IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Misc. Application No.S-754 of 2024

Applicants:	Sadaqat Ali and Mashooque Ali both sons of Sheral by caste Gopang through Mr. Ishrat Ali Lohar, advocate.
Respondent No.1:	Shahid son of Gohar Shah through Syed Majid Hussain Shah, advocate.
For the State:	Mr. Nazar Muhammad, A.P.G.
Date of hearing:	23-09-2025
Date of Judgment:	23-09-2025

JUDGMENT

Jan Ali Junejo, J. – The Applicants have filed this Criminal Miscellaneous Application under Section 561-A, Cr.P.C. seeking quashment of the Order dated 26.10.2024 (hereinafter referred to as the *"Impugned Order"*) passed by the learned 1st Civil Judge & Judicial Magistrate, Dadu in FIR No.170 of 2024 registered under Sections 365-B and 496-A, P.P.C. at Police Station A-Section, Dadu. Through the impugned order, the learned Magistrate, while disagreeing with the final report under Section 173 Cr.P.C. submitted by the Investigating Officer recommending the discharge of Applicants under Section 169 Cr.P.C., took cognizance of the matter under Section 190(1)(b), Cr.P.C., extended the scope of the case to include Section 376 P.P.C., and directed issuance of non-bailable warrants against the present Applicants.

2. The brief facts necessary for the disposal of this application are that the complainant Shahid lodged FIR No.170/2024 on 28.05.2024 at Police Station A-Section Dadu alleging that his minor sister Saima aged 12/13 years was abducted on 19.05.2024 at 1200 hours by Khadim Hussain and two unknown persons at gunpoint. The complainant alleged that Khadim Hussain had been

insisting for marriage with Saima, but the family refused on account of caste difference. On the day of incident, Saima was allegedly dragged into a car and taken away. The FIR was lodged after an unexplained delay of 9 days, during which the complainant admittedly remained in contact with the family of accused Khadim Hussain. Khadim Hussain was later arrested, but Saima appeared before this Court (Larkana Bench) on 03.06.2024 in C.P. No. D-377/2024 stating on oath that she had married Khadim Hussain of her own free will, denying abduction, and seeking protection against her family members. On 09.08.2024, Saima recorded her statement under Section 164 Cr.P.C. before the learned 2nd Judicial Magistrate, Dadu, wherein she implicated Applicants Sadaqat Ali and Mashooque Ali as being present at the time of alleged incident.

3. The Investigating Officer submitted final report under Section 173 Cr.P.C. opining that the Applicants were innocent and liable to be discharged under Section 169 Cr.P.C. on the basis of lack of evidence, official alibi (attendance records of Government service), and contradictions in statements. The learned Judicial Magistrate, however, disagreed with the I.O., took cognizance against all accused including the present Applicants under Sections 365-B, 496-A, and 376 P.P.C., and directed issuance of NBWs vide order dated 26.10.2024.

4. The learned counsel for the Applicants fervently argued for the allowance of the Criminal Miscellaneous Application, contending that the impugned order of the Magistrate is a non-speaking, mechanical order passed without application of judicial mind and is therefore unsustainable in law. He stressed that the FIR was lodged after an inordinate and unexplained delay of 9 days, casting serious doubt on its authenticity and suggesting it was an afterthought. He further highlighted that the victim, Saima, had voluntarily

approached the High Court to affirm her marriage to the co-accused, Khadim Hussain, thereby completely falsifying the core allegation of abduction. The subsequent statement under Section 164 Cr.P.C., recorded months later and contradicting her sworn testimony before the High Court, was argued to be unreliable, involuntary, and lacking any corroborative evidence. The counsel emphasized that the Magistrate, while disagreeing with the Investigating Officer's final report which recommended discharge based on solid alibi evidence (official attendance and biometric records placing the Applicants in Hyderabad), failed to record any cogent reasons for such disagreement, as is mandatorily required by settled law. Consequently, he prayed that the continuation of proceedings amounts to a gross abuse of the process of the court and requested the impugned order be set aside and the Applicants be exonerated.

5. The learned counsel for the Complainant vehemently opposed the application and prayed for its dismissal, asserting that the learned Magistrate acted wholly within his jurisdictional powers under Section 190(1)(b) Cr.P.C. His primary contention was that the subsequent statement of the victim, Saima, recorded under Section 164 Cr.P.C., wherein she specifically named and implicated the present Applicants in the alleged offence, constitutes sufficient material for the Magistrate to justifiably take cognizance. He argued that the mere delay in lodging the FIR is not fatal to the prosecution's case at this nascent stage, as the veracity and credibility of evidence are matters for trial and should not be evaluated in a quashment petition. He maintained that the Magistrate was not bound by the conclusions of the Investigating Officer and was entitled to form an independent opinion based on the material presented before him, which in this case included the damning 164 Cr.P.C. statement. He further argued that the Applicants have their remedy to file proper application under Section 265-K, Cr.P.C. before the trial Court. Lastly,

the learned counsel prayed for dismissal of the present Criminal Misc. Application. The learned counsel relied upon the case law reported in PLD 2025 SC 53.

6. The learned A.P.G. appearing for the State aligned with the arguments advanced by the complainant's counsel and opposed the application for quashment. He supported the Magistrate's order taking cognizance, reiterating that the statement of the victim under Section 164 Cr.P.C. provides a prima facie case for the offences alleged, including the added charge under Section 376 P.P.C. The State's position was that the Magistrate validly exercised his discretion under Section 190(1)(b) Cr.P.C. and that at the stage of cognizance, the court is only to see if there is sufficient ground to proceed, not to conduct a mini-trial or weigh the evidence. Therefore, he prayed for the dismissal of the application, allowing the case to proceed to trial where all evidence, including the alleged alibi and contradictions, could be properly tested.

7. Having considered the arguments advanced by the learned counsel for the Applicants, the learned counsel for the Complainant, and the learned A.P.G. for the State, and having perused the material available on record with their able assistance, this Court finds the following reasons paramount in reaching its conclusion:

Firstly, regarding the inordinate delay in lodging the FIR, the record unequivocally shows that the alleged incident occurred on 19.05.2024, while the FIR was belatedly registered on 28.05.2024, an inordinate delay of 9 days. Crucially, no plausible explanation for this significant lapse of time is forthcoming either within the text of the FIR or in any subsequent statement of the complainant. This Court is bound by the settled principle of law that the prompt lodging of an FIR is essential to ensure the spontaneity of the

complaint and to guard against the possibility of embellishment or fabrication. An unexplained delay of this magnitude inherently shakes the very foundation of the prosecution's case, creating a serious doubt as to the truthfulness of the allegations and raising a strong presumption that the FIR was a product of deliberation and afterthought.

Secondly, the evidentiary worth of the statement recorded under Section 164 Cr.P.C. stands gravely undermined by the circumstances in which it was made. The victim, Mst. Saima, recorded this statement on 09.08.2024, nearly three months after the registration of the FIR and on 03.06.2024 she had voluntarily appeared before this very Court in Constitutional Petition No.D-377 of 2024 before the Circuit Court, Larkana. In the said Petition, she categorically stated in Paragraph No.3 that she is 25 years of age, and in Paragraph No.12, she unequivocally affirmed that she had neither been abducted nor enticed by anyone but had contracted marriage with Khadim Hussain Gopang of her own free will and consent. Not only this, but the lady also prayed for disposal of FIR No.170/2024 after recording her statement before the police. Furthermore, on 03.06.2024, Mst. Saima appeared before Circuit Court Larkana, declaring herself sui juris and reiterating the stance taken in her Petition. In this backdrop, her subsequent volte-face in the belated statement under Section 164 Cr.P.C. not only remains unexplained but also casts serious doubt upon its voluntariness, reliability, and authenticity. A statement that surfaces at such a late stage, directly contradicting her earlier sworn testimony before a superior court, cannot, in the absence of independent and credible corroboration, constitute a safe foundation for criminal prosecution.

It is a trite law that while a Magistrate is not bound by the conclusions of the Investigating Officer under Section 173 Cr.P.C., the discretionary power

to disagree is not unbridled. This power must be exercised judiciously and must be accompanied by cogent, well-reasoned grounds for rejecting the IO's findings. It is a well-settled principle of law that the mere *ipse dixit* of the police is not binding upon the Courts of law. However, the opinion of a police officer, when duly supported by cogent and credible material, may carry persuasive value. This view finds support in the judgment of the Honourable Supreme Court of Pakistan in the case of ***Waqas-ur-Rehman alias Moon v. The State and others (2021 SCMR 1899)***, wherein it was observed that: *"We are conversant with the fact that the ipsi dixit of the police is not binding on the Courts but it has persuasive value"*. In the present case, the learned Magistrate's impugned order suffers from a fatal flaw: it is a non-speaking order. The Magistrate merely relied upon the belated and contradictory Section 164 statement while turning a blind eye to a plethora of crucial material, including the victim's own petition before the High Court, the IO's detailed final report based on investigation, and the concrete alibi evidence (official attendance and biometric records) and Mobile CDR furnished by the Applicants that placed them in a different city at the time of the incident. This selective appreciation of evidence and the complete absence of any reasoning for disregarding the exonerating material renders the order arbitrary, illegal, and a clear non-application of mind.

The cumulative effect of the fatal delay, the unreliable nature of the sole piece of incriminating evidence, and the legally unsustainable order passed by the Magistrate leads this Court to the inescapable conclusion that allowing the proceedings to continue against the Applicants would be a gross abuse of the process of the Court and would result in a severe miscarriage of justice. The impugned order is therefore not fit to be sustained. In similar circumstances, in the case of ***Rizwana Bibi v. The State and another (2012***

SCMR 94), the Honourable Supreme Court of Pakistan was pleased to hold that: *"Petitioner who has appeared in person pursuant to an order of this Court, submitted that she is a Graduate; that she got her marriage with the earlier husband namely Abdul Hafeez dissolved through judgment and decree dated 7-11-2008 (ex parte) and married Sajid Ali; that no one has abducted her; that the prosecution launched by petitioner's father is a product of mala fide and a hurt ego and that she be allowed to lead her normal marital life as there is a baby girl aged 11 months from the said wedlock. She lastly submitted that there is danger to her life from her parents as she has been declared a 'Kari' (adventurous) and that she be provided police protection"*. Emphasis supplied.

8. Section 561-A Cr.P.C. confers inherent powers upon the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court, or otherwise to secure the ends of justice. It is well settled that these powers can be exercised where the material on record demonstrates that continuation of proceedings would serve no useful purpose, or where such continuation is manifestly oppressive and contrary to the interests of justice. In the present matter, the Applicants have been implicated solely on the basis of a belated and contradictory statement recorded under Section 164 Cr.P.C., which stands in stark conflict with the victim's earlier sworn testimony before this Court in constitutional proceedings, as well as with the documentary evidence produced during investigation. Such inconsistency, coupled with the unexplained delay in making the impugned statement, renders the prosecution case against the Applicants doubtful at its very inception. Allowing the criminal proceedings to continue in these circumstances would not only amount to sheer harassment but would also constitute an abuse of the process of law.

9. For the reasons discussed above, it is manifest that:

- *The FIR is tainted with unexplained and fatal delay, which strikes at the very root of the prosecution's case;*

- *The statement recorded under Section 164 Cr.P.C., being not only belated but also contradictory to the victim's earlier sworn version, is inherently unreliable and devoid of probative value;*

- *The Investigating Officer, upon examining the factual and documentary record, rightly exonerated the Applicants, and his findings stood corroborated by official documents and material evidence available on record;*

- *The learned Magistrate, while disagreeing with the I.O.'s well-reasoned report, proceeded to pass the Impugned Order in a cursory and non-speaking manner, without assigning cogent reasons as mandated by law, thereby rendering the order unsustainable; and*

- *In the totality of circumstances, continuation of criminal proceedings against the Applicants would amount to an abuse of the process of law and result in grave miscarriage of justice.*

10. In view of the foregoing circumstances, the Criminal Miscellaneous Application filed on behalf of the Applicants is allowed. Consequently, the Impugned Order dated 26.10.2024 passed by the learned 1st Civil Judge & Judicial Magistrate, Dadu stands set aside, and the proceedings initiated against the Applicants in pursuance thereof stand quashed to their extent.

JUDGE