

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Misc. Application No. S-206 of 2025

Applicant : Arbab Ali s/o Mithan Khoso,
Through Mr. Muhammad Ibrahim Lashari,
Advocate

Respondent No.4 : Through Mr. Riaz Ahmed Khoso, Advocate

The State : Through Mr. Sardar Ali Solangi, DPG.

Date of hearing : 28.07.2025

Date of order : 01.08.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – *The* applicant invokes the inherent jurisdiction of this court to quash the proceedings arising from the order dated 12.06.2025, passed by the learned Judicial Magistrate-II/Incharge Consumer Protection Judge, Jacobabad, whereby cognizance was taken against the applicant and others in a case bearing crime No.28/2024, registered at Police Station Mubarakpur, for offence u/s 324, 452, 506/2, 114, 337-A(i), 337-F(i), 337-F(v), 147, 148, 149 PPC and issued Non-Bailable Warrants for his arrest.

2. The factual matrix, as discernible from the record, is that the petitioner, Arbab Ali, lodged F.I.R. No. 28/2024 on 19.09.2024 for offences under Sections 324, 452, 506/2, 337-A(i), F(i), F(v), 114, 148, & 149 of P.P.C. The private respondents herein were nominated as the accused. It appears that the private respondents also had a version of events, alleging that the applicant's party was the aggressor. Pursuant to an order of this Court dated 13.12.2024 in Criminal Miscellaneous Application No. S-392 of 2024, the Investigating Officer (I.O.) was directed to record the cross-version of the accused party in line with the dictum laid down by the Honourable Supreme Court in the case of *Mst. Sughra Bibi v. The State* (PLD 2018 SC 595).

3. Initially, the I.O. conducted a consolidated investigation and submitted a single, amalgamated charge sheet, placing members of both parties in the column of the accused. This procedurally flawed report was correctly identified by the learned Deputy District Public Prosecutor (DPP) in his scrutiny memo dated 13.03.2025 and was subsequently, and very rightly, turned down by the learned Magistrate vide a detailed and speaking order dated 19.05.2025. In that order, the learned Magistrate astutely observed the vagueness and ambiguity of the single report and directed the I.O. to bifurcate the investigation file and submit two separate reports based on the material collected for each version.

4. In compliance with the said judicial directive, the I.O. submitted two distinct charge sheets. One challan was submitted against the private respondents, and the second, which is the subject of the present application, was submitted against the applicant and his party based on the cross-version recorded. The learned DPP, in his subsequent scrutiny memo dated 29.05.2025, confirmed that the I.O. had complied with the court's order by submitting separate reports. It was upon this second, duly bifurcated report that the learned Magistrate took cognizance on 12.06.2025, leading to the issuance of process against the applicant.

5. Learned counsel for the applicant has assailed the impugned order primarily on the grounds that the learned Magistrate failed to apply his judicial mind, acted in a hasty manner, and that the I.O acted with mala fide intent by implicating the original complainant. It is further argued that the applicant was not afforded an opportunity of being heard before cognizance was taken against him.

6. I have given anxious consideration to the arguments advanced and have meticulously perused the record, including the impugned order, the preceding order of the Magistrate dated 19.05.2025, and the scrutiny reports of the learned DPP.

7. The contentions of the applicant's counsel are found to be without substance. The procedure for dealing with a case involving a cross-version or two versions of the same incident is no longer *res integra*. The Honourable Supreme Court in the landmark judgment of *Mst. Sughra Bibi (supra)* has settled the proposition that instead of registering a second F.I.R., the police are to record the counter-version under Section 161, Cr.P.C., and, after a thorough investigation, may submit a report under Section 173, Cr.P.C., in respect of both versions. The natural and legal corollary is the submission of separate challans if the investigation finds evidence supporting both narratives, leaving it to the trial court to determine the ultimate aggressor.

8. The assertion that the learned Magistrate failed to apply judicial mind is directly contradicted by the record. The order dated 19.05.2025 is a testament to the Magistrate's diligent application of mind, whereby he identified a patent procedural irregularity committed by the I.O. and passed a reasoned order directing its rectification. His subsequent action of taking cognizance on 12.06.2025 was a logical and lawful consequence of the submission of a proper, bifurcated police report, which was submitted in compliance with his earlier valid directive. The procedure adopted by the learned Magistrate is, therefore, not only free from any illegality but is in complete harmony with the established legal framework.

9. The argument that the applicant was not heard before cognizance was taken is legally untenable. It is trite law that an accused person has no vested right to be heard at the pre-cognizance stage. The Magistrate, while taking cognizance of an offence under Section 190, Cr.P.C., on the basis of a police report, is required to consider the report and the accompanying documents, not to conduct a preliminary hearing for the prospective accused. The stage for the accused to be heard and to contest the allegations arises after cognizance is taken and process is issued.

10. The allegations of mala fides against the I.O. are unsubstantiated. The I.O. acted in pursuance of directions from the High Court and the Magistrate. The mere fact that the investigation culminated in a report adverse to the applicant, who was the first informant, does not, in itself, constitute evidence of malice.

11. For the foregoing reasons, there is no patent illegality, irregularity, or abuse of the process of the court in the impugned order passed by the learned Magistrate. The Magistrate has acted squarely within the ambit of the law and established procedure. The inherent jurisdiction of this Court under Section 561-A, Cr.P.C., is to be exercised sparingly to prevent abuse of the process of any Court or otherwise to secure the ends of justice, none of which conditions are met in the instant case.

12. Consequently, this Criminal Miscellaneous Application is found to be devoid of merit and is hereby dismissed.

J U D G E

Asgar Altaf/P.A