ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Misc. Application No.113 of 2015

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

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1) For Katcha Peshi.
2) For hearing of MA No.3711/2015

24.06.2015

Mr. Mehmood Akhtar Qureshi, advocate for applicant
Ms. Rahat Ahsan, Deputy Prosecutor General Sindh
Mr. Shahadat Awan, Advocate for Respondent No.2.

The applicant has preferred this criminal miscellaneous application for quashment of proceedings of Case No.983 of 2015 before VII Judicial Magistrate (West) Karachi arising from FIR No.161/2015, registered at P.S. Docks, City South Zone, Karachi, under sections 506-B PPC.

2. Brief facts of this case are that on **01.04.2015**, Aasim Ghani Usman, Executive Director of M/s. Abbas Sugar Mills lodged complaint that on **24.03.2015** Suleman Lalani son of Shamsuddin, who is also one of the Directors of Al-Abbas Sugar Mills and also Chief Executive of M/s. Jehangir Siddiqui Inter Company, in the 48th meeting of Board of Directors of Al-Abbas Sugar Mills at Beach Luxury Hotel at 10:00 AM has threatened to kill him and his family.

3. After formal investigation and recording 161 Cr.PC statements of participants of 48th meeting of the Board of Directors of Al-Abbas Sugar Mills, the prosecution has submitted charge sheet against the applicant in the Court of VII Judicial Magistrate, West, Karachi, showing the name of applicant in column No.2 as absconder.

4. Counsel for Respondent No.2/complainant has filed preliminary legal objections.

5. I have heard learned counsel for the applicant and respondent No.2 as well as Ms. Rahat Ehsan, DPG and perused the record carefully.

6. At the very outset Mr. Shahadat Awan, learned counsel for Respondent No.2 has complained that Deputy Registrar (Judicial) has failed to discharge his duty of raising the basic objections on this Cr. Misc. Application that "there was no impugned order in this matter." He has also raised another objection that the applicant has filed an application under Secton 249-A Cr.P.C before the learned Magistrate and withdrew the same and approached this Court through instant petition under Section 561-A Cr.P.C. These objections have also been taken by him in Para-1 to 6 of written preliminary legal objections.

7. Regarding the objection of learned counsel for Respondent No.2 that the office has not raised a particular objection (whether there is any impugned order or not?) is of no consequence, since these proceedings are not in the nature of an appeal or revisions. It is precisely a case for quashment of proceeding arising from Crime No.161/2015 under Section 506-B PPC pending before VII Judicial Magistrate (West) Karachi. Therefore, by not raising this routine office objection, I am afraid the office has not done any mischief to the detriment of any rights of respondent No.2, the complainant.

8. Learned counsel for the applicant in rebuttal to the objection regarding filing of an application under Section 249-A Cr.P.C and withdrawing the same has drawn my attention to the facts from the record that this Cr. Misc. Petition was sworn before the identification branch of this Court on **19.5.2015** and the counsel who was appearing in the trial Court on behalf of the applicant/accused has filed an application under Section 249-A Cr.P.C on **20.05.2015** without express permission of the applicant. Therefore, on **21.05.2015** application filed before trial Court was withdrawn and thereafter the present Cr. Misc. A., which was sworn on **19.5.2015** was presented on **22.05.2015**. He has contended that for invoking jurisdiction of this Court under Section 561-A Cr.P.C, it is not the absolute rule that the applicant should first avail remedy under Section 249-A Cr.P.C. In support of his contention, he has relied on a case reported in **1990 PCr.LJ 876** (MUHAMMAD SABID and another versus GHAFFAR AHMED and 3 others) dealing with identical situation. Relevant Para 7 from the citation is reproduced below:

> "It was, however, contended by learned A.A.G. and by counsel of respondent No.l that the petitioners had in fact moved an application under section 249-A, Cr.P.C. in the learned trial Court on 27-02-1988 but did not pursue it and, therefore, present petition under section 561-A, Cr.P.C. is not competent. It was further urged by them that resort to section 561-A, Cr.P.C. can be made only when no alternate remedy is available whereas in the present case two alternate remedies were available under section 249-A, Cr.P.C. and section 235/239, Cr.P.C. Counsel of respondent No.l also urged that documents relied upon by the petitioners must be tendered in evidence at the time of the trial of complainant's case and till then they cannot be looked into. I beg to differ with these objections. Learned counsel of the petitioners relied upon 1986 P Cr. L J 2749, 1087 PCr.LJ 2096 and 1988 PCr.LJ 629 which all hold that it is not necessary for an aggrieved person to first move the trial Court under section 249-A, Cr.P.C. and that such party can directly approach High Court under selection 561-A, Cr.P.C. No judgment holding contrary view could be produced by learned counsel of the applicants or by learned A.A.G. I, therefore, hold that this petition under section 561-A, Cr.P.C. is competent. If the petitioners did not pursue their application under section 249-A, Cr.P.C. before learned trial Court, it makes no difference; it only meant that it stood dismissed as withdrawn on the day when petition under section 561-A, Cr.P.C. was filed in High Court…… *(emphasis is provided)*"

In the above context learned counsel for applicant has also relied on several other case laws, however, I would like to refer only two judgments from the Hon'ble Supreme Court viz; **1994 SCMR 798** (The State ..Vs..Asif Ali Zardari) and **2000 SCMR 22** (Miraj Khan ..Vs..Gul Ahmed and 3 others). In **1994 SCMR 798** relevant observation from para-9 is as under:-

> 9. Section 561-A, Cr.P.C. confers upon High Court inherent powers to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. These powers are very wide and can be exercised by the High Court at any time. Ordinarily High Court does not quash proceedings under section 561-A, Cr.P.C. unless trial Court exercises its power under section 249-A or 265-K, Cr.P.C. which are incidentally of the same nature and in a way akin to and co-related with quashment of proceedings as envisaged under section 561-A, Cr.P.C. In exceptional cases High Court can exercise its jurisdiction under section 561-A, Cr.P.C. without waiting for trial Court to pass orders under section 249-A or 265-K, Cr.P.C. if the facts of the case so warrant to prevent abuse of the process of any Court or otherwise to secure the ends of justice. *(Emphasis is provided)*

In the case reported in 2000 SCMR 122, relevant observation from para-4 is as under:-

> 4. There is no absolute bar on the power of the High Court to quash an F.I.R. and it is not always necessary to direct the aggrieved person to first exhaust the remedy available to him under section 249-A, Cr.P.C. It is coordinal principle of law that every criminal case should be adjudged on its own facts. The facts of one case differ from the other and, therefore, no rule of universal application can be laid in a certain case so as to be made applicable to other cases. Even in the case reported in PLD 1997 SC 275, relied on by the learned counsel for the petitioner this principle has been recognized that the High Court in exceptional cases can exercise jurisdiction under section 561-A, Cr.P.C without waiting for trial Court to pass orders under section 249-A or 265-K, Cr.P.C., if the facts of the case so warrant. The main consideration to be kept in view would be whether the continuance of the proceedings before the trial forum would be futile exercise, wastage of time and abuse of process of Court or not. If on the basis of facts admitted and patent on record no offence can be made out then it would amount to abuse of process of law to allow the prosecution to continue with the trial. If the facts of the present case are scrutinized on the touchstone of the above criteria then it would be obvious that the further proceedings in the Court on the basis of the impugned F.I.R. would be sheer wastage-of time. It is admitted in the F.I.R. which is based on the written application of the complainant that the disputed amount was given as "Qarze-Hasna". It is obvious that the addition of word "Amanat" with "Qarze-Hasna" is ridiculous and appears to have been added so as to justify the registration of the criminal case. The cases relied on by the learned counsel for the caveator support the view taken by the High Court. *(Emphasis is provided).*

9. On merit learned counsel for the applicant has contended that the perusal of FIR which has been lodged after delay of eight days of the so called incident of intimidation by itself is enough to appreciate that the respondent / complainant was not intimidated nor any heated discussion during the 48th meeting of Board of Directors was of that magnitude that it could attract the provisions of an offence under **Section 506-B PPC**. No untoward act has been alleged in the FIR which may be treated to have "caused alarm" to the complainant. Learned counsel for the applicant has referred to **Section 503 PPC** and contended that the complainant under the so called threats was not "alarmed" to do any act which he was not legally bound to do or omitted to do any act which the complainant was legally entitled to do at the 48th meeting of Board of Directors of Al-Abbas

Sugar Mills which had been concluded peacefully after exhaustive discussion on each item on the agenda with a vote of thanks to chair.

10. Mr. Mehmood A. Qureshi, learned counsel for the applicant, by referring to the contents of the FIR, charge sheet and 161 statement has contended that the cognizable offence under **section 506-B PPC** was not spelt out, therefore, the challan should not have been filed by the I.O nor should have been approved. This is clear from FIR that no weapon was used in the so called intimidation or threat extended to the complainant. The complainant in the FIR himself has stated that "he suspected that the applicant was having pistol in his pocket" and the other participants of 48th meeting of the Board of Directors namely Iqbal Usman Chairman, Asma Kochanwala, Darakshan Ghani, Directors. Mr. Zohair Abbas, Chief Financial Officer, all have made one line statements that "at 10:15 p.m during the meeting Suleman Lalani rose from his chair and threatened the complainant (Asim Ghani) that he would kill him and his family because father of Asim Ghani had earlier lodged false case against the accused." To appreciate exact case of prosecution, the relevant part of FIR and statements of witnesses under Section 161 Cr.PC are reproduced below:

> "That on **24.03.2015**, in the 48th meeting of Board of Directors of Al-Abbas Sugar Mills at Beach Luxury Hotel at 10:00 AM, during the meeting, he (applicant) abruptly stood up, got infuriated, started giving murder threats in front of Directors present there and said to me that he will not spare me, my father, my wife and children, he will kill us and got me and my father arrested in false cases as my father had also filed a false case against him two years back. I suspect that Suleman Lalani was armed at that time and his companions were also present out the place of meeting. Suleman Lalani while going also extended threats. Now I have come to report and my claim is against Suleman Lalani for extending threats of murder to me and my family members and also threats of causing financial losses to me."

بیان ازاں مسمی زہیر عباس ولد اظہر عباس (PW-3)

میٹنگ شروع ہوئی تو قریب سوا دس بجے سلمان لالانی کسی بات پر غصے میں آکر کھڑا ہوکر عاصم غنی عثمان کوجان سے مارنے کی دھمکیاں دینا شروع کر دیں اور کہا کہ تمہارے والد نے میرے خلاف ایف آئی آر درج کرائی تھی۔ میں تمہیں، تمہارے والد، تمہاری بیوی بچوں کو قتل کردوں گا۔ جان سے ماردوں گا۔ اس نے پینٹ کی دائیں جیب کی طرف بار بار ہاتھ کیا جس سے شبہ ہوا کہ اس کے پاس اسلحہ بھی تھا۔ اس واقعے کی ایف آئی آر عاصم غنی عثمان نے تھانہ ڈاکس میں درج کرائی۔

بیان ازاں مسمات اسماء اویس کوچینی والا (PW-4)

دوران میٹنگ کسی بات پر سلیمان لالانی غصے میں آگیا اورعاصم غنی عثمان کوجان سے مارنے کی دھمکیاں دینے لگا اور کہا کہ تمہارے والد نے میرے خلاف ایف آئی آر کرائی تھی۔ میں تمہیں، تمہارے والد، بیوی بچوں کو جان سے ماردوں گا اور بار بار ھاتھ پینٹ کی طرف کررہا تھا۔ شبہ ہوا کہ اس کے پاس اسلحہ ہے اور میرا بھائی عاصم خوفزدہ ہوگیا۔ میرے بھائی نے اس واقعے کی ایف آئی آر تھانہ ڈاکس میں درج کرائی۔

بیان ازاں مسمی محمد اقبال عثمان (PW-5)

دوران میٹنگ سوا دس بجے سلیمان لالانی نے عاصم غنی عثمان جو کہ میرا بھتیجا بھی ھے کو اٹھ کر جان سے مارنے کی دھمکیاں دینا شروع کردیں اور کہا کہ تمہارے والد نے میرے خلاف مقدمہ کرایا تھا، تجھے، تمہارے والد، بیوی بچوں کو جان سے ماروں گا اور پینٹ کی طرف ہاتھ کررہا تھا جیسا اسلحہ نکالنے کا ایکشن کر رہا ہو اس پر عاصم غنی عثمان خوفزدہ ہوگیا تھا جس نے اس واقعے کی ایف آئی آر تھانہ ڈاکس میں درج کرائی۔

بیان ازاں مس درخشاں غنی دختر عبدالغنی عثمان (PW-6)

قریبی سوا دس بجے دوران میٹنگ ڈائریکٹر سلیمان لالانی اٹھ کر کھڑا ھوگیا اور میرے بھائی ڈائریکٹر عاصم غنی عثمان کوجان سے مارنے کی دھمکیاں دینے لگا اور کہا کہ تمہارے والد نے میرے خلاف کیس کرایا تھا۔ تجھے، تمہارے والد، تمہاری بیوی بچوں کو جان سے ماردوں گا اور پینٹ کی طرف بار بار ہاتھ کررہا تھا جیسے اسلحہ نکال رہا ہو۔

بیان ازاں SI مقصود عالم قریشی، (PW-7)

10 بجے دوران میٹنگ ڈائریکٹر صاحبان کے سامنے سلیمان لالانی ولد شمس الدین جوکہ العباس میں بحیثیت ڈائریکٹر ھے نے اٹھ کر مجھے جان سے مارنے کی دھمکیاں دیں اور کہا کہ تمہیں، تمہارے والد، بیوی بچوں کو نہیں چھوڑوں گا۔ جھوٹے کیس میں پھنسوانے کی دھمکیاں دیں، شبہ ہے کہ اس کے پاس اسلحہ بھی تھا۔

After referring to the above evidence, learned counsel further submitted that the meeting held in peaceful atmosphere. The minutes of the 48th meeting of the Board of Directors were subsequently provided to the applicant/accused by the company secretary (PW-3) with a covering letter dated 0**7.04.2015,** clearly shows that even the desired resolution was passed in the said meeting**.** Therefore, the applicant, instead of doing anything in furtherance of his so-called threat, filed a Civil Suit No.478/2015 and only two days after the meeting i.e **26.03.2015** he obtained the following interim orders from this Court nullifying the resolution:

> "Let notice be issued to the Defendants for 2.4.2015. In the meantime the Defendants are restrained from making such investment as above and are further directed to maintain status in this regard".

11. In fact respondent No.2, after the service of summons of aforesaid Civil Suit, has filed a frivolous case against the applicant/accused in frustration of the aforesaid order and managed to get the challan submitted in a case which was not even made out from the prosecution story in the FIR and 161 Cr.PC statements of the interested witnesses. There has been a delay of eight days in lodging of FIR and no justification or explanation

has been offered that why there was a delay in lodging of FIR. He further contended that the prosecution never attempted to arrest the accused and declared in the challan that the applicant is absconder though the applicant was very much in Karachi pursing civil suit and running his business from the office very much known to the complainant and everyone.

12. Learned counsel for respondent No.2 and D.P.G., besides the objections already discussed in the earlier part of the order, attempted to argue that the applicant has approached this Court with unclean hands. The applicant has willfully deviated from the normal course of law by invoking the inherent jurisdiction of this Court and he has avoided to appear before the trial Court as reflected in the diary sheets of Case No.983/2015 pending before VII Judicial Magistrate (West) Karachi. They have further contended that the proceedings are not based on mala fide and even otherwise the question of mala fide is to be decided by recording evidence. Learned counsel for respondent No.2 has relied on **PLD 2004 SC 298** (BASHIR AHMED versus ZAFAR-UL-ISLAM) and referred to various placitums dealing with the circumstances in which provisions of section 561-A Cr.PC should be avoided by the High Court. I have thoroughly examined this case law and found that even in this case law the Honourable Supreme Court has not disapproved or overruled the judgment reported in **1994 SCMR 798** and **2000 SCMR 122**, which have been relied upon by the learned counsel for the applicant and I have quoted relevant observations in the earlier part of this judgment. Even in the judgment vehemently relied upon by the learned counsel for respondent No.2, the Honourable Supreme Court in **para 23** has held that inherent power can be invoked in exceptional circumstances and the same was the view expressed in the judgments relied upon by the counsel for the applicant. Para 23 of the judgment reported in **PLD 2004 SC 298** is reproduced below:

> "23. The correct import of the provisions of section 561-A, Cr.P.C, may be summarized as under:
>
> i) The said provision should never be understood to provide an additional or alternate remedy nor could the same be used to override the express provisions of law;

(ii) the said powers can ordinarily be exercised only where no provision exists in the Code to cater for a situation or where the Code offers no remedy for the redress of a grievance;

(iii) inherent powers can be invoked to make a departure from the normal course prescribed by law only and only in exceptional cases of extraordinary nature and reasons must be offered to justify such a deviation; and

(iv) in the matter of quashing criminal proceedings, the trial must ordinarily be permitted to take its regular course envisaged by law and the provisions of section 561-A, Cr.P.C. should be invoked only in exceptional cases for reasons to be recorded." *(Emphasis is provided)*

The other case law relied and referred by the learned counsel for respondent No.2 were not relevant in the facts of the case in hand.

13. In the case in hand following facts negates the claim of the complainant that he and his family were under the threat of death by the applicant:

(i) The conduct of the applicant/accused as disclosed from the record does not show that at any point of time he had the will or wish to take the law in his hands.

(ii) The so-called incident took place within 15 minutes of the start of the meeting of Board of Directors and yet the meeting did not end in fiasco. It continued as a normal meeting as is evident from the minutes of the meeting provided by the Company Secretary with his covering letter dated **07.04.2015** to the accused/applicant. Therefore, the requirements of **Section 503 PPC** are missing. The complainant did exactly what he wanted to do and did nothing which he was not legally supposed to do.

(iii) The perusal of the minutes of the 48th meeting of Board of Directors shows that there were two items on the Agenda which were taken up and discussions and participation of the Chairman (PW-5) and Executive Director (complainant) as well as accused/applicant Suleman Lalani has been elaborately incorporated in the minutes of the meeting. It is recorded in the minutes that, "there was some heated discussion made whereby certain omnibus things were said by Mr. Suleman Lalani". The minutes of meeting are silent about any untoward incident during the 48th meeting. Therefore, the contents of FIR and the 161 Cr.PC statements of PWs stand contradicted by the record of the minutes of the 48th meeting, during which alleged threats were issued by the applicant/accused.

(iv) The very fact that the accused/applicant, after the 48th meeting, instead of committing any threatened criminal offence, preferred to

file a Civil Suit No.478/2015 further confirms that he had no will or wish and intention of causing any injury or harm to the complainant and his family.

(v) There is a delay of eight days in lodging of FIR. Neither in the FIR nor the learned counsel for respondent No.2 before this Court has been able to explain the circumstances which compelled the complainant to live under the life threats for self and his family for eight days and why he did not approach the police immediately.

(vi) I am surprised that IO of Crime No.161/2015 from the so-called statement of the complainant in which admittedly the applicant/accused has not used any weapon to threat him, the IO claimed that an offence under section **506-B PPC** was made out for registration of FIR. Even 161 Cr.PC statement did not make any improvement in the contents of the FIR to bring the case within the purview of **Section 506-B PPC** and yet the prosecution had submitted challan by showing the applicant/accused as absconder. No record of any attempt to arrest the accused has been disclosed by the prosecution.

(vii) The contents of FIR and 161 Cr.PC statements of the PWs reproduced in para 10 above clearly show that if the incident has taken place and the story of the complainant, his uncle and his sisters, who are PWs, is taken to be correct even then it is admitted position that accused/applicant has not used any weapon in the course of intimidation and therefore there was no justification to register the case under **section 506-B PPC**.

(viii) The learned Judicial Magistrate also acted mechanically by accepting the challan and did not exercise his authority in terms of **Section 173 Cr.PC**. The contents of FIR and statements of PWs recorded under Section 161 Cr.PC were not enough to constitute a cognizable offence under **section 506-B PPC** and therefore the learned Magistrate should have refused to take cognizance.

(ix) Learned Magistrate not only failed to exercise his jurisdiction with conscious mind under of **Section 173 Cr.PC** but he also started proceedings in an unprecedented haste. From **06.05.2015** to **27.05.2015** Case No.983/2015 was taken up by learned Magistrate as many as on six dates viz 06.05.2015, 13.05.2015, 14.05.2015, 20.05.2015, 21.05.2015 and 27.05.2015. In any case the hearing of routine criminal case in which complainant took eight days to lodge an FIR, the trial Court did not adjourn it even for eight days in one stretch during the month of May, 2015.

14. In view of above stated facts, I believe that circumstances of the case in hand were not normal. A cognizable offence under **Section 506-B PPC** was not made out for trial. Trial of a case on the facts of FIR lodged by respondent No.2 is wastage of precious time of Court beside uncalled for harassment to the applicant. In view of the peculiar circumstances of the

case discussed above and particularly on the ground that the learned Magistrate did not apply his judicial mind to the provisions of **Section 173 Cr.PC** in accepting the challan of a case which on the face of it was lacking in the material to support the prosecution story, the applicant was justified in approaching this Court.

15. The crux of the above discussion is that since on the face of it no cognizable offence has been made out against the applicant the prosecution of the case before the VII Judicial Magistrate (West) Karachi arising out of FIR No.161/2015 is sheer abuse of process of the Court and, therefore, FIR No.161/2015 and proceedings of Case No.983/2015 stand quashed.

J U D G E

Gulsher/PA