

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No. S-156 of 2025

(Muhammad Safar Lodro Vs. The State & others)

Date	Order with signature of Judge
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- 1. For Orders on office objection.
- 2. For hearing of main case.
- 3. For hearing of MA No. 1364/2025. (Stay)

ORDER.

07-04-2025.

Mr. Abdul Qadir Khanzada, advocate for the applicant.
Mr. Pir Bux Doongah, advocate for respondent No.3.
Syed Sardar Ali Shah Rizvi, Additional P.G for the State.

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Ali Haider 'Ada',J:- Being aggrieved and dissatisfied with the order Dated 11-03-2025 passed by learned 1st Additional Sessions Judge/Ex-Officio Justice of Peace (MCTC) Naushahro Feroze in Crl. Misc. Application No. 889/2025 Re. “Nawab Khan Vs. SSP NausheroFeroze & Others” filed by respondent No. 3 for registration of FIR, which was allowed and Station House Officer (**SHO**) PS Mithiani was directed to record the statement of respondent No. 3 and if, it constitutes a cognizable offence, incorporate the same in the book under Section 154 Criminal Procedure Code (**Cr.P.C**) and investigate the matter in accordance with. However, no arrest of the accused, nominated in the matter shall be made until and unless the Investigation Officer (**I.O**) of the case collects any tangible/concrete evidence. Besides that during investigation, If, is proved that said proceeding/FIR of applicant become false, then proceedings under section 182 Pakistan Penal Code (**PPC**) may be initiated against him; hence applicant has impugned the said order by preferring the instant Crl. Misc. Application.

2. Learned counsel for applicant submits that Respondent No. 03 has concocted a false narrative by alleging that his son Shahid Ali was

kidnapped and that a robbery was committed by the applicants. It is contended that this story has been fabricated solely because an FIR No. 27/2025, had already been registered against son of Respondent No.03 and his close relative, lodged by Dhani Bux, the uncle of applicant and out of malice and with an intent to shield himself, he has lodged a false application against the applicants. He further submits that an application under Section 491 Cr.P.C. was filed by Respondent No.03, alleging that his son had been kidnapped; however, the said application was not pressed subsequently. It is further contends that the son of Respondent No.03, namely Shahid Ali, obtained interim pre-arrest bail from the learned Sessions Judge, Naushero Feroze. Lastly, the learned counsel prays for the setting aside of the order passed by the learned Justice of Peace, In support placed documents under the cover of a statement.

3. On the other hand, the learned counsel for Respondent No. 03 submits that even prior to the incident narrated in the instant application and prior to the registration of FIR No. 27/2025, one FIR had already been registered against the applicant party by Shahid Ali, the son of Respondent No.03, in relation to the murder of Zahid Ali, another son of Respondent No. 03. It is contended that due to prevailing enmity, the applicants have again committed a cognizable offence. As such, he submits that investigation should be carried out after recording the statement, lastly prays for dismissal of the instant application.

4. The learned Deputy Prosecutor General supports the order passed by the learned Justice of Peace on the ground that it has already been observed that no arrest shall be made unless and until tangible evidence comes to the surface. He further submits that if, the applicants have any defence and the same may be presented before the Investigating Officer during the course of

investigation. However, depriving, Respondent No.03 of his right to seek legal recourse would not be appropriate. The learned Deputy Prosecutor General also draws the attention of this Court to the fact that the applicants themselves have taken the plea that the application u/s 22-A & 22-B Cr.PC was filed against them merely because FIR No. 27/2025 had been registered against son of Respondent No. 03 as well close relative. This, according to him, casts doubt on the applicant's version, as it is possible that FIR No. 27/2025 was lodged by the applicant party merely to counterbalance the murder case earlier registered against them. Such a plea, he contends, may in fact operate adversely against the applicants. He, therefore, prays for the dismissal of the instant application and for the order passed by the learned Justice of Peace to be maintained.

5. Heard; and perused the material available on record.

6. Prima facie, it appears that a cognizable offence is made out. In support of this contention, I am fortified by the judgment reported as 2024 SCMR 1123.

9. We have examined the impugned order of the High Court and, in paragraphs 6 and 7, several observations are made as a fact-finding forum which directly affected the merits of the case. It seems to us that the learned High Court had assumed the role of an investigator and passed certain observations to declare the case false which is beyond the purview of the jurisdiction of the High Court under Section 561-A, Cr.P.C. It is well-known that the inherent jurisdiction conferred under Section 561-A, Cr.P.C., cannot be deemed to be an alternative jurisdiction or additional jurisdiction and cannot be exploited to disrupt or impede the procedural law on the basis of presumptive findings or hyper-technicalities, but it is meant to protect and safeguard the interest of justice to redress grievances of aggrieved persons for which no other procedure or remedy is provided in the Cr.P.C. Despite everything, the ends of justice inescapably denote justice as administered and dispensed with by the

courts but not justice in an abstract and intangible notion. In the case of Ghulam Muhammad v. Muzammal Khan [PLD 1967 SC 317], this Court had occasion to point out that the power given by section 561-A, Cr.P.C., can certainly not be so utilized as to interrupt or divert the ordinary course of criminal procedure as laid down in the procedural statute. The matter only relates to the simple implementation of the order passed by the Justice of Peace which was only confined to the recording of the statement of the complainant before the S.H.O. but what we have perceived is that the matter was dragged unnecessarily for the last many years and the order passed in October 2015 is at a standstill and unimplemented.

10. The mere registration of FIR does not insinuate the conviction but as a rider, it is clearly provided under Section 169 of the Cr.P.C. that if upon an investigation, it appears to the officer incharge of the police-station, or to the police-officer making the investigation that there is no sufficient evidence or reasonable ground or suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or send him for trial. While Section 173 Cr.P.C inter alia provides that as soon as the investigation is completed, the officer incharge of the police station shall, through the Public Prosecutor, forward to a Magistrate empowered to take cognizance of the offence on a police-report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and communicate, in such manner as may be prescribed by the Provincial Government. Furthermore, in the present context of the case where the respondents allegedly claim that no case was made out and the Justice of Peace exceeded his jurisdiction, it would be pertinent to point out the genre of the "A", "B" and "C" Class Reports under Section 173, Cr.P.C. The Police Report under "A" class indicates that the FIR is true but the accused persons are untraced, or there

is no clue whatsoever about the culprits or property, or the accused is known but there is no evidence to justify his being sent up to the Magistrate for Trial, while report under "B" class denotes that the FIR is maliciously false or frivolous and no case is made out against the accused persons, whereas the report under "C" class refers to when the criminal case was filed due to mistake of fact or if offence complained about is of a civil nature. Had the opportunity been afforded to the Investigating Officer to carry out investigation according to the statement of the petitioner, he could perform his duties to ascertain whether any prima facie case is made out, and obviously if no case was made out then the Investigating Officer could file the report in the Court in the relevant Class. Being fully cognizant to such law and procedure, the learned Justice of Peace, while allowing application under Section 22-A, Cr.P.C, directed the S.H.O. Police Station 'A' Section, Ghotki, to record the statement of the petitioner and if a cognizable offence is made out, then register the FIR with the rider that the proposed accused should not be arrested without collection of tangible evidence and if during investigation, the FIR is found to be false, the police will be at liberty to initiate action against the complainant (petitioner) as required under Section 182, Cr.P.C.

7. The only defence taken by the applicant is that since an FIR was earlier registered against the son and close relative of Respondent No. 03, the latter, out of grudge, intends to counterblast that case by filing the present application. However, this plea may also be viewed adversely against the applicant, as it is an admitted position that prior to the FIR of the applicant, another FIR regarding the murder of Zahid Ali was already on record against the applicant party. This gives rise to a strong inference that the FIR lodged by the applicant may have been lodged to reply the earlier murder case. Nevertheless, this Court refrains from arriving at any such conclusive finding at this stage and confines itself to examining whether any material is available on record and whether the learned Justice of Peace applied his judicial mind while passing the impugned order. It appears that the

application was not decided in a mechanical manner. Therefore, no interference is warranted with the order of the learned Justice of Peace.

8. Accordingly, the instant application is hereby dismissed and the order passed by the learned Justice of Peace is maintained. It is further noted that the I.O has already been directed not to effect arrest unless and until cogent evidence is collected.

J U D G E

Nasim/P.A