

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

Criminal Misc. Application No.S-20 of 2025

Present: Mr. Justice Jan Ali Junejo

For Applicant:	Mr. Asad Rasool Mahar, learned advocate
For Respondent/State:	Mr. Nazir Ahmed Bhangwar, DPG for the State
Date of hearing:	16.04.2025
Date of Order:	16.04.2025

ORDER

Jan Ali Junejo, J:-- The applicant, Saqib Hussain S/o. Abdul Jabbar Soomro, has invoked the jurisdiction of this Court under Section 561-A, Cr.P.C. through the instant Criminal Miscellaneous Application seeking setting aside of the Order dated 13.01.2025 (hereinafter referred to as the "*Impugned Order*") passed by the learned Civil Judge and Judicial Magistrate-I, Garhi Yasin. The said impugned order arises out of Crime No.46/2024, registered under Sections 395, 447, 506/2, and 337-H(ii), P.P.C. at Police Station Dakhan, wherein the learned Magistrate declined to accept the summary report submitted by the Investigating Officer recommending disposal of the FIR under "C" Class, and instead took cognizance of the offence and directed that the case be sent up to the Sessions Court for trial under Section 395, P.P.C.

2. Briefly stated, the facts of the prosecution case are that the complainant, a retired primary school teacher, owns agricultural land bearing Survey No. 579/1 situated in Deh Sangi, Tapo Markhiyani. He had engaged a tenant, Abdul Jabbar, to manage cultivation. When the paddy crop was ready, on 8.12.2023, the accused, including the applicant and others, allegedly formed an unlawful assembly, entered the land with weapons, and forcibly harvested and removed

the paddy crop worth Rs.7,50,000/-. When the complainant along with his sons attempted to resist, they were threatened at gunpoint and forcibly driven away. The accused allegedly included the applicant, his father Abdul Jabbar, Aqib, and others. The FIR was lodged after a delay, but the complainant claimed to have approached higher authorities multiple times prior to registration.

3. Learned counsel for the applicant has contended that the impugned order is illegal, arbitrary, and passed without proper judicial application of mind. He argued that the learned Magistrate failed to appreciate the evidence objectively and disregarded the findings of the Investigating Officer who, after a thorough probe, recommended disposal of the FIR under "C" Class due to lack of sufficient evidence. He submitted that the case is falsely registered due to political enmity and is based on a concocted and managed story. There was unexplained delay of eight months in lodging the FIR and no credible evidence was found at the scene. It was further contended that the applicant is a practicing advocate and his co-accused are elderly and respectable individuals with no criminal background. The counsel urged this Court to exercise its inherent jurisdiction and quash the proceedings to prevent abuse of process of law. Lastly, the learned counsel prayed for allowing the Criminal Misc. Application.

4. On the other hand, the learned Deputy Prosecutor General appearing for the State opposed the application and supported the impugned order. He submitted that the learned Magistrate had examined the material placed on record, including the statements of the complainant and prosecution witnesses, and rightly concluded that there existed prima facie evidence warranting trial. It was further argued that the opinion of the Investigating Officer is not binding upon the court, which has the authority to independently assess the material and take cognizance. It was emphasized that since the Magistrate has already taken cognizance and the case has been sent to the Sessions Court under Section 395,

P.P.C., the applicant is at liberty to seek remedy before the trial Court by moving an application under Section 249-A or Section 265-K, Cr.P.C., as the case may be.

5. I have considered the arguments advanced and examined the record with care. The impugned order clearly demonstrates that the learned Magistrate has judiciously applied his mind and passed a well-reasoned order by observing that the complainant's version is supported by witness statements and prima facie sufficient material exists to proceed to trial. Reliance on defence witnesses by the Investigating Officer without opportunity of judicial examination has rightly been disregarded at this stage. The learned Magistrate has relied on sound legal principles, inter alia, that the findings of the police are not binding on the Court and that trial is the proper forum to ascertain truth through cross-examination and due process. Once cognizance has been taken, this Court cannot interfere lightly under Section 561-A Cr.P.C. unless there is manifest illegality or miscarriage of justice, which is not evident here. The applicant retains the remedy to approach the trial Court under Section 265-K, Cr.P.C. if he believes the charge is groundless. It is a firmly established principle of law that the jurisdiction conferred under Section 561-A, Cr.P.C. is not intended to serve as an alternative or substitute for the specific remedies expressly provided under the Code, such as those available under Sections 435 to 439 or Sections 249-A and 265-K, Cr.P.C., depending on the circumstances. The invocation of inherent powers cannot be permitted as a means to sidestep or circumvent the ordinary legal remedies available in the normal course of judicial proceedings. In this regard, authoritative guidance can be drawn from the judgment of the Honourable Supreme Court of Pakistan in the case of ***Muhammad Farooq v. Ahmed Nawaz Jagirani and others*** reported in ***(PLD 2016 SC 55)***.

6. In view of the above discussion and legal position, I find no merit in this application. The learned Magistrate has passed a speaking order in accordance

with law. No abuse of process of law or exceptional circumstance has been made out to warrant interference of this Court in exercise of inherent jurisdiction. Accordingly, the present Criminal Miscellaneous Application being bereft of substantive merits is hereby dismissed.

JUDGE