered that the material collected by the prosecution has led to only conclude

that the charge is groundless and there is no probability of that applicant shall be convicted of the offence charged; that this Criminal Misc. Application for quashment of the proceedings has been filed on the ground that the FIR was not registered by a competent authority in terms of Section 31 of the National Database and Registration Ordinance, 2000, therefore, the proceedings initiated on the basis of such FIR are liable to be quashed. During course of the arguments, learned counsel for the applicant has relied upon various documents on record and has made an attempt to show that the proceedings pending before the trial court is nothing but out come of the enmity and was given colour of Criminal proceedings, therefore, according to him this criminal Miscellaneous Application may be allowed by setting aside the impugned orders of the two courts below and further prayed for acquittal of the applicant. In support of his arguments, he has relied upon the case of *Makhdoom Ahmed alias Zameer Ahmed Vs. Noor Ahmed and another* reported in (2003 YLR 2335).

5. Conversely learned standing counsel assisted by the counsel for the complainant have opposed this Criminal Miscellaneous Application vehemently and contended that the controversy involved infact is requiring evidence and according to them no witness has been examined by the trial Court as the applicant is avoiding to appear before the trial Court to face the trial. It is also argued by them that the dropping of proceedings by NADRA does not mean that the FIR become invalid. Prosecution has sufficient evidence available and material evidence is essential to go into the depth of the matter. It is also argued by them that Section 31 of the National Database and Registration Authority Ordinance, 2000 is not applicable in the present case as according to them FIR has been registered by the FIA Authority who conducted the initial inquiry No.264/2008 dated 01-03-2008 in which it was established that the accused persons fraudulently changed their date of birth in their

NICs/CNICs and subsequently obtained passport at the strength thereof. They have further contended that the powers under Section 561-A, Cr.P.C. can be exercised to prevent abuse of the process of any Court or to secure the ends of justice. Such powers cannot be exercised mechanically or in every case where there is allegation of false implication or of the evidence being false. Exercise of such powers cannot further the ends of justice, if an exercise is undertaken at pretrial stage to determine whether the prosecution evidence likely to come on record is true or false. According to them, the quashment of proceedings at an early stage gives an unfortunate impression of stifling of criminal prosecutions, by exercise of an extraordinary power which is given for the dispensation of complete justice, in the forms provided by law. They have further submitted that determination of the guilt or innocence of an accused, depends on totality of facts and circumstances revealed during the trial, and when such a stage had not been reached, the application for quashment of the proceedings in the trial Court is not maintainable. In support of their arguments, they have relied upon the cases of (1) *Bashir Ahmad V/S Zafar-ul-Islam* reported in PLD 2004 Supreme Court 298, (2) *Hashim V/S Gul Muhammad and 2 others* reported in 2009 P Cr.L. J 36 (Federal Shariat Court) and *Shevo vs. Regional Police Officer, Hyderabad Region, Hyderabad and 15 others* PLD 2009 Karachi 24.

6. Perusal of record shows that admittedly in this matter though charge has been framed but no evidence has been recorded. It is alleged by complainant that Applicant/Accused deliberately avoiding to appear before the trial Court to face the trial and the trial is being lingering on because of none appearance of the Applicant before the trial court. Record further shows that FIR in this case was lodged for offence under the passport Act and so also Pakistan Penal Code and as per record, it is alleged that the initial inquiry No.264/2008 dated 01-03-2008 was conducted by F.I.A. Authority in which it was

established that the Applicant/Accused person fraudulently changed their date of birth in their NICs/CNICs and subsequently obtained passport on the strength thereof. The name of the Applicant/Accused is mentioned in the FIR alongwith other accused, therefore, under the circumstances, let at least the evidence of complainant under Section 249-A Cr.P.C be recorded for which FIA be given opportunity to place their case before the Court, hence the application before trial Court for acquittal of the Applicant was premature. Furthermore, during trial it is yet to be seen whether the lodgment of complaint with FIA was justified under the circumstances and / or such a complaint was actuated with malafide intentions. Since in this case previous matrimonial relations are also shown involved, therefore, it is premature to say that the charge already framed is groundless.

7. Learned counsel for the Applicant has placed his much reliance on Section 31 of National Database Authority and Registration Ordinance, 2000, but this point has not been agitated before the trial Court and the point relates mixed question of law and fact. Under these circumstances, I refrain myself from dilating upon the merit of the case at this stage, however, in view of the above, I am of the view that the instant Criminal Miscellaneous Application has no merits and substance at this stage, which is hereby dismissed alongwith listed application. However, the Applicant/Accused is at liberty to repeat application under Section 249-A Cr.P.C with the legal plea referred to above before the trial Court after recording of evidence of complainant, if he so desired and trial court then passed an appropriate order in accordance with law within one month.

This Cr.Misc. Application is dismissed.

JUDGE

SHAHBAZ

