IN THE HIGH COURT OF SINDH KARACHI

Criminal Miscellaneous Application No. S-85 of 2022
(Syed Muhammad Ali Shah Vs The State and others)

DATE	ORDER WITH SIGNATURE OF JUDGES

1. For hearing of main case.
2. For hearing of MA No. 1580/2022

16.12.2025.

Mr. Aamir Mansoob Qureshi, Advocate, along with the Applicant

Mr. Shafqat Zaman, Advocate for the Respondents/accused

Mr. Mumtaz Ali Shah, Assistant Prosecutor General, Sindh

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ORDER

Ali Haider 'Ada', J;-Through the instant Criminal Miscellaneous Application, the applicant assails the Order dated 20.01.2022 passed by the learned Judicial Magistrate-X, Malir, Karachi, whereby despite submission of a challan in FIR No. 424 of 2021, the learned Magistrate disagreed with the investigation, classified the case under "B" Class, cancelled the FIR, and ordered the release of accused/respondents No. 6 to 11 from jail. Feeling aggrieved and dissatisfied with such findings, the complainant, who is a Sub-Inspector of Police, has invoked the jurisdiction of this Court.

2. Brief facts, as gathered from the record, are that the FIR was lodged by the applicant on 22.09.2021 under Section 9(c) of the Control of Narcotics Substances Act, 1997. The date of the incident is the same. The allegation is that during routine patrolling, the applicant along with subordinate staff received spy information regarding an inter-provincial narcotics network travelling in a Honda Civic through Rarhi Road. Acting upon such information, the police party proceeded to the pointed location, intercepted the vehicle, and apprehended five accused. Upon conducting personal search, charas weighing 2,430 grams was allegedly recovered from each accused, totaling 12,150 grams (12.150 kg). The accused were arrested at the spot, necessary legal formalities were completed, and the FIR was lodged accordingly.

3. Initially, an investigation report under Section 173, Cr.P.C. was submitted before the learned Magistrate. However, vide order dated 28.10.2021, cognizance was declined and the SSP-Investigation was directed to appoint another officer for further investigation. Pursuant to such directions, further investigation was conducted and another report under Section 173, Cr.P.C. was submitted, but vide order dated 08.12.2021, the Magistrate again declined to take cognizance and required the SSP-Investigation to submit a further report, even directing enquiry proceedings against the investigating officer.

4. Subsequently, on 14.01.2022, another report under Section 173, Cr.P.C. was submitted, wherein respondents No. 6 to 11 were nominated, and a positive challan was filed for trial. Nevertheless, the learned Magistrate, through the impugned order dated 20.01.2022, converted the positive challan into "B" Class, cancelled the FIR, and ordered release of the accused.

5. Learned counsel for the applicant contends that the entire exercise undertaken by the learned Magistrate amounts to a gross abuse of process, as there is no legal concept permitting the conversion of a positive report into "B" Class. He submits that the Magistrate twice directed an investigation, and the subsequent investigative material, which nominated respondents No. 6 to 11 as accused, carried evidentiary weight. Yet, the Magistrate, without adopting the proper judicial procedure, declined cognizance for the third time and passed the impugned order on the premise that CDRs and other evidence were not collected, matters which, according to counsel, fall strictly within the domain of trial and not pre-trial administrative scrutiny. It is therefore argued that the impugned order is without lawful authority, reflects non-application of judicial mind, and is liable to be set aside.

6. Conversely, learned counsel for respondents/accused, Mr. Shafqat Zaman, raises a preliminary objection regarding maintainability, stating that once a challan was submitted, it was only the State that could move a miscellaneous application, not the complainant in his personal capacity. He submits that the investigative material was

thoroughly scrutinized, and the impugned order is a speaking order passed within the lawful domain of the Magistrate. Counsel relies on case law reported as PLD 2008 Karachi 280, PLD 2006 Karachi 302, PLD 2007 Karachi 489 and 1989 PCr.LJ 909, and supports the impugned findings.

7. On the other hand, learned Assistant Prosecutor General does not support the impugned order. He submits that the Magistrate has travelled beyond his jurisdiction, as the alleged contraband was admittedly secured from the accused, and the objections raised by the Magistrate pertain to matters falling within the purview of trial. He therefore refrained from supporting the reasoning adopted in the impugned order.

8. Heard and perused the material available on record.

9. At this stage, it is appropriate to note the statutory framework governing the concept of "investigation" under the Code of Criminal Procedure. **Section 4(1)(l), Cr.P.C.** defines the term "investigation," and a brief clarification of its scope and import is essential, as it determines the outlines of the investigating agency's mandate and the procedural obligations cast upon the Investigating Officer while inquiring into an offence. For ready reference, the said provision is reproduced below.

> ***"Section 4(1) (l) "Investigation": -includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf."***

10. Having considered the statutory definition of "investigation" under Section 4(1)(l) of the Criminal Procedure Code, it is equally crucial to examine the legal framework that defines the powers, jurisdiction, and responsibilities conferred upon an Investigating Officer. The Code of Criminal Procedure, through its relevant provisions, prescribes the extent and limitations of an officer's authority in probing offences, while the Police Rules, 1934, further clear the procedural obligations, duties, and standards to be observed during such investigations. For a thorough appreciation of the legislative

scheme, it is necessary to refer to the provisions governing both the initiation and conduct of an investigation. In this context, **Section 156, Cr.P.C.,** read together with **Rules 25.1 and 25.2 of the Police Rules, 1934 (Volume III)**, describes the operational parameters within which an Investigating Officer is required to function. For convenience, the said provisions are reproduced below:-

> ***"Section 156. Investigation into cognizable cases: (1) Any officer incharge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would, have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.***
>
> ***(2) No proceeding of a police-office in any such case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under this section to investigate.***
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> ***(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.***
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> ***[(4) Notwithstanding anything contained in sub-sections (2) or (3) no police-officer shall investigate an offence under Section 497 or Section 498 of the Pakistan Penal Code, except upon a complaint made by the husband of the woman, or, in his absence by some person who had the care of such woman on his behalf at the time when such offence was committed.]***
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> ***25.1-Power to investigate.—(1) An officer in charge of a police station is empowered by section 156, Criminal Procedure Code, to investigate any cognizable offence which occurs within the limits of his jurisdiction.***
>
> ***(2) He is also empowered under section 157(1), Criminal Procedure Code, to depute a subordinate to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offenders. Any police officer may be so deputed under this section, but where a police officer under the rank of assistant sub-inspector is deputed the investigation shall inveriably by taken up and completed by the officer in charge of the police station or an assistance sub-inspector at the first opportunity.***
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> ***3) An officer in charge of a station shall also render assistance whenever required to all officers of the Criminal Investigation Department working within his jurisdiction.***
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> ***25.2 Power of investigating officers.-- (1) The powers and privileges of a police officer making an investigation are details in sections 160 to 175, Criminal Procedure Code. An officer so making an investigation shall invariably issue an order in***

writing in Form 25.2(1) to any person summoned to attend such investigation and shall endorse on the copy of the order retained by the person so summoned the date and time of his arrival at, and the date and time of his departure from the place to which he is summoned. The duplicate of the order shall be attached to the case diary.

(2) No avoidable trouble shall be given to any person from whom enquiries are made and no person shall be unnecessarily detained.

(3) It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

11. Turning to the duties and responsibilities entrusted to the Investigating Officer, it is imperative to recognize that the officer plays a central and consequential role within the criminal justice system. The thoroughness, integrity, and accuracy of an investigation directly influence the fairness of the trial and the ultimate dispensation of justice. The principle is firmly established in **Syed Qamber Ali Shah v. Province of Sindh and others (2024 SCMR 1123). Similarly, in Suo Motu Case No. 19 of 2011 (2012 SCMR 437),** the Honourable Supreme Court emphasized that the investigating agency is bound by a duty to conduct inquiries with diligence, impartiality, and unwavering fidelity to the law. Collectively, these judicial pronouncements underscore that an investigation must be conducted honestly, objectively, and strictly in accordance with statutory mandates, as it constitutes the backbone of the criminal process.

12. The law further delineates the Investigating Officer's role in the collection, preservation, and proper presentation of evidence before the competent forum. The function of the officer is strictly investigative, not adjudicative. The Investigating Officer is neither authorized to draw legal inferences, pre-judge the matter, nor assume powers beyond those expressly conferred by law. Any expertise or authority ascribed to the Investigating Officer is confined to the operational domain, namely the systematic gathering, safeguarding, and submission of material evidence pertinent to the alleged offence. This principle was reaffirmed by the Honourable Supreme Court in **Muhammad Ahmad (Mahmood**

Ahmad) and another v. The State (2010 SCMR 660), which clarified that determination of guilt or innocence is an exclusive judicial function. Consequently, the Investigating Officer must exercise powers within the statutory boundaries, ensuring that evidence is obtained lawfully, impartially, and meticulously, while leaving all evaluative and adjudicatory determinations to the competent Court.

13. As per established principles of criminal jurisprudence, the categorization of criminal cases into distinct classes finds its origin in the colonial-era Bombay Presidency Police Rules. This system was later incorporated into the **Bombay Police Manual, Part III,** wherein **Rule 219** set out the well-known classifications of A, B, and C classes. Although these provisions were originally framed during the British period, the practice continues to be consistently followed by police authorities in Pakistan. These classifications are invoked at the stage of submission of the final report under Section 173, Cr.P.C., whereby the Investigating Officer may recommend disposal of the case under the appropriate class. However, such recommendations are not formative. For clarity, the definitions of the respective classes are set out as follows:

> ***A-Class: This category applies to cases where the allegations are found to be substantively true, but the accused remain untraced or unidentified. The investigation report in such matters reflects that, despite diligent and sincere efforts by the Investigating Officer, the culprits could not be apprehended. In these circumstances, the FIR is kept pending, and the investigation may be resumed or continued if any fresh or credible information comes to light in the future.***
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> ***B-Class: This classification is reserved for maliciously false or frivolous complaints. Where, after proper investigation, it becomes evident that the FIR was lodged knowingly with false information or with an intent to harass the accused, the case is disposed of under B-Class. Disposal under this category may also attract legal consequences for the complainant under Section 182 of the Pakistan Penal Code, which penalizes furnishing false information to public servants.***
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> ***C-Class: This category covers those cases which are neither established as true nor proved to be maliciously false. It includes situations where there is insufficient evidence to proceed, where the matter falls under non-cognizable offences, or where the facts appear to be primarily civil in nature.***

14. In this regard, this Court, in the case of **Syeda Afshan versus Syed Farukh Ali and others (PLD 2013 Sindh 423)**, observed that:

> ***"5. There is no procedural law in our country in which aMagistrate can grant administrative approval for disposal of a case under "A", "B" or "C" class, but the Magistrate has disposed of the case under "C" class by passing impugned order, therefore, it is to be clarified that these classes are in practice to dispose of the criminal cases after completion of investigation since long, this continuous practice has become usage and is not in consistent with or in derogation of fundamental rights as prescribed by Article 8 of the Constitution, therefore, such usage has force of law and now such practice is a part and parcel of the procedural law. Actually these classes were prescribed by Bombay Presidency Police Guide. According to Bombay Presidency Police Guide, report of investigation under section 173 of the Code of Criminal Procedure, 1898, is to be filed either in the form of a charge-sheet, if the accused is sent for trial, or in the form of a Final Report, in other cases. Final Reports are classified into 'A'---true cases, maliciously false cases, neither true nor maliciously false cases but non-cognizable.As per practice/usage the class "A", "B" and "C" are defined as under:--***
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> > ***CLASS 'A':***
> >
> > ***F.I.R. is true, but accused is/are untraced, therefore, Magistrate can dispose of the case till the appearance/arrest of the accused.***
> >
> > ***CLASS 'B':***
> >
> > ***The F.I.R. is maliciously false and after passing summary orders by directing the S.H.O. to initiate proceedings for offence punishable under section 182, P.P.C. against the complainant/person, who gives information, which he knows or believes to be false.***
> >
> > ***CLASS 'C':***
> >
> > ***F.I.R. can be disposed of being non-cognizable offence, but in this class it is suffice to say that if there is evidence regarding non- cognizable offence, the Magistrate can direct the S.H.O. to submit a separate report under section 155, Cr.P.C. for taking cognizance and proceedings or otherwise."***

15. Moreover, in terms of **Rule 24.4 of the Police Rules, 1934,** where information obtained during the course of an investigation raises doubt regarding the commission of an offence, the law mandates a specific procedure to formally record such findings and to indicate that no

offence has been committed. For ease of reference, Rule 24.4(I) of the Police Rules, 1934 is reproduced below:

> ***"24.4. Action when reports are doubtful.--(1) If the information or other intelligence relating to the alleged commission of a cognizable offence is such that an officer in charge of a police station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant, if any, the fact that he will not investigate the case or cause it to be investigated."***

16. So far as the cancellation of a case is concerned, the powers and procedures for such action are also expressly prescribed in the relevant provisions of the Police Rules. The framework for the cancellation or final disposal of a case is specifically set out under **Rule 24.7 of the Police Rules, 1934**. For ease of reference, the said Rule is reproduced below:

> ***"24.7. Cancellation of cases.-- Unless the investigation of a case is transferred to another Police Station or district, or first information report can be cancelled without the orders of a Magistrate of the 1st class. When information or other intelligence is recorded under section 154, Criminal Procedure Code, and, after investigation, is found to be maliciously false or false owing to mistake of law or fact or to be non-cognizable or matter for a civil suit, the Superintendent shall send the first information report and any other papers on record in the case with the final report to a Magistrate having jurisdiction and being a Magistrate of the first class, for orders of cancellation. On receipt of such an order the officer in charge of the police station shall cancel the first information report by drawing a red line across the page, noting the name of the Magistrate canceling the case with number and date of order. He shall then return the original order to the Superintendent's office to be filed with the record of the case."***

17. After perusal of the relevant legal provisions, it is evident that the learned Magistrate, in passing the impugned order, classified the case as 'B' class. The Magistrate observed that the Investigating Officer had not collected certain material, such as CDRs of the raiding party, and data regarding the vehicle, but opined that the material was incomplete or flawed, as not all witnesses were present at the time of recovery. On this basis, the Magistrate concluded that there were deficiencies in the investigation and, consequently, converted the case into 'B' class.

However, this approach is legally untenable. The Magistrate, while exercising administrative powers, exceeded his jurisdiction by effectively touching the questions of the trial and making conclusions similar to a trial Court, without the production of evidence or adherence to judicial procedures. Such findings are entirely contrary to law. The impugned order that it passes like judgment on the merits is hereby treated as *void ab initio*, as it reflects a failure to apply proper judicial mind and exceeds the jurisdiction and authority of the Magistrate.

18. It is further observed that if any party, including the defence, disputes the investigation or the evidence collected, they remain at liberty to raise such objections before the competent forum and present their defence. In the present case, substantial evidence, such as the recovery of charas, seizure of the vehicle, and positive chemical analysis reports, is already on record. The Magistrate's conversion of the case into 'B' class, without a proper legal basis and by likely evaluating the investigation, is not permitted under the law. Scrutiny of the investigation material does not give permission to the Magistrate to make conclusions regarding the merits of the case. Passing a verdict or determination without evidence is outside the legal competence of the Magistrate in administrative proceedings.

19. In essence, while administrative scrutiny ensures procedural propriety, it cannot substitute for trial, which requires evidence, cross-examination, and adherence to procedures. Any attempt to conflate administrative review with trial decision undermines the legal framework and the principles of fair trial.

20. However, where a report under Section 173, Cr.P.C., is positive, indicating that the Investigating Officer has taken action under Section 170, Cr.P.C., and has forwarded the accused in custody for trial, the Magistrate is required to take cognizance in terms of Section 190(1)(b), Cr.P.C., or, as appropriate, send the case for trial under Section 190(3), Cr.P.C. In this context, reliance may be placed upon the case of **Abdul Hafeez Junejo versus The State (2010 YLR 470)**, wherein it was held that:

"12. As to the second controversy regarding non-application of mind through a speaking order by the learned Magistrate while sending up the case to the Court of session for trial, there appears to be no cavil to the proposition that in cases where the Investigating Officer proposes to terminate/cancel the First Information Report by proposing it to be a "false case" or "case of no evidence" or for any other reason submits report under sections 169/ 173, Cr.P.C., then the Magistrate Incharge in either case whether he concurs or disagree with such report is required to appreciate the report of the Investigating Officer in the light of material collected during the investigation and then to pass just and fair speaking order reflecting judicious application of mind and this is for the reason that by such order the Magistrate endorses termination or decides to take cognizance in a case proposed for termination and in both events either the complainant or the accused have a right to know the reasons which prevailed with the learned Magistrate to endorse termination or to proceed in a case proposed for termination. However, in my opinion in cases where upon completion of investigation the Investigating Officer under section 170, Cr.P.C. on the basis of martial collected during such investigation in his report under section 173, Cr.P.C. proposes the trial of the accused for an offence then such principle is hardly applicable for the simple reason that a Magistrate upon receiving Report under sections 170/173 Cr.P.C. cannot dismiss such report and is duty bound to proceed to deal with it in accordance with law, which means that the Magistrate shall proceed to issue process or send it to the Court of Session for trial, such view of mine finds support from the dicta laid down in the case of Said Jalal and 2 others v. The State and another (1972 SCMR 516). Likewise in the case of Habib v. The State (1983 SCMR 370) the apex Court observed:-

> *"If however, a report under section 173, Cr.P.C. shows that the Police Officer has taken action under section 170, Cr.P.C. and has forwarded the accused under custody for trial, the Magistrate shall proceed to take cognizance under section 190(1) (b) Cr.P.C. or send up the case for trial under section 190(3) Cr.P.C."*

21. Further guidance and authoritative precedent can be drawn from the case of **Amanat Ali versus 1st Civil Judge and Judicial Magistrate, Daharki, and 2 others (2015 YLR 2312),** as it was held that:

"12. Barring the above provisions of law, the Magistrate is not competent to wash off his hands from the trial of which he has already taken cognizance on the report submitted by the investigating officer under section 173, Cr.P.C. If however the report of the investigating officer placed before the Magistrate for his approval is in negative, whereby he has disposed of the prosecution case either under (a), (b) or (c) class, the Magistrate in such case under the law is competent after evaluating the material placed before him to either agree with the conclusion

drawn therein or to make his own independent opinion by disagreeing with the inference arrived at by the investigating officer. However if the report of the investigating officer is in positive, thereby he has referred the accused to the Magistrate for the purpose of trial along with the material collected against him or them, the Magistrate is not empowered in such situation to disagree with the conclusion of the investigating officer. For the purpose of reliance the following cases can be cited, SBLR 2010 Sindh 306, 1972 SCMR 516."

22. Additionally, in case of **Khadim Hussain Versus The State and 12 others PLD 2025 Sindh 12,** as it had been held that:

"4. It is settled, as per scheme of law, that in a positive report of I.O. in investigation referring the accused to a trial, the Magistrate has no jurisdiction to disagree with him by disposing of the case or deleting a particular section. The conclusion drawn by the I.O that there is sufficient material to show that a particular offence or the case as reported has been made out for the Court to hold a trial thereon is always based on some material collected by him during investigation. The evidentiary value of which the Magistrate is not competent to discard on taking a summary tour of material before him. It requires examination of witnesses. Therefore, it would be for the Court, be it Magistrate's trial or the Sessions' trial, to apply its mind, in the trial, and decide whether the case is made out; or there is sufficient material to attract applicability of a particular section and then follow the procedure accordingly."

23. In view of the foregoing facts and circumstances, this application is hereby allowed. The impugned order dated 20.01.2022 is set aside. The Investigating Officer is directed to file a fresh report, taking into account that the accused were initially shown as arrested but were released following the impugned order. Accordingly, the officer shall either seek the re-arrest of the accused or follow the procedure prescribed under Section 512, Cr.P.C. Thereafter, the Magistrate shall proceed strictly in accordance with the principles laid down by law.

24. Accordingly, the instant Criminal Miscellaneous Application stands disposed of.

JUDGE

Amjad /PS