

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar

Mr. Justice Syed Hasan Azhar Rizvi

Criminal Petition No.31-K of 2022

(Against the order dated 14.02.2022, passed by the High Court of Sindh, Bench at Sukkur in Criminal Miscellaneous Application No.S-644 of 2020)

Munawar Alam Khan

...Petitioner

Versus

Qurban Ali Mallano and others

...Respondents

Petitioner : In person

For the Respondents : N.R.

Date of Hearing : 08.04.2024.

JUDGMENT

Syed Hasan Azhar Rizvi, J. Through the captioned petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner, who appears in person, has challenged the legality of order dated 14.02.2022 passed by the High Court of Sindh, bench at Sukkur (*High Court*) whereby his Criminal Miscellaneous Application No.S-644 of 2020 was dismissed while maintaining the order dated 21.10.2022 passed by Additional Sessions Judge-II, Sukkur/Justice of Peace (*trial Court*) in Criminal Miscellaneous Application No.2038 of 2019 filed under Sections 22-A and 22-B Cr.P.C.

2. Facts as per the record are that both the parties to the *lis* belong to the legal fraternity and are contesting bar elections on yearly basis against each other. The animosity amongst them is an admitted fact. In earlier elections both the groups resorted to a

brawl. After the incident, the petitioner approached the police for lodging an FIR against the accused/respondents but the same was not so done.

3. The applicant in person states that both the Courts below have not taken into consideration the facts of the case in its true perspective; that the impugned order suffers from misreading or non-reading, therefore not tenable in the eyes of law; that while pursuing his application filed under Sections 22-A and 22-B Cr.P.C. before the trial Court, the respondents/accused assaulted him.

4. Having heard the petitioner and scanned the material available on the record, we observe that there are many precedents regarding misuse of provisions of Sections 22-A and 22-B Cr.P.C. and it is the prime duty of the Court that such misuse be taken care of and application filed should not be lightly entertained and decided in a mechanical manner for issuing direction to the police to lodge an FIR, conduct investigation in the matter and prosecute the accused. It is a settled principle of law that each and every case is to be decided on its own peculiar facts and circumstances and inference in this regard can be drawn from the cases reported as **Rai Ashraf and others** versus **Muhammad Saleem Bhatti and others** (PLD 2010 SC 691), **Trustees of the Port of Karachi** versus **Muhammad Saleem** (1994 SCMR 2213) and **The State** versus **Mushtaq Ahmed** (PLD 1973 SC 418).

5. It reflects from the record that before the High Court, a question was asked from the learned counsel for the petitioner whether respondent No.1, namely Mr. Qurban Ali Mallano, was present when the occurrence took place, he answered in the negative. The allegation levelled against respondent No.1 is that on

his instigation respondent No.2, namely Rahib Mallano, who is his brother-in-law, has committed the offence. Even otherwise from the comments filed by medical officer before the trial Court, it has been found that he has provided treatment to the petitioner but no medical certificate was issued in this regard on the ground that the petitioner has failed to furnish the police letter.

6. A common culture prevailing with our society and often chosen by the legal fraternity is to settle the disputes by converting them into criminal prosecution against each other which, in our candid view, is apparent on the record owing to the reason that there are other cases running in Court *inter se* the parties. After having received kicks and fists blows at the hands of the respondents, the petitioner has remained successful in seeking a direction for lodging an FIR from the trial Court, whereas FIR bearing No.98 of 2019 was also lodged against the petitioner in a similar context by some Advocates of accused/respondents' group.

7. A larger bench of this Court in the case reported as **Mst. Sughran Bibi** versus **The State** (PLD 2018 SC 595) has elaborately discussed the proposition *qua* lodging of an F.I.R, relevant portions wherefrom in order to resolve the controversy at hand read as under:-

"9. The whole gambit of controversy in hand revolves around the import and application of Section 154 of Cr.P.C. hence for ready reference it will be useful to reproduce the same as under:

"154. Information in cognizable cases.- Every information relating to the commission of a cognizable offence if given orally to an officer-incharge of a police station, shall be reduced in writing by him or under his direction and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf."

10. As could be seen from the plain reading of above reproduced provision of law, the requirement of Section 154 Cr.P.C. is to enter

every information of commission of a cognizable offence, whether given orally or in writing to the officer-in-charge of the police station, which shall then be reduced into writing and signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in the form prescribed by the Provincial Government in this behalf. Meaning thereby, that it is not a legal requirement for provider of such information to canvass the whole scene of occurrence of a cognizable offence giving description and details of accused, details of weapons used by them, their specific role, motive behind the occurrence, and the names of eye-witnesses etc. But it is a matter of common experience that usually the entries made in Section 154 Cr.P.C. book, as per practice, contain invariably all such details so much so that in the ordinary parlance/sense it is considered as the gist of the prosecution case against the accused. In such state of affairs, if a collusive, mala fide or concocted FIR, registered at the instance of some individual with some ulterior motive, is taken as sacrosanct, it is likely to divert the whole course of investigation in a wrong direction and spoil the entire prosecution case on that premise. The Court while considering the crucial point of registration of another FIR cannot remain oblivious of these ground realities so as to non-suit the aggrieved party from agitating his grievance in an honest manner, or ensure regulating proper investigation of a crime in the right direction, or apprehend the real culprits and brought them before the Court of law for justice.

11. Though our criminal legal system proceeds on the presumption of honest, God fearing and fair police officers, impartial and honest investigation system, but this is far from reality in the society we live in. In such circumstances when the Courts feel that due to mala fide, dishonest, colourful and motivated acts or omissions, entire investigation of the crime has been misled or it is going to be misled and on that account the case of the prosecution is likely to fail, then they are not denuded of their powers to order recording of another FIR disclosing a different version to check such nefarious design meant to save the real culprits vis-a-vis misleading the investigation/prosecution, at any appropriate stage of the proceedings. However, where need be, such powers are to be exercised with extreme care and caution and not in a routine manner so as to merely fulfill the wish of an individual who, as per his whims, is not satisfied either with the contents of earlier FIR or the direction of investigation based thereon or wants registration of another FIR with some ulterior motive. It is more so important in the circumstances when the procedure of direct complaint under Section 200, Cr.P.C. is also provided to meet such eventualities. However, it may be clarified here that there may be circumstances where registration of another FIR will be the only proper course as adopting the alternate course provided in Section 200, Cr.P.C. may not be equally efficacious and effective for the aggrieved person. The case law on the subject, which has been referred to above, lend support to the view that provisions of Section 154,

Cr.P.C. are to be read in a pragmatic, holistic and realistic manner in order to ensure that its true spirit and object is achieved and it is not abused at the hands of individuals or police, who may be adamant to make mockery of this system. It is for these reasons that no definite principle can be laid down barring the registration of another FIR.

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15. The confusion prevailing in the matter of registration of multiple FIRs in respect of the same offence stems from a misunderstanding that an FIR is the version of the incident reported to the police whereas the legal position is that an FIR to be registered under section 154, Cr.P.C. is only an information about commission of a cognizable offence and not an information about the circumstances in which such offence was committed or by whom it was committed. If the information supplied to the police not only reports commission of a cognizable offence but also contains a story as to how and by whom the offence was committed then such further information is just a version of the informant and during the investigation the investigating officer is free to entertain any number of versions advanced by any number of persons and it is his duty "to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person" as mandated by Rule 25.2(3) of the Police Rules, 1934 reproduced above. All subsequent or divergent versions of the same occurrence or the persons involved therein are to be received, recorded and investigated by the investigating officer in the same "case" which is based upon the one and only FIR registered in respect of the relevant "offence" in the prescribed book kept at the local police station.

16. Now we turn to the judgments rendered by this Court so far on the issue of registration of multiple FIRs in respect of commission of the same cognizable offence depicting different versions of the same incident. In the case of *Jamshed Ahmad v. Muhammad Akram Khan and another* (1975 SCMR 149) this Court had found the High Court to be justified in refusing to order registration of a second FIR because an FIR already stood registered in respect of "the same transaction" and the case was already under investigation.

17. In the case of *Kaura v. The State and others* (1983 SCMR 436) this Court had categorically held that a case had already been registered through an FIR and, therefore, registration of another FIR "was not called for" merely because the subsequent information supplied to the police contained a divergent version of the same incident. It was observed by this Court that "the ball had already been set rolling and the police was not only competent but also duty bound to unearth the true facts and trace the real culprits."

18. The subsequent case of *Wajid Ali Khan Durani and others v. Government of Sindh and others* (2001 SCMR 1556), however,

struck a different note and, therefore, the same requires a close scrutiny. It was alleged in that case that the two FIRs already registered with the local police in respect of the same incident "did not reflect the true facts" and, therefore, another FIR ought to be registered "disclosing the true facts of the incident" and in that backdrop the High Court had ordered the local police to register a third FIR in respect of the selfsame incident. When the said order of the High Court was assailed before this Court it was upheld and maintained simply by observing that "the learned High Court in the circumstances of the case, was within its jurisdiction in giving the direction to the police for registering another F.I.R. at the instance of the aggrieved widows of the deceased. Moreover, admittedly, since lodging of the third F.I.R., regular challan has been submitted in the Court in which the petitioners have been named as accused persons and the trial is yet to take place." This Court had gone on to observe that "Similarly, the contention that the learned High Court has not followed the view expressed by this Court in 1983 SCMR 436 is misconceived, as perusal of the impugned judgment would also show that in the circumstances pointed out in the judgment the learned High Court had correctly appreciated the views expressed in several cases by the superior Courts including the case referred to by the counsel in giving the direction for registering another F.I.R." A careful examination of the said judgment handed down by this Court shows three things: firstly, it was presumed without referring to any legal provision or basis that the High Court had the jurisdiction to order registration of a third FIR in respect of the same incident; secondly, the third FIR had already been registered on the basis of the impugned order passed by the High Court and upon completion of the investigation on the basis of the third FIR a Challan had already been submitted before the trial court for holding a regular trial of the accused persons implicated through the third FIR; and, thirdly, the judgment passed by this Court earlier on in the case of *Kaura v. The State and others* (1983 SCMR 436) had not been correctly appreciated. We understand, and it is submitted with great respect, that in that case this Court did not feel persuaded to interfere in the matter primarily because the case had already reached the trial court after completion of the investigation stage and it was presumably on account of that development that this Court had paid little attention to the legal issues involved in registration of multiple FIRs in respect of the same incident. It, thus, appears to us that the said judgment had proceeded on the basis of its own peculiar facts and, therefore, the same could not readily be treated as the law declared.

19. The case of *Mst. Anwar Begum v. Station House Officer, Police Station Kalri West, Karachi and 12 others* (PLD 2005 SC 297) was a case in which the High Court had refused to order registration of a second FIR regarding an incident in respect of which an FIR already stood registered with the local police but this Court issued such an order. In this case a second FIR containing a different version was ordered by this Court to be registered because it was found that "the veracity and truthfulness of F.I.R. lodged by

respondent Muhammad Yousuf, the Manager of the Company, became highly doubtful and the petitioner was right in asking for registration of another F.I.R. at her own version". The investigation of the case was still in progress when this Court had observed in that case that the veracity and truthfulness of the FIR originally registered was "highly doubtful" which observation, it is submitted with deep reverence, was not only presumptuous but also premature. Apart from that while issuing an order regarding registration of a second FIR this Court had referred to the judgment of this Court passed in the case of *Wajid Ali Khan Durani and others v. Government of Sindh and others* (2001 SCMR 1556), it had made no mention of the judgments rendered by this Court in the cases of *Jamshed Ahmad v. Muhammad Akram Khan and another* (1975 SCMR 149) and *Kaura v. The State and others* (1983 SCMR 436) and it had placed reliance upon the case of *Muhammad Ishaque v. S.P. Jaffarabad and another* (PLJ 1998 Quetta 1) decided by a High Court. Unfortunately no provision of the Code of Criminal Procedure, 1898 or of the Police Rules, 1934 was discussed in that judgment and as a matter of fact no discussion of the relevant law had taken place in the said judgment of this Court at all.

20. The last of the precedent cases from this Court is the case of *Ali Muhammad and others v. Syed Bibi and others* (PLD 2016 SC 484) wherein the High Court had ordered registration of a second FIR containing a different version of the same incident and this Court had upheld that order of the High Court. In that judgment this Court had observed in the very beginning that "Regarding this incident, an FIR was earlier lodged with misleading and incorrect statement of facts, therefore, she filed an application under Section 22-A Cr.P.C. before the Justice of Peace/Sessions Judge Pishin with the following assertions: ---". With utmost respect, this Court could have been more circumspect before making an observation about misleading or incorrect nature of the facts asserted in the original FIR especially when the stage of the case was premature and the investigation of the case was still in progress. This Court had then gone on to notice the case of *Kaura v. The State and others* (1983 SCMR 436) but unfortunately the ratio decidendi of that case was not even adverted to. It appears that the main consideration persuading this Court in favour of registration of a second FIR about the same incident was what was observed in the following paragraph of the judgment:

"8. We have considered submissions of the learned ASC for the appellants on short controversy involved in the matter relating to registration of another FIR. In the instant case, perusal of contents of the earlier FIR lodged at the instance of Ali Muhammad Defedar Levies on 09.06.2010 and the contents of other FIR lodged by Respondent No.1 on 27.08.2015, in terms of the impugned judgment, reveals two entirely different and conflicting stories about the actual occurrence. It is, thus, obvious that in case prosecution leads its evidence on the basis of contents of earlier FIR and the investigation made on that basis, then from no stretch of imagination the grievance of Respondent No.1, attributing

criminal liability of whole occurrence to the complainant and his party ("the appellants" herein), could be considered or adjudicated upon by the Court.---"

It appears that the Court was not properly assisted on that occasion and it was erroneously made to understand that the police are to investigate the case only on the lines asserted in an FIR and then it is to lead evidence before the trial court only in terms of the accusations made in the FIR. As already noticed in the preceding paragraphs of the present judgment, the scheme of the law is totally the opposite of it and according to the same after commencement of an investigation on the basis of an FIR the investigation officer is to collect every possible information about the facts and circumstances of the case, he is to receive or record any information in that regard becoming available from any source whatsoever, he is not to prematurely commit himself to any particular version of the incident and after finding out the actual facts the final report under section 173, Cr.P.C. is to be submitted not in terms of the allegations levelled in the FIR but in accordance with the actual facts discovered during the investigation.

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25. During the course of hearing of this petition we had inquired from the petitioner as to why she was insisting upon registration of a separate FIR in respect of her version of the incident especially when she had already instituted a private complaint containing her version of the incident and the accused persons in her private complaint had already been summoned by the trial court to face a trial and a Charge had been framed against them. In response to that query the petitioner had categorically stated that she wanted the accused persons in her version of the incident to be arrested and recoveries to be affected from them which was not possible through the medium of a private complaint. Such understanding of the law on the part of the petitioner, which understanding is also shared by a large section of the legal community in our country, has been found by us to be erroneous and fallacious. By virtue of the provisions of section 202(1), Cr.P.C. a court seized of a private complaint can "direct an inquiry or investigation to be made by any Justice of the Peace or by a police officer or by such other person as it thinks fit". If in a given case the court seized of a private complaint deems it appropriate to direct an investigation to be carried out in respect of the allegations made then the powers available during an investigation, enumerated in Part V, Chapter XIV of the Code of Criminal Procedure, 1898 read with section 4(1)(l) of the same Code, include the powers to arrest an accused person and to affect recovery from his possession or at his instance. Such powers of the investigating officer or the investigating person recognize no distinction between an investigation in a State case and an investigation in a complaint case.

26. The impression entertained by the petitioner that if a separate FIR is registered in terms of her version of the incident then the accused persons nominated by her would automatically be arrested has been found by us to be not only misconceived but also discomfoting. The law does not permit arrest of a person merely on the basis of a bald allegation levelled against him.

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27. As a result of the discussion made above we declare the legal position as follows:

(i) According to section 154, Cr.P.C. an FIR is only the first information to the local police about commission of a cognizable offence. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard.

(ii) If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.

(iii) Upon registration of an FIR a criminal "case" comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter.

(iv) During the investigation conducted after registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161, Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case.

(v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

(vi) Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and

the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue.

(vii) Upon conclusion of the investigation the report to be submitted under section 173, Cr.P.C is to be based upon the actual facts discovered during the investigation irrespective of the version of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person."

8. Under the circumstances, we are clear in our mind that the trial Court has taken into consideration all material aspects of the matter, either legal or factual, and has rightly dismissed the application filed by the petitioner under Sections 22-A(6)(1) and 22-B Cr.P.C. on the ground that the same is tainted with *mala fide*, that order has been upheld by the High Court through the impugned order. The petitioner has failed to persuade us to interfere in the well-reasoned orders passed by the *fora* below.

9. No misreading or non-reading as well as infirmity or illegality on the record has been noticed. Consequently, the petition being bereft of merit is dismissed. Leave to appeal is declined.

Bench-I

Karachi, the

8th April, 2024

NOT APPROVED FOR REPORTING

Ghulam Raza/*