

**IN THE HIGH COURT OF SINDH CIRCUIT COURT AT  
HYDERABAD**

**Criminal Misc. Application No. S-15 of 2025**

For Applicant: Ali Ghulam son of Bachal through  
M/s Ishrat Ali Lohar and Muhammad  
Jameel Ahmed, advocates.

For the Respondent No.1: Jam Kaloi son of Manak Kaloi through  
Mr. Sajjad Ahmed Chandio, advocate.

For State: Ms. Sana Memon, Assistant P.G.

Date of hearing: 26-08-2025

Date of Judgment: 26-08-2025

**JUDGMENT**

**Jan Ali Junejo, J. ---** By this application under Section 561-A Cr.P.C., the applicant seeks to set aside the orders dated 12-09-2024 and 13-12-2024 (hereinafter referred to as the “Impugned Orders”) of the learned Civil Judge & Judicial Magistrate, Tando Bago, whereby *further investigation* was directed and thereafter maintained, in Crime No. 27 of 2023, P.S. Tando Bago, under Section 302 PPC. The applicant additionally prays that the report submitted by DSP Siraj Ahmed Lashari be “approved”, asserting that no incriminating material exists against him and certain private respondents. The principal planks urged are:

- (i) The matter was sub judice before this Court in Cr. Misc. Application No. S-104 of 2024 when the Judicial Magistrate passed the first impugned order on 12-09-2024;
- (ii) DSP Siraj’s investigation had exonerated the applicant/private respondents; and
- (iii) The impugned orders are non-speaking, passed without application of mind.

2. The case concerns the firearm death of Miandad Kaloi. The FIR was initially registered *on behalf of the State against unknown persons* after medico-legal formalities; the legal heirs did not initially come forward to lodge an FIR. The record reflects three investigative phases before the Judicial Magistrate's Order of 12.09.2024: First: Order dated 18-09-2023 by the Judicial Magistrate on a report u/s 512 Cr.P.C.; matter sent to SSP Badin for reinvestigation. Second: Transfer to DIGP C&I Sindh; INSP Tufail Jalali submitted a report U/s. 173 Cr.P.C., treated as *interim challan* with cognizance postponed under s.344 Cr.P.C. in view of *Nasarullah* (PLD 2016 Sindh 238) vide order dated 19-01-2024. Third: On Cr. Misc. No. S-104 of 2024, this Court directed transfer of investigation to DSP Siraj Ahmed Lashari, calling for a report by 15-04-2024.

3. DSP Siraj then recorded statements (including of the present applicant and material witnesses), collected CDRs, and submitted a report which, *inter alia*, nominated certain persons (Faiz Muhammad alias Faizo; and as absconders Jam S/o. Manak, Muhammad Hassan S/o. Miandad. The learned ADPP's written vetting noted, among other things, that three persons had been implicated *merely on the basis of the arrested accused's statement*, that there was no confession recorded before a Court, and that no crime weapon was recovered from Atta Hussain; the ADPP concluded that there was no tangible material to implicate the proposed/absconding accused.

4. After hearing DSP Siraj, the widow of the deceased, and counsel, the learned Judicial Magistrate, by order dated 12-09-2024, recorded reasons for dissatisfaction with the state of investigation (including reliance on an accused's statement and lack of work-up regarding the alleged weapon) and directed further investigation by a *competent officer not below the rank of ASP*, to be deputed by DIG Hyderabad. Subsequently, by order dated 28-11-2024, this

Court (in S-104/2024) directed DSP Siraj to submit his final report before the learned Judicial Magistrate “for further proceedings”. In compliance, the report was submitted before the learned Judicial Magistrate, who, on 13-12-2024, maintained his earlier direction for further investigation. It is also a matter of record that the Applicant, through his counsel, did not press Criminal Miscellaneous Application No. S-104 of 2024 (*Jam Kaloi v. Ali Ghulam and others*), which was accordingly dismissed as not pressed vide order dated 10-01-2025 passed by this Court.

5. Learned counsel for the Applicant argues that the learned Judicial Magistrate acted without jurisdiction in passing the impugned order dated 12.09.2024, as the matter of investigation was already sub judice before this Court in Criminal Miscellaneous Application No. S-104 of 2024. He emphasizes that DSP Siraj Ahmed Lashari had completed investigation and submitted a report exonerating the Applicant and other private respondents, yet the Judicial Magistrate, instead of approving the said report, passed a non-speaking order lacking judicial reasoning and proper application of mind. He further contends that the impugned orders have caused serious prejudice to the Applicant and, therefore, deserve to be set aside, with the report submitted by DSP Siraj being accepted.

6. Conversely, learned counsel for Respondent No.1 argues that the Judicial Magistrate’s orders are fully in consonance with the powers vested under Section 173, Cr.P.C., as the Court is not bound by the conclusions of the Investigating Officer. He emphasizes that the Judicial Magistrate can direct further investigation whenever the previous inquiry appears unsatisfactory or incomplete. He contends that the impugned orders are speaking and reasoned, reflecting due application of mind to the material discrepancies highlighted by the ADPP, and submits that the Judicial Magistrate rightly exercised jurisdiction to secure a fair and complete probe.

The learned counsel has relied upon the case laws i.e. 1. 2011 SCMR 1430; 2. PLD 2007 SC 31; 3. 2020 P.Cr.L.J. 130; and 4. 2003 YLR 919.

7. Learned A.P.G. for the State argues that the impugned orders are comprehensive and well-reasoned, passed after hearing all concerned and examining the entire investigative record. She emphasizes that the learned Judicial Magistrate has not prejudged the merits nor exceeded his lawful authority; rather, he has simply directed further investigation to ensure that all relevant evidence is collected before cognizance is taken. She contends that this approach is in full accord with the settled principles of law and calls for no interference by this Court.

8. I have carefully considered the arguments advanced by the learned counsel for the Applicant, the learned counsel for Respondent No.1, and the learned A.P.G. for the State. I have also meticulously examined the impugned orders passed by the learned Judicial Magistrate, along with the material available on record, with utmost care and circumspection. The inherent jurisdiction is *exceptional*, to be sparingly exercised to prevent abuse of the process of Court or to secure the ends of justice. It is not a substitute for the statutory scheme of the Code, nor a charter to interfere at large with interlocutory, reasoned orders unless they betray patent illegality or perversity. Before (and even after) taking cognizance, a Judicial Magistrate is not bound by the police's conclusions and may, upon being dissatisfied that the investigation is incomplete or unsatisfactory, call for further investigation. Reliance is placed on the dictum laid down by this Court in the case of ***Khalid Hussain and 6 others v. Asif Iqbal and 2 others (2021 P.Cr.L.J. 242)***, wherein it was observed that: "*in a police case, however after submission of the report, the matter goes to the Magistrate for forming an opinion as to whether it is fit case for taking cognizance and committing the matter for trial in a case which is lodged before the police by way of FIR and the Magistrate cannot exclude or include any section of P.P.C. into*

*the charge-sheet or take cognizance of the offence other than triable by him, after investigation has been completed and charge-sheet has been submitted by the police, however it is made clear that if he is not satisfied with the investigation report, he can order for further investigation on that aspect of the case, which the prosecution has left or if he finds sufficient material to take direct cognizance of the matter".* The impugned order itself aptly notes the settled principle that *police findings do not bind the Court* and that the object of investigation is collection of material, with the guilt or innocence to be determined by the Court upon evidence. Reference may be made to the dictum enunciated by the Honourable Supreme Court of Pakistan in the case of *Muhammad Ahmad (Mahmood Ahmed) and another v. The State (2010 SCMR 660)*, wherein it was held that: *"It may be added that in the last 110 years since the Code of Criminal Procedure had been in existence in its present form, not once had it been authoritatively declared that an Investigating Officer was an expert in the matter of determining the guilt or innocence of accused persons whose opinion was admissible for the purpose, under the law of evidence"*.

9. The applicant stresses that when the Judicial Magistrate passed the order dated 12-09-2024, Cr. Misc. S-104/2024 was pending before this Court; and even later, after 28-11-2024, the Judicial Magistrate ought to have "approved" DSP Siraj's report rather than maintain the direction for further investigation. The contention is misconceived. This Court's subsequent order dated 28.11.2024 required DSP Siraj to submit his *final report before the Magistrate for further proceedings*—a phrase that recognizes and indeed restores the Judicial Magistrate's statutory role to assess the report and, if not satisfied, to require further investigation. That is precisely what the Judicial Magistrate did on 13.12.2024. No inconsistency with this Court's control is demonstrated; rather, the course adopted is consonant with the Code of Criminal Procedure. The order dated 12-09-2024 is *speaking* on its face. It (a) narrates the 1st, 2nd and 3rd investigations and the trajectory of the case, (b)

reproduces the ADPP's vetting criticizing the nomination of persons merely on the arrested accused's statement, the absence of a judicial confession, and lack of recovery, (c) records the hearing of DSP Siraj, the widow of the deceased, and counsel, and (d) articulates concrete reasons for requiring more work on critical points (weapon, evidentiary basis beyond a co-accused's statement).

10. On that evaluative footing, the learned Magistrate ordered *further investigation* by a competent senior officer and fixed the supervisory channel (DIGP Hyderabad). Reasons are thus recorded, the conclusion flows logically, and the order cannot be disparaged as non-speaking. The applicant's insistence that DSP Siraj's report "exonerated" him is belied by the very material placed before the Magistrate, including the ADPP's commentary that the incrimination of three persons rested on the arrested accused's statement and that no weapon was recovered from Atta Hussain; the ADPP concluded there was no tangible evidence to implicate the proposed accused. The Magistrate was entitled to examine the report and the ADPP's opinion side by side and to demand more robust investigation rather than accept the report as conclusive. As to the phrase "*not below the rank of ASP*," courts ordinarily refrain from micro-managing investigative staffing. That said, in context, the direction is ancillary to the principal decision to require further investigation, and was aimed at ensuring a competent, disinterested inquiry after multiple inconclusive attempts. Even if the rank prescription is treated as directory (to be read as "a competent officer" to be designated by the police hierarchy), the core direction—*undertake further investigation and report*—remains unimpeached. This aspect furnishes no ground to quash the *entire* order. Upon receipt of DSP Siraj's *final report* pursuant to this Court's order of 28-11-2024, the Magistrate maintained the course of further investigation already charted on 12-09-2024. That action is squarely within the statutory remit and in line with the

expression “for further proceedings” used by this Court; it neither overrides nor contradicts this Court’s directions.

11. The threshold for invoking Section 561-A, Cr.P.C. has not been met. The impugned orders are firmly grounded in the record, supported by cogent reasoning, and guided by settled legal principles, including the proposition that police conclusions do not bind the Court. They further prescribe a measured course of further investigation, an approach permissible under the Code, to ensure that neither impunity nor prejudice results. The applicant’s additional allegations—that the case is concocted and that there is “no direct or cogent evidence”—are arguments on merits more apposite to trial or to the Magistrate’s eventual consideration upon receipt of all investigation reports. They do not translate into a jurisdictional defect or perversity in the impugned orders.

12. For the foregoing reasons, this Criminal Miscellaneous Application is dismissed for want of substantive merit and it is observed that:

- (a) The direction for *further investigation* shall proceed expeditiously under the supervision of the DIG Hyderabad. The police hierarchy shall depute a competent officer in accordance with law; the phrase “not below the rank of ASP” in the order dated 12-09-2024 shall be read as directory and not as fettering administrative discretion in the selection, provided competence and impartiality are ensured.
- (b) Upon completion, the *further-investigation report* shall be placed before the learned Judicial Magistrate along with all earlier reports, including DSP Siraj’s report, whereupon the learned Judicial Magistrate shall proceed strictly in accordance with law, independently and uninfluenced by any observation herein, after hearing the parties.
- (c) The office shall transmit a copy of this judgment to the learned Civil Judge & Judicial Magistrate, Tando Bago, and to the DIGP Hyderabad for information and compliance.

**JUDGE**