

ALLAH WASAYA and others---Petitioners

Versus

SIKANDAR HAYAT and others---Respondents

Criminal Miscellaneous No.1391-M of 2010, decided on 23rd February, 2011.

NASIR SAEED SHEIKH, J.---The instant Criminal Miscellaneous has been instituted by Allah Wasaya son of Khan, Muhammad, Khizar Hayat, Sikander Hayat both sons of Allah Wasaya and Faiz Baldish son of Ghulam Muhammad against the order dated 1-11-2010, passed by the learned Additional Sessions Judge, Jalalpur Pirwala, District Multan, whereby a criminal revision against the order dated 4-9-2010, passed by the learned Magistrate Section 30, Jalalpur Pirwala, District Multan, was accepted and the private complaint instituted against the petitioners was remanded back to the learned trial Magistrate for recording the statement of the complainant first and then to proceed further in the matter in accordance with law.

2. Briefly stating the facts of the case are that the petitioners are involved as accused in a State case first registered vide F.I.R. No.110, dated 16-4-2006, under sections, 324, 336,148, 149 of P.P.C., Police Station, Saddar, Jalalpur Pirwala, District Multan, at the instance of the respondent No.1 Sikander Hayat. The respondent No. 1 then later instituted a private complaint during the trial of the said case on 23-12-2009 before the learned Judicial Magistrate section 30, Jalalpur Pirwala, District Multan. The learned Judicial Magistrate vide order dated 3-2-2010 called upon the petitioners to face the trial in the private complaint. The petitioners preferred a criminal revision against the order dated 3-2-2010, which criminal revision came up for hearing before the learned Additional Sessions Judge, and was accepted vide order dated 23-4-2010 on the ground that the preliminary evidence recorded by some official of the court was not endorsed by the learned Judicial Magistrate and no memorandum of the substance of the evidence was prepared in the handwriting of the learned Judicial Magistrate. The case was, therefore, remanded back by the learned Additional Sessions Judge, Jalalpur Pirwala, through an order dated 23-4-2010.

3. After the remand of the case, the learned Judicial Magistrate recorded the preliminary evidence in his own hand-writing and vide order dated 4-9-2010 summoned the petitioners to face the trial in the private complaint. The petitioners assailed the order dated 4-9-2010, passed by the learned Judicial Magistrate through a criminal revision, which came up for hearing before a learned Additional Sessions Judge, Jalalpur Pirwala, who accepted the revision of the petitioners on the ground that the statement of the complainant was required to be recorded first as per provisions of sections 200 and 202 of Cr.P.C., and, thereafter the process for compelling the attendance of the persons complained against was to be issued. The learned Additional Sessions Judge came to the conclusion that in the case in question, the statements of the witnesses were recorded first by the learned Magistrate and then the statement of the complainant was recorded, which

process was violative of the mandatory provisions of law, therefore, the impugned order dated 4-9-2010 being not sustainable in the eye of law was set-aside by the learned Additional Sessions Judge, Jalalpur Pirwala vide order dated 1-11-2010 and the matter was remanded back to the learned trial Magistrate for recording the statement of the complainant first and then to proceed with the matter further in accordance with law.

4. The petitioners have assailed this order dated 1-11-2010 through the -instant Criminal Miscellaneous.

5. It is contended by the learned counsel for the petitioners that the learned Additional Sessions Judge should have dismissed the complaint as the proceedings resulting into the order dated 4-9-2010 were based upon violation of provisions of section 200 of Cr.P.C. It is further contended that after the registration of F.I.R. No.110 of 2006, for the same offence, the private complaint was lodged after more than three years, therefore, the private complaint should have been dismissed by the learned Additional Sessions Judge on this ground alone. It is next argued that the complaint is liable to be dismissed on the ground that the learned Judicial Magistrate does not have powers to entertain and try the offence under section 336 of P.P.C. as the offence is punishable with 10 years imprisonment as Tazir, which is beyond the competence of the learned Judicial Magistrate. The learned counsel for the petitioner has relied upon the judgments reported as Muhammad Iqbal and others v. The State 2008 YLR 174 Zafar and others

v. Umer Hayat and others (2010 SCMR 1816), Mushtaq Ahmad v. Akhtar Hussain

and 3 others 2006 YLR 1959 and Rasool Bux Shaikh v. The State and another

(2010 PCr.LJ 733) in support of his contentions.

6. The learned Deputy Prosecutor-General has opposed the criminal miscellaneous and has prayed for its dismissal. No body has appeared on behalf of the respondent No.1/complainant and he is proceeded ex parte.

7. I have considered the arguments of the learned counsel for the petitioners and have perused the record.

8. The complaint simply cannot be dismissed on the ground that it was instituted with some delay. It may be a ground to be considered at the time of final decision of the case but not at such a preliminary stage when even an earlier order of summoning the present petitioners dated 3-2-2010 passed by the learned Magistrate section 30, was assailed and was set-aside by the learned Additional Sessions Judge, vide order dated 23-4-2010 and the case was remanded back to the learned Judicial Magistrate for proceedings in accordance with law by the learned Additional Sessions Judge. The petitioners did not raise this point at that relevant time and accepted the revisional order dated 23-4-2010. The provisions of section 200 of Cr.P.C. have been taken due notice and the order of summoning the petitioners have been set aside by the learned Additional Sessions Judge, vide order dated 1-11-2010 and the case has been remanded back with the direction that the statement of the complainant be recorded and then further proceedings be taken in

accordance with law by the learned Magistrate. Merely because the provisions of section 200 of Cr.P.C. have not been complied with, it does not give any cause of grievance to the petitioners to pray that the complaint be dismissed as such.

9. The contention of the learned counsel for the petitioners that the learned Judicial Magistrate does not have the necessary jurisdiction and competence for taking cognizance of the offence under section 336 of P.P.C. is also not sustainable. Section 30 of the Criminal Procedure Code, 1898 is reproduced as follows:-

"30. **Offences not punishable with death.** Notwithstanding anything contained in sections 28 and 29, the Provincial Government may invest any Magistrate of the First Class with power to try as a Magistrate all offences not punishable with death."

A bare reading of section 30 of Criminal Procedure Code, 1898 makes it clear that all the offences except those punishable with death can be tried by a Magistrate of 1st Class empowered under section 30 of the Criminal Procedure Code, 1898. Admittedly, the learned Judicial Magistrate who has taken cognizance of the matter is a Magistrate of Section 30 and is fully competent to take cognizance of the matter and try the same.

The case-law produced by the learned counsel for the petitioners is not relevant to the proposition being argued and is distinguishable on its own facts.

In view of above, the instant Criminal Miscellaneous is devoid of any merits and the same is hereby dismissed.

N.H.Q./A-117/L

Petition dismissed.