

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITION NO. 47 OF 2016 &

C.M.A. NO. 5424 OF 2016

(On appeal against the judgment dated 04.11.2015
passed by the High Court of Sindh, Karachi in CP No.
D-3065/2015)

1. Salman Abro (In CP 47/2016)
2. Application for impleadment by
Zeeshan Mustafa Lashari (In CMA 5424/2016)
... Petitioner/Applicant

VERSUS

Government of Sindh and others (In CP 47/2016)
... Respondents

For the Petitioner: Mr. Ghulam Sarwar Abro, father of the
petitioner

For the State: Mr. Zafar Ahmed Khan, Addl. P.G. Sindh

For the Respondents (2): Mr. Faisal Siddiqui, ASC
(Also for applicant in CMA No. 5424/2016)

Date of Hearing: 09.02.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.-

Civil Petition No. 47/2016

Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the judgment of the High Court of Sindh, Karachi whereby the Constitutional Petition filed by him was dismissed and the order of the learned Trial Court dated 29.04.2015 dismissing his private complaint under Section 203 Cr.P.C. was upheld.

2. Briefly stated the facts of the matter are that the petitioner is facing trial in case registered vide FIR No. 235/2014 under Sections 302, 324, 427, 34 PPC read with Section 7 of the Anti Terrorism Act, at Police Station Darakshan, Karachi, for the alleged murder of one Suleman Mustafa Lashari. According to the FIR, on the fateful day and time, the complainant was sitting in his house when petitioner along with others while armed with firearms came at the gate of their

bungalow and started firing. Due to the firing, their guard namely Ghulam Ali Bugti and his brother Suleman Mustafa Lashari sustained injuries. The complainant party while exercising right of self defence fired at the assailant due to which petitioner also received injuries. The brother of the complainant Suleman Mustafa and his guard were evacuated to hospital but his brother succumbed to the injuries. Later it was found that one of the assailants also lost his life during the occurrence. The motive behind the occurrence was that the petitioner and the deceased had some hostility during their friendship, which persuaded the petitioner to launch attack resulting into death of the deceased. After registration of the aforesaid crime report, one Mansoor Ali filed an application under Section 22-A & 22-B Cr.P.C before the Justice of Peace, Karachi South for registration of counter version, but the same was dismissed vide order dated 10.05.2014. He assailed the order of Justice of Peace before the High Court of Sindh by filing Criminal Misc. Application No. 59/2014, which also met the same fate vide order dated 03.09.2014. The order of the High Court was challenged before this Court through Criminal Petition No. 101-K/2014, which was ultimately withdrawn and the same was disposed of accordingly vide order dated 06.02.2015. It is strange enough that in the second round of litigation, the petitioner Salman Abro filed private complaint under Section 200 Cr.P.C before the learned Trial Court for recording of counter version under Sections 302, 324, 427, 201, 149 PPC read with Sections 6/7 of the Anti Terrorism Act. The learned Trial Court after recording the preliminary statements and while inquiring into the matter dismissed the private complaint vide order dated 29.04.2015 on the ground that there does not exist any reasonable ground for issuance of process against the proposed accused in the complaint lodged by the petitioner. Being dissatisfied with the order of the learned Trial Court, the petitioner filed Constitutional Petition No. D-3065/2015 before the learned High Court of Sindh, Karachi, but it has been dismissed vide impugned judgment dated 04.11.2015. Hence, this petition seeking leave to appeal.

3. *Learned counsel for the petitioner is not in attendance. According to the father of the petitioner, learned counsel is indisposed. We have noticed that on the last two dates of hearing, the learned counsel for the petitioner had sent applications for adjournment on different grounds. Since, a short point is involved and as the matter is*

lingering on since 2016, we have decided to proceed with the matter on merits. Mr. Ghulam Sarwar, father of the petitioner, inter alia, contended that one of his guards has been killed by the complainant party of the FIR and his son i.e. the petitioner has received serious injuries, which clearly shows that the complainant party was the aggressor but the learned courts below have not taken this aspect of the matter into consideration and refused to register the counter version of the petitioner's side, which resulted into grave miscarriage of justice; that the petitioner had fired in self defence due to which deceased Suleman Mustafa lost his life. He lastly contended that the complainant party is not appearing before the Trial Court and deliberately delaying the matter.

4. *On the other hand, learned Law Officer and learned counsel for the respondent No. 2 have defended the impugned judgment. Learned counsel for the respondent No. 2 has inter alia contended that the matter is at the stage of final arguments; that the plea of petitioner for registering his counter version was also declined in the earlier round of litigation, which means it had attained finality, therefore, seeking the same relief in the second round amounts to mockery of law.*

5. *We have heard learned counsel for the parties and have perused the available record.*

6. *A bare perusal of the record shows that in the first round of litigation, a stranger namely Mansoor Ali had tried to lodge counter version of the occurrence, which was declined up to the High Court. Even the petition before this Court filed by the said Mansoor Ali was dismissed as withdrawn. This clearly reflects that the attempt made by the said Mansoor Ali on behalf of the petitioner has already attained finality. Surprisingly, the said Mansoor Ali was neither a witness of the occurrence nor he had any nexus with the incident, therefore, there was no compelling reason for him to file the counter version on behalf of the petitioner. In the second round of litigation, the petitioner himself opted to file private complaint which has been dismissed by the learned courts below. The learned High Court in the impugned judgment has observed that the petitioner has not approached the court with clean hands, but with nefarious intent as the counter version of the petitioner had already been investigated by the police while following all legal requirements. It was further*

observed that the only purpose to launch counter version is to create a strong defence that too with a delay of one year and the same could be termed as an afterthought and as such it does not create a sound foundation in the given circumstances. After evaluating all facts and circumstances, we could not persuade ourselves to come to a different conclusion than what has been arrived at by the High Court. We have been informed that the evidence has already been recorded and the trial is at the verge of final arguments. We are aware of the fact that at this stage any observation qua the merits of the case would certainly prejudice the case of either of the parties and the same would not be in the interest of safe administration of criminal justice. The grounds urged by the petitioner before us can safely be agitated before the learned Trial Court in the light of the evidence led by either of the parties.

7. *For what has been discussed above, we find no reason to interfere with the well reasoned judgment of the learned High Court. This petition having no merit is accordingly dismissed and leave to appeal is refused.*

C.M.A. No. 5424 OF 2016

8. *Through this application, the complainant of the FIR seeks to be impleaded as necessary party in Civil Petition No. 47/2016. We have noted that this Court vide order dated 20.07.2016 had directed that the complainant be arrayed as respondent in the petition, which was accordingly done and he was arrayed as respondent No. 2 in the main petition. In this view of the matter and since the main petition has been dismissed, this CMA has become infructuous and is disposed of accordingly.*

JUDGE

JUDGE

Islamabad, the
9th of February, 2021
Not Approved For Reporting
Khurram