

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Miscellaneous Application No.S-872 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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16.05.2025

Mr. Abdul Rasheed Abro Advocate for the Applicants.

Ms. Sana Memon, Assistant Prosecutor General.

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ORDER

MIRAN MUHAMMAD SHAH, J.- Learned Counsel for the Applicant has impugned the Order dated 02.10.2024 passed by the learned Civil Judge & Judicial Magistrate/consumer protection Court Badin in Summary No.09/2024 arising out of Crime No.53 of 2024 u/s 324, 506/2, 341, 147, 148, 149, 109, 504 PPC of PS Nindo lodged by the Respondent No.3 against the Applicants.

2. Brief facts of the matter are as under:-

The complainant Maqsood son of Habibullah Abro lodged FIR at police station Nindo on 01-07-2024 at 2230 hours stating therein that Ahmed Khan Abro and others are not on good terms with complainant due to dispute over land. On 26-6-2024, the complainant along with his cousin Faheem son of Rabdino Abro, Abdul Hafeez son of Ibrahim Abro and complainant's maternal uncle Ghulam Mustafa son of Mitho Abro were returning to their village from Badin. When at about 10:00 P.M, they reached near fishpond of Ahmed Khan Abro, they saw on the headlights of vehicle and identified Akbar son of Ahmed Abro armed with repeater (2) Ali Raza son of Darya Khan Abro armed with hatchet (3) Amanullah son of Abdul Rasheed Abro armed with hatchet (4) Saleem son of Darya Khan armed with lathi (5) Rafique son of Khalique Dino Mallah armed with iron rod (6) Amjad son of Ali Raza Abro armed with lathi. They intercepted the complainant party. The complainant stopped the vehicle. As soon as complainant party alighted from vehicle, applicant/ accused person Akbar fired from his repeater at complainant with

intention to kill him; however, complainant fell down on ground and saved himself. Accused Ali Raza intended to cause back side of hatchet blow on the head of complainant's maternal uncle Ghulam Mustafa, who gave his arm and blow hit him at his left arm. Thereafter, all accused persons caused kicks and fists to complainant party. On hue and cry of the complainant party and fire arm report, the villagers came speedily and seeing them accused persons fled away. Later on such FIR was lodged.

After the registration of the FIR, the investigation was conducted by the Investigating Officer (I.O.), SIP Muhammad Ishaque, who recorded the statements of the prosecution witnesses (P.Ws), collected other relevant material during the investigation, and ultimately found the applicants/accused to be innocent. Consequently, the I.O. released the applicants under Section 169 Cr.P.C and submitted a final report under Section 173 Cr.P.C. However, Respondent No.3/complainant filed an application before the learned Sessions Judge/Ex-Officio Justice of Peace, Badin, bearing Criminal Miscellaneous Application No.1100 of 2024, seeking the transfer of the investigation in the aforementioned case. The learned Sessions Judge allowed the application and directed the SSP Badin to transfer the investigation to another officer of P.S. Badin, not below the rank of Inspector. In compliance, the SSP Badin, through letter No. CBR-38146 dated 07.08.2024, ordered a re-investigation of the case and handed over the investigation to SHO P.S. Badin. The second I.O., namely Anwar Laghari, SHO P.S. Badin, conducted a fair and impartial investigation. He collected all pertinent evidence, including CDRS, and concluded that there was no reasonable evidence to proceed with the case. Accordingly, the I.O. submitted a final report under Section 173 Cr.P.C, classifying the case under "B" Class. However, the learned Magistrate declined the final report and, vide an order dated 02.10.2024, took cognizance against the applicants. The Magistrate also issued Non-Bailable Warrants (NBWs) against the applicants. Thereafter the applicants/accused being aggrieved with impugned order have filed a Criminal Revision Appl No. No. 19/24 of 2024 before learned Sessions Judge Badin, consequently same has been dismissed vide order dated 03.08.2024.

3. Learned Counsel for the Applicants/Accused states that learned Magistrate did not provide any cogent reason for disagreeing with the opinion of the Investigating Officer who had recommended for the case to be 'C' class which according to the learned Counsel should have been accepted however learned Magistrate without examining the material on record passed the

impugned Order which is legally flawed and is liable to be set aside.

4. However, learned APG present also very reluctantly supported the impugned Order and agrees that no satisfactory reasons were given in the impugned Order by the learned Magistrate.

5. After hearing both the Counsel it has transpired that even on the face of it the impugned Order lacks material legality for refuting any of the reports filed by the Investigating Officer. The Magistrate Order must always be supported with cogent reasons and must dilate upon the contentions of the police Report. Such reports cannot be arbitrarily rejected without making observation upon the ingredients of the Report and the facts of the case. In my opinion the impugned Order lacks merits hence should be set aside. I therefore allow this Criminal Miscellaneous Application No.S-872//2024 and set aside the Order dated 02.10.2024 passed by the learned Magistrate/Consumer Protection Court Badin.

JUDGE

Ali Haider