

33

IN THE COURT OF SESSIONS JUDGE & EX-OFFICIO JUSTICE  
OF PEACE KARACHI SOUTH.

CRI. MISC. APPL. NO. 739 OF 2014.

13-

Mansoor Ali,

Applicant.

Vs.

The SHO P.S. Darakshan.

Respondent.

U/S. 22-A Cr.P.C.

10.05.2014.

ORDER.

The applicant named-above has prayed to issue the directions to the SHO P.S. Darakshan to lodge the report as alleged by the applicant against accused persons namely Suleman Lashari, Zeeshan Mustafa Lashari and their accomplices because they have taken the law in their hands and have committed the cognizable offence and applicant named-above has approached to the SHO to lodge the report by submitting the application who is avoiding to register the report as alleged by the applicant against the proposed accused persons reasons best known to him.

Facts leading to this petition are that applicant has the claim that he is rendering the services in Education Department and is residing with his uncle S.P. Ghulam Saifwar at Flat No. G-3, Beach Luxury Apartment, Block No.4, Clifton, Karachi and he was sleeping at his apartment on 08.05.2014 and it was about 02:00 midnight when he received the phone call from the guard of his uncle namely P.C. Rashid Ali Sajid who had disclosed that he alongwith P.C. Zaheer Ahmed Rind, P.C. Yaseen Jamali, P.C. Imran Ali, P.C. Maqbool Jamali, Suleman s/o. Abro had gone to meet with the friends of Suleman Abro namely Suleman Lashari at his house where some dispute arose in between Suleman Lashari and Zeeshan Mustafa Lashari who were having the weapons and they were accompanying with their guards namely Ali Ghulam Bugti and they had instructed to their guard Ali Ghulam Bugti to stop their car at Bin Vago when all of sudden Suleman Lashari and Zeeshan Mustafa had opened the straight fire at their car and the above persons had tried to reverse back to their car but Suleman Lashari and Zeeshan Mustafa alongwith their accomplices



had opened the straight fire at their car due to which guard Zaheer Ahmed Rind and Suleman Abro had received the fire-shot injuries. P.C. Zaheer Ahmed Rind had down fell from the car whereas Suleman Abro had also received the fire hot injuries serious in nature. P.C. Rashid Ali Gujjar had shifted the injured to Dr. Ziauddin Hospital for medical treatment and had intimated to applicant with a request to reach at hospital immediately. Applicant had appeared at hospital and P.C. Zaheer Ahmed Rind had been succumbed because of such fire-shot injuries whereas Suleman Abro was admitted as indoor patient for medical treatment and he had appeared at P.S. with the purpose to lodge the F.I.R. but SHO had refused to register such F.I.R. reasons best known to him and on the next day he had made an application to the respondent and he had declined to register the F.I.R. due to the influence of the other party. Applicant had also approached to the high ups of police department and had narrated the state of incident but no fruitful result was achieved and after seeing no way he was not having any remedy except to file the present application because police officials are duty bound to record the statement under section 154 Cr.P.C. of the applicant in to lodge the report if cognizable offence is made-out but SHO has failed to perform his official duty.

The report was called from SHO P.S. Darakshan who has submitted the report by denying such state of allegations that applicant is not highlighting the full story of incident and he has alleged that as a matter of fact ASI Muhammad Khan had recorded the statement under section 154 Cr.P.C. of complainant Suleman Mustafá Lashari at Jinnah Hospital, Karachi, who has alleged that he was sitting in the terrace of his house alongwith his brother-in-law Rahimuddin, his mother Mrs. Erum Naz and his servant Riayat @ Goji S/o. Kaloo Dillawar and they were chitchatting to each other on 08.05.2014 and it was about 02:00 at night and his brother Suleman Mustafá aged about 18 years student of A-Level was busy in preparation of his paper in the lawn of bungalow and in the meantime a white van having the Registration No. CU 2900 of Black Colour had appeared and six persons were available in the said vehicle and three persons had alighted from the van who were



having the Kalashnikovs and had started to open the fire at the main gate and then they had entered inside the bungalow whereas remaining three persons were available outside the gate of bungalow and they all had opened the straight fire at the security guard Ali Ghulam Bugti S/o. Sajjhn with their Kalashnikovs and Suleman Abro had opened the straight fire from his Kalashnikov at his younger brother Suleman Mustafa with intention to commit his murder by raising the lalkara and his younger brother Suleman Mustafa had become injured serious in nature. Complainant who was having the licensed pistol and his injured security guard Ali Ghulam Bugti who was having the licenses repeater had retaliated to the attackers in their defence by opening the fire with their weapons and due to which Suleman Abro and his guards namely Zaheer Ahmed Rind had become injured. Complainant had shifted to his injured brother Suleman Mustafa and security guards Ali Ghulam Bugti to South City Hospital with the help of his mother. His brother Suleman Mustafa had received the fire-shot injuries at the left side of his neck and at his buttock whereas security guard Ali Ghulam Bugti had received the fire-shot injury at the left leg and his brother Suleman Mustafa had been succumbed at South City Hospital after sustaining the fire-shot injuries. Dead body of his brother Suleman Mustafa was shifted to JPMC for PM. Examination where he had come to know that guard Suleman Abro namely Zaheer Ahmed Rind has also been expired. His younger brother Suleman Mustafa had disclosed before him that some days back to the incident took place Suleman Abro had crossed the vehicle from the wrong side at sea view to the vehicle of Suleman Mustafa and hot words were exchanged in between them and he had alleged that Suleman Abro S/o. Ghulam Sarwar, Zaheer Ahmed Rind S/o. Abdul Waheed alongwith their four companions had appeared at the bungalow of complainant party and had opened the fire at deceased and security guard namely Ali Ghulam Bugti and sudh F.I.R. No. 235/2014 was lodged at P.S. under sections 302, 374, 427, 34 PPC read with section 7 A.T.A. 1997 in the light of statement under section 154 Cr.P.C. and the investigation was taken up by the I.O. to which is underway at present.



16-

It is the submissions of the learned counsel appearing on behalf of the applicant named above that proposed accused persons have taken the law in their hands and SHO P.S. Darakshan may kindly be pleased to issue the direction to record the statement under section 154 Cr.P.C. of the applicant and to lodge the report in the light of such state of allegations because cognizable offence has been made but at the place of alleged incident and SHO of P.S. is facilitating to the complainant party of F.I.R. No. 235/2014 and he is not initiating any action against the culprits of the alleged crime.

SHO P.S. Darakshan has resisted the state of allegations as leveled by the applicant and he has argued that accused persons involved in F.I.R. No. 235/2014 had entered into the house of complainant party at midnight when accused persons namely Suleman Abro along with others were having the Kalashnikovs to which they had used at the time of commission of alleged offence and brother of complainant namely Sulbman Mustafa aged about 18 years has been succumbed because of firing of accused persons, whereas private guard namely Ali Ghulam Bugti has received the fire-shot injuries and sufficient evidence has been collected in support of state of allegations as alleged by complainant Zeeshan Mustafa and the investigation of that case is underway and applicant party is required to join the investigation and to produce the material to show their innocence if they are not at fault and, lastly, he has prayed to dismiss the petition in hand.



Learned DPP has supported the arguments so advanced by the SHO that investigation is underway and each and everything would come on record during the course of investigation and there is no need to issue direction to the SHO to lodge the F.I.R. as prayed by the applicant because he is trying to create the defence plea to lodge the F.I.R. against the complainant party of F.I.R. No. 235/2014 and he has a privilege to file the private complaint if applicant is aggrieved with the action of proposed accused persons or police at the end of investigation of instant F.I.R.

There is substance in the submissions as made by the SHO of P.S. Darakshan that F.I.R. vide Crime No. 235/2014 has been lodged in respect of alleged incident.

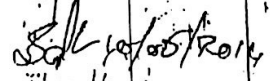
77-

and the accused persons involved in the said F.I.R. have been apprehended by police and it is the sole privilege of the accused persons involved in the abovesaid crime to produce the substantial material to show their innocence during the course of investigation of said crime because I am at the humble view that investigating officer of each case will have the privilege to separate the grain from the chaff while conducting the investigation and he has also the privilege to shift the responsibility in respect of state of allegations towards the complainant party if some material comes to the file of I.O. during the course of investigation and the direct complaint (private complaint) is an alternative and efficacious remedy as available with the applicant to agitate his state of allegations against the proposed accused persons and I am fortified with the decisions of Honourable superior courts as appeared in 2005 P.Cr.L.J. 997 & 1579. Further under the scheme of section 22-A Cr.P.C. it has been settled that Ex-Officio Justice of Peace is not supposed to allow the application under section 22-A & B Cr.P.C. in a mechanical manner and should apply his mind as to whether the applicant had approached the court with clean hands or it was tainted with malice and I am fortified with the decisions of Honourable superior courts as appeared in 2013 P.Cr.L.J. p.813 and 2010 YLR. p. 189 and the applicant of this petition will have the privilege to file the direct complaint before the competent court of law by highlighting all such state of allegations as alleged in the present petition at the end of investigation in relation to the captioned crime.



I do not see any substance to issue the directions to the SHO Darakshan to lodge the report as prayed by the applicant/petitioner; hence the application in hand is hereby dismissed:

Announced in open court today this the 10<sup>th</sup> of May 2014.

  
(Ahmed Sabir)  
Sessions Judge & Ex-Officio Justice of Peace,  
Karachi South.

AT 10