

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Misc. Application No.1223 of 2024

For Applicant:	Mr. Moulvi Iqbal Haider, advocate
For Respondents Nos.3 to 5:	Mr. Muneeb Ahmed Damrah, advocate
For State:	Syed Mumtaz Ali Shah, APG
Date of hearing:	20.03.2025
Date of Short Order:	20.03.2025
Date of judgment:	21.03.2025

JUDGMENT

Jan Ali Junejo, J: The present Criminal Miscellaneous Application under Section 561-A Cr.P.C. arises from an order dated 25-11-2024 (hereinafter referred to as the “Impugned Order”) passed by the learned IVth Additional Sessions Judge, Karachi-Central, whereby the Applicant’s application for directing the SHO, P.S. Gulberg to register an FIR against the proposed accused was disposed of with directions to the SSP Complaint Cell to constitute an inquiry committee. The Applicant seeks setting aside of the impugned order and a direction for the registration of an FIR.

2. The Applicant, a law-abiding citizen, owns and operates a scrap shop (Kabari) at Plot No. D-698, Block-5, Rehmanabad, Federal B. Area, Karachi, purchased via a Sale Agreement dated 21-06-2013 from the deceased father of the proposed accused. Following the death of the seller, the accused persons began harassing the Applicant, demanding vacation of the property and extortion money. On 07-11-2024, the proposed accused, armed with weapons, physically assaulted the Applicant and his employee with iron rods, forcibly removed goods worth Rs. 10,00,000/-, and set fire

to the shop, Qingqi rickshaw, and a handcart (Thela) using petrol bombs. Despite calls to 15 Police and Fire Brigade, by the time assistance arrived, the shop was completely burned. The police, however, refused to register an FIR, compelling the Applicant to approach the trial court. The learned IVth Additional Sessions Judge, Karachi Central, instead of directing the SHO to register an FIR, ordered an inquiry, which the Applicant contends is contrary to the mandatory provisions of Section 154 Cr.P.C.

3. Learned counsel for the Applicant argued that the impugned order is against settled legal principles laid down in ***Muhammad Bashir v. SHO, Okara Cantt (PLD 2007 SC 539)***, which mandates that when a cognizable offense is disclosed, the police must register an FIR. He contended that the trial court's direction for an inquiry is unjust, delays justice, and allows evidence tampering. He further emphasized that the police's refusal to record an FIR violates the Applicant's legal rights, and prayed for setting aside the impugned order and directing registration of an FIR.

4. Conversely, learned counsel for Respondents Nos. 3 to 5, Mr. Muneeb Ahmed Damrah, opposed the application, asserting that the allegations leveled by the Applicant are fabricated and an attempt to misuse the legal process for personal vendetta. He argued that the proposed accused persons have no involvement in the alleged incident, and there exists no independent evidence corroborating the Applicant's version. He contended that the direction for an inquiry was justified, as it ensures that only genuine complaints are entertained, preventing frivolous litigation and false implications. He further argued that the Applicant failed to provide any cogent proof that the police refused to act lawfully and that an

FIR should only be registered based on substantive evidence, not mere accusations. Lastly, the learned counsel prayed for dismissal of the Criminal Misc. Application.

5. Learned APG, supported the impugned order, maintaining that the direction for an inquiry was in accordance with the principles of justice. He submitted that not every complaint warrants immediate registration of an FIR, particularly when the allegations involve personal enmity and property disputes. He argued that law enforcement agencies have a duty to verify complaints before initiating criminal proceedings to prevent abuse of the legal process. He further contended that the inquiry ordered by the learned trial court would have facilitated the collection of evidence to ascertain whether a cognizable offense had been committed, and therefore, the impugned order did not suffer from any legal infirmity. Lastly, the learned APG prayed for dismissal of the application in hand.

6. I have given due consideration to the arguments advanced by both sides and have perused the material on record. The crux of the controversy revolves around the legal obligation of the police under Section 154 Cr.P.C., which mandates the registration of an FIR when information regarding a cognizable offense is disclosed. The Hon'ble Supreme Court, in ***Muhammad Bashir v. Station House Officer, Okara Cantt* (PLD 2007 SC 539)**, has unequivocally held that the police are duty-bound to register an FIR upon receiving such information, and any delay or refusal in this regard is against the law. The impugned order directing an inquiry before the registration of an FIR is contrary to the settled principles of law. The allegations made in the application disclose a cognizable offense, and as

such, the refusal of the police to register an FIR is unjustified. The learned trial Court erred in directing an inquiry, thereby causing unnecessary delay, which is against the principle that *justice delayed is justice denied*. In Case of ***Muhammad Bashir*** referred above, it was observed by the Honourable Supreme Court of Pakistan that: “*What, therefore, transpires from the above noticed scheme, the spirit, the intention and even the letter of the relevant law was that there was no room for any inquiry into the veracity of the information received by an officer incharge of a Police Station with respect to the commission of an offence and he was consequently clothed with no authority to refuse to record an F.I.R. only because, in his opinion, the information conveyed to him, lacked credibility*”. In another Case of ***Iftikhar Hussain and others v. The State (2004 SCMR 1185)***, it was held by the Apex Court of Pakistan that: “*As far as F.I.R: under section 154, Cr.P.C. itself is concerned, it is always treated to be a corner stone of the prosecution case to establish guilt against culprits involved in the crime. Thus it has got a very significant role to play. If there is any doubt in lodging of F.I.R. and commencement of investigation, it gives rise to a doubt in benefit of which, of course, cannot be extended to anyone else except to the accused.* **However, an F.I.R. under section 154, Cr.P.C. which has been lodged after conducting an inquiry loses its evidentiary value** as held in the cases of *Muhammad Hanif v. State* PLD 1977 Lah. 1253, *Mst. Muhammadia v. Zari Bacha* and another PLD 1982 Pesh. 85, *Nazir Masih v. State* 1997 MLD 48, *Muhammad Javed v. S.S.P. Gujranwala and others* PLD 1.998 Lah. 214 and *Qazi Muhammad Javed v. S.S.P. Gujranwala and others* 1999 PCr.LJ 1645”. The underlining is supplied.

7. In view of the above discussion, this Criminal Miscellaneous Application is allowed. The impugned order dated 25-11-2024, passed by the learned VIth Additional Sessions Judge, Karachi Central, is set aside. The concerned SHO is directed to record the statement of the Applicant under Section 154 Cr.P.C. and proceed in accordance with the law. The police authorities are further directed to ensure the safety and security of the Applicant and his family and to take necessary legal action against the proposed accused persons if a cognizable offense is made out. These are the reasons of short order Dated: 20-03-2025.

JUDGE