

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.
Cr. Misc Appl. No.S-04 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

17.09.2015.

Mr. Abdul Sattar Sarki Advocate for the applicant.
Mr. Shahid Ahmed Shaikh Asstt. A.P.G
=

NAZAR AKBAR J: Through this application, applicant has impugned order dated 16.12.2014 whereby learned Ist Civil Judge and J.M. Sakrand District Shaheed Benazirabad accepted report of the I.O. for disposal of the case bearing Crime No.201/2014 of P.S. Sakran u/s 382, 220 PPC under “B” class.

2. Precisely facts of the applicant’s case as per FIR are that on 13.04.2014 respondents No.5 to 13 trespassed into her house and committed robbery of one Tola gold and cash Rs.25000/-. On her resistance, the accused persons pushed her and she fell down due to which her arm was fractured thereafter they went away while issuing threats for dire consequences.

3. Learned counsel for the applicant contends that the respondents No.5 to 13 are nominated in the FIR with role of committing robbery and causing injury to the applicant by throwing her and such medical certificate verified such fact, however, the I.O. did not conduct proper investigation and malafidely submitted report for disposal of the case under “B” class for the reason that the accused persons were the police officials. Per learned counsel there was sufficient evidence to take cognizance of the offence but learned Magistrate erroneously accepted the police report without taking into consideration the ocular testimony corroborated by the medical evidence, therefore, impugned order suffers from legal infirmity.

4. Learned Assistant P.G opposed this application and contended that impugned order does not suffer from any illegality or infirmity, hence this revision application merits no consideration.

5. I have heard learned counsel for the parties and perused the record. From the perusal of record it appears that this case was investigated twice, firstly by the I.O. of the same police station and secondly by DSP Maqbool Ahmed Memon on the directions of the learned Magistrate and on both the occasions the case of the applicant was found false and was recommended to be disposed of under "B" class. The very reason of filing a false case by the applicant against the police officers mentioned in the reports is to protect her sons who are involved in sale of Narcotics. The I.O. also recorded statements of the persons of locality who stated that no such incident had taken place. No independent person was cited to have witnessed the incident though it was occurred in day time i.e. at 5.00 p.m. Learned counsel for the applicant has failed to show that investigation was not conducted properly and impartially particularly when people of applicant's Mohalla denied such incident. Learned Magistrate has passed elaborate and speaking order which does not require any interference.

6. After conclusion of arguments, learned counsel for the applicant while relying upon order dated 18.01.2011 passed by this court in Cr. Misc. Appl. No.S-437/2010, suggested that the impugned order may be modified to the extent that FIR may be treated as disposed of in "C" class instead of "B" class and the applicant may be allowed to file Direct complaint u/s 200 Cr.P.C to prosecute the accused party without being influenced by proceeding of police in crime No.201/2014. Learned Assistant P.G recorded no objection to this proposal of the learned counsel for the applicant. Accordingly, impugned order is modified and FIR shall be treated as disposed of under "C" class. The applicant is at liberty to file Direct complaint however, he shall not be entitled to agitate anything about the proceedings of the police arising out of the above crime. The Magistrate

concerned before whom proposed Direct Complaint shall be filed, shall not be influenced by anything mentioned by the police in their report and shall independently examine the complaint and shall decide the matter in accordance with law

7. With the above observation, this Cr. Misc. Application stands disposed of.

JUDGE

A.K