

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc. Application No.S-53 of 2025.

Syed Muhammad Ali Shah v. The State & others

Applicant : Syed Muhammad Ali Shah through M/s Iftikhar A.Shah & Mr. Babar Ali, Advocates.

Respondent : The State through Ms. Sana Memon, A.P.G & respondent No.2 (Ghulam Shabbir) through, M/s Manzoor Ahmed Panhwar & Mir Murtaza Abro, Advocates.

Date of hearing : 07.04.2025.

Date of Decision : 07.04.2025.

ORDER

Miran Muhammad Shah, J:- Through this Cr. Misc Application, the applicant has impugned the order dated 22.01.2025 passed by learned Civil Judge/J.M-I, Matiari in crime No.50 of 2024 U/s 324, 427, 34, 337F(i) PPC of PS Matiari, whereby the learned Magistrate had observed in conclusion as under;

"13. In view of the above facts and discussion, I hereby disagree with the reports of I. Os. Therefore, I take cognizance against the accused named above, for their involvement in commission of offences punishable under sections 324, 109, 427, 147, 148, 149, 337 F(iii), 337L(i) PPC. The accused namely 1) Imdad s/o Ghulam Qadir Joyo, 2) Parvaiz s/o Arbab Khaskheli, 3) Abdul Latif s/o Urs Jakhro, 4) Imran s/o Abdul Qadir Joyo, and 5) Pariyal s/o Muhammad Jakhro are alleged to have attacked the injured Razzique Dhino with the intention to kill, armed with deadly weapons, committing rioting, causing damage to his vehicle, and causing injuries to him, all at the instigation of the accused 6) Muhammad Ali Shah s/o Zulfiqar Ali Shah. Let the case be registered. The I.O of the case is strictly directed to submit a charge sheet/ final report on prescribed proforma setting forth the names of witnesses, within 7 days without fail. It is now well-settled that at the first instance, it would always be proper and fair to issue summons or at firstailable warrants against the accused who was not sent up for trail. In this case, previously, the accused are released by IO under section 169 Cr.PC, therefore at first instance it would be appropriate to issue summons/ notice to the accused. Issue notice to the accused namely 1) Pariyal s/o Muhammad Jakhro and 2) Muhammad Ali Shah s/o Zulfiqar Ali Shah. Since the offence punishable under section 324 P.P.C is exclusively triable by Court of Sessions, let the R & P be sent to Hon'ble District & Session Judge, Matiari after completion of all necessary formalities."

2. The facts of the FIR are mentioned in the impugned order with detail and the copy of F.I.R. is also attached with the Application, hence, needs not to reproduce the same here.

3. Learned counsels for applicant argued at length and stated that the order passed by learned Judicial Magistrate is against the law, facts and natural justice; that the learned

trial court had committed illegality while passing the impugned order; that the learned Magistrate had passed an order without considering the video evidence; that the impugned order is passed in slip shod manner undermining the principles of natural justice and rule of law; that the FIR was lodged with the delay of about 14 days against unknown persons; that the statement of respondent No.2 and victim was recorded U/s 161 Cr.P.C who again reiterated the facts mentioned in the FIR without naming any accused person; that after the delay of 67 days of incident, the statement of victim was recorded U/s 164 Cr.P.C, wherein he has alleged that one Imran Johyo upon instigation of the present applicant attacked the victim; that independent circumstantial piece of evidence collected by the I.O negate the contents of 164 Cr.P.C statement given by the victim which is in shape of CDR which suggest that accused were not present at the time of alleged incident including the applicant and such CDR shows that the victim and the respondent No.2 were at different locations at the time of incident; that the statements recorded U/s 161 Cr.P.C of witnesses namely Imam Bux, Asif Ali and Qalander confirms that the nominated accused were with them at the time of alleged incident. He prayed that the evidence collected by the I.O fully supports the case of present applicant, who has been implicated in this case wrongly as there is no evidence against him. Relies upon the case laws reported as 1977 SCMR 292, 2009 YLR 169, 2009 P.Cr.L.J 1425, 1980 P.Cr.L.J 754, 2007 YLR 3082 & one un-reported order passed in Cr. Misc Application No.1054 of 2024.

4. On the other hand, learned counsels for respondent No.2 argued at length and stated that the order impugned through this Cr. Misc Application is very much competent and there is no illegality in order passed by the learned Judicial Magistrate as sufficient material had come on record which connect the present applicant/accused who is very influential person, and because of this, the police is supporting him; that the statement U/s 164 Cr.P.C of victim was subsequently recorded who fully implicated the present applicant as accused having role of instigation; that after recording evidence the material would come on surface regarding guilt or otherwise of the applicant, however, at present there are so many evidences against the present applicant regarding an offence committed by him. Lastly prayed that the case of present applicant regarding deleting his name has not made out, therefore, the instant Cr. Misc Application may be dismissed. Relied upon the case laws reported as PLD 2007 Karachi 489 & 2002 SCMR 63.

5. Heard & perused.

6. This Cr. Misc Application has been filed assailing an order passed by learned Judicial Magistrate on a final report U/s 173 Cr.P.C submitted by Inspector/IO Muhammad Aslam Gugo with recommendation to dispose of the case under "A" class in crime No.50 of 2024 U/s 324, 427, 34, 337F(i) PPC of PS Matiari, while learned DDPP had also forwarded the report to learned Magistrate alongwith separate scrutiny

for appropriate orders. The legal proposition has arisen whether “The Magistrate under Section 173 Cr.P.C has the powers to take cognizance on his own after discarding the challan report of the Investigation Officer filed U/s 173 Cr.P.C?” At this stage, I feel it appropriate to reproduce Section 173 & 190 Cr.P.C hereunder;

“173. Report of Police-officer.- (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer incharge of the Police-station shall, [through the Public Prosecutor]:--

- a) Forward to a Magistrate empowered to take cognizance of the offence on a police-report, a report in the form prescribed by the [Provincial Government], setting forth the names of the parties, the nature of the information and the names of the person who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and
- b) Communicate, in such manner as may be prescribed by the [Provincial Government], the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given

[Provided that, where investigation is not completed within a period of fourteen days from the date of recording of the first information report under section 154, the officer incharge of the police station shall, within three days of the expiration of such period, forward to the Magistrate through the Public Prosecutor, an interim report in the form prescribed by the Provincial Government stating therein the result of the investigation made until then and the Court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the court decides that the trial should not so commence.]

2. Where a superior officer of police has been appointed under Section 158, the report shall, in any cases in which the [Provincial Government] by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer incharge of the police-station to make further investigation.

3. Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

4. A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial:

Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

[(5). Where the officer incharge of a police station forwards a report under sub-section (1), he shall along with the report produce the witnesses in the case, except the public servants, and the Magistrate shall bind such witnesses for appearance before him or some other Court on the date fixed for trial.]

190. Cognizance of offences by Magistrates. [(1) All Magistrates of the First Class, or any other Magistrate specially empowered by the Provincial Government on the recommendation of the High Court, may take cognizance of any offence-

- a) upon receiving a complaint of facts which constitute such offence;
- b) upon a report in writing of such facts made by any police officer;
- c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion,

that such offence has been committed which he may try or send to the Court of Session for trial and]

[(2)]. A Magistrate taking cognizance under sub-section (1) of an offence triable exclusively by a Court of Session shall, without recording any evidence, send the case to the Court of Session for trial].

7. An interpretation of Section 173, Cr.P.C. provides that after completion of investigation, the incharge of Police Station shall submit report through Public Prosecutor before the Magistrate empowered to take cognizance of the offence on it and if he finds that there is sufficient evidence against the accused then he has power to take the cognizance of the offence, furthermore if, the Magistrate is of the view that the proper investigation, has not been conducted and require further investigation, then he can direct the officer incharge of the Police Station to make further investigation. In view of Section 190, Cr.P.C. if, a Magistrate after taking cognizance of offence observes that if an offence is triable exclusively by a Court of Session, then without recording any evidence he sends the case to Court of Sessions for trial. In case of **Muhammad Nasir Cheema v. Mazhar Javaid and others** reported in PLD 2007 Supreme Court 31, the Honourable Supreme Court of Pakistan has held;

"6. The only provision relating to the subject which is available in the Code of Criminal Procedure is section 173 which commands expeditious conclusion of the investigations and further ordains that on conclusion of every investigation, the concerned S.H.O. shall submit a report of the result thereof in the prescribed manner to the Magistrate competent to take cognizance under section 190, Cr.P.C. No power vests with any Court including a High Court to override the said legal command and to direct the S.H.O. either not to submit the said report (mentioned as challan in the Police Rules and also in the impugned order) or to submit the said report in a particular manner i.e. against only such persons as the Court desires or only with respect to such offences as the Court wishes. The impugned order can also not be sustained because, as has been mentioned above, the challan in question stood already submitted in Court and was thus beyond the reach of the concerned S.H.O."

8. In this case an FIR was lodged on 17.05.2024 by complainant Ghulam Shabbir, thereafter investigation through different I.Os was conducted and finally I.O/Inspector Muhammad Aslam Gugo submitted final report U/s 173 Cr.P.C under "A" class, which means that the police has investigated a case and found the information to be true but untraceable, meaning they have discovered a crime, but have been unable to identify and arrest the offender(s). This type of report is submitted to the Magistrate to inform them of the investigation's findings and the reasons for the case's untraceability. After taking guidance from the case of **Muhammad Nasir Cheema** (Supra), it is sufficient to say that the concerned SHO shall submit a report of the result thereof in the prescribed manner to the Magistrate competent to take cognizance under Section 190, Cr.P.C. In this case after completing the investigation, the report (challan) U/s 173 Cr.P.C was filed before learned Magistrate under "A" class, but the learned Magistrate on his own took cognizance against six (06) accused persons including applicant. In the case (**Supra**), the Honourable Supreme Court of Pakistan has held that no power is vested with any Court including the High Court to override the said command and to direct the SHO either not to submit a said report or to submit a said report in particular manner i.e. against only such person as the Court desires or only with respect to such offence(s) as the

Court wishes. In the impugned order, the learned Magistrate by declining the report of I.O U/s 173 Cr.P.C had taken cognizance on his own. No doubt that the Magistrate is not bound by the report submitted by police U/s 173 Cr.P.C but he may or may not agree with the conclusions reached by Investigation Officer, for which he may require the police to make a further investigation.

9. The case law as quoted by learned Magistrate states that the Magistrate may either accept the report and take cognizance of an offence and issue process, or may disagree with the report or may direct further investigation and require the police to make a further report. The learned Magistrate despite quoting the above order has not complied with it and took cognizance and even went against the dictum quoted by him.

10. In the light of above discussion, and the dictum laid down by the Honourable Supreme Court of Pakistan, so also placing my reliance on 2021 P.Cr.L.J 198 and unreported order of this Honourable Court passed in Cr. Misc. Application No.S-673 of 2024 (Mumtaz Ali v. Dothi & another), I am of the view that the learned trial Magistrate has erred while disposing of the challan and without consulting the case law as prescribed by the Honourable Supreme Court of Pakistan. Therefore, I **allow** this Cr. Misc. Application No.S-53 of 2025 filed by applicant. The impugned order passed by the learned Civil Judge/Judicial Magistrate-I Matiari dated 22.01.2025 is set-aside to the extent of present applicant.

JUDGE

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