

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Miscellaneous Application No.S-498 of 2024

Applicant: Mulazim Sajjad s/o Ghulam Jaffar
Through Mr. Ghulam Nabi Meo advocate.

Respondents: 1. The State.
2. S.S.P, Mirpurkhas.
3. SHO P.S Taluka Mirpurkhas.
4. Muhammad Farooque Hadan s/o Syed Matee uz Zaman.
5. Muhammad Hakeem Muhammad Sajjad
s/o Syed Matee uz Zaman.
6. Ahmed Hassan s/o Tarique Hassan.
7. Syed Seerum Hassan s/o Muhammad Sajjad Hussain.
Ms. Sehrish Zardari advocate for respondent No.4.
Mr. Vishandas Kolhi advocate for respondents No.5 to 7.
Official respondents through Mr. Ghulam Abbas
Dalwani, Deputy P.G..

Date of hearing: 11.07.2025.

Date of Order: 11.07.2025.

ORDER

Jan Ali Junejo, J. – Through this Criminal Miscellaneous Application under Section 561-A Cr.P.C, the applicant/complainant Mulazim Sajjad seeks setting aside of the Order dated 30.07.2024 (here-in-after referred to as the “Impugned Order”) passed by the learned Judicial Magistrate/Consumer Protection Court, Mirpurkhas, whereby FIR No. 56/2024 registered at Police Station Taluka, Mirpurkhas under Sections 324, 506(ii), 337-A(i), 337-F(i), and 504 PPC was disposed of under "C" Class and all accused persons namely Muhammad Farooque Hassan, Muhammad Hakeem Sajjad, Ahmed Hassan and Syed Seerum Hassan were discharged.

2. The brief facts, as narrated by the applicant in the FIR, are that he is a journalist affiliated with Ab Tak News while his son, Ali Raza, is a reporter for GNN News and a member of Aiwan-e-Sahafat, Mirpurkhas. It is alleged that on 15.06.2024, the applicant's son Ali Raza sustained gunshot injuries after being

attacked near Public School Road, Rajasthan City, Mirpurkhas. The complainant claims that the accused persons—angered by an earlier FIR lodged by Ali Raza (FIR No. 99/2024 under Section 420 PPC)—intercepted Ali Raza while he was on his way to visit a friend, and then two of the accused persons (Farooque Hassan and Seerum Hassan) opened fire while others physically assaulted him and issued threats of murder. The matter was reported, and FIR No. 56/2024 was registered accordingly.

3. After registration of FIR, the investigation was initially conducted by ASI Ali Hassan Khaskheli, later reviewed by a joint investigation team under the direction of SSP Mirpurkhas. Ultimately, a report recommending disposal of the FIR under “B” class (false FIR) was submitted. However, the learned Magistrate, not fully convinced, directed SDPO City to reinvestigate. The reinvestigation also concluded that the incident had not occurred as claimed and recommended disposal under “B” class. Nonetheless, by exercising judicial discretion, the learned Magistrate disposed of the FIR under “C” class (insufficient evidence), primarily on grounds of lack of direct evidence, inconsistent medical record, fabricated recovery of bullet shells, absence of blood at the alleged place of occurrence, contradictory call data records (CDRs), and contradictory CCTV footage.

4. Learned counsel for the Applicant contended that the learned Judicial Magistrate erred in disposing of the FIR under "C" class without appreciating that the allegations contained in the FIR, coupled with the provisional medico-legal certificate and direct account of the injured eyewitness, clearly made out a prima facie cognizable offence under Section 324 PPC and others. He argued that the presence of firearm injuries, eyewitness testimony, and circumstantial consistency with the version narrated in the FIR, were sufficient to proceed further with trial. It was emphasized that the Magistrate had no jurisdiction to assess credibility of evidence at this preliminary stage and had acted beyond the scope of cognizance. It was further argued that the findings based on CDRs and

CCTV footage were circumstantial in nature, and that direct evidence cannot be discarded merely on such basis without a proper trial. Lastly, the learned counsel prayed for allowing the Criminal Misc. Application.

5. Conversely, learned counsel for the private Respondents/accused supported the impugned order and contended that the FIR was the result of a personal vendetta stemming from an earlier financial dispute involving the complainant's son and the brother of the accused, Jahangir Mutih. He asserted that no direct eyewitness was present at the scene, and the sole version of the injured was unreliable and uncorroborated. He relied on the CCTV footage and CDR analysis, which clearly showed that the accused were not present at the alleged location during the time of the incident, thereby negating the complainant's version. That the empties were allegedly produced by the eyewitness from his own pocket, which undermined the credibility of the entire prosecution case. He argued that no prima facie offence was made out against the accused, and therefore, the impugned order required no interference.

6. The learned Deputy Prosecutor General appearing for the State also opposed the Criminal Misc. Application and supported the impugned order. He submitted that the investigation was conducted by two independent officers, including a JIT and SDPO, and both reached the unanimous conclusion that no incident as alleged in the FIR took place. He argued that no independent witness supported the version of the complainant, and the police had collected digital evidence, including CCTV footage and location data, showing that the accused were elsewhere at the relevant time. He maintained that the absence of critical evidence, and on-site recovery of ballistic material by the police, further weakened the case. According to him, in light of this, the learned Magistrate had rightly exercised judicial discretion by disposing of the case under "C" class due to insufficient evidence, and the present application was devoid of merit and liable to be dismissed.

7. I have carefully considered the arguments advanced by the learned counsel for the Applicant, the learned counsel representing the private Respondents, as well as the learned Deputy Prosecutor General appearing on behalf of the State. I have also meticulously examined the material available on record with due diligence and judicial caution. A perusal of the record reveals that the learned Magistrate, while passing the impugned order, rightly observed that the prosecution's case rests predominantly on hearsay statements and circumstantial assertions, without any direct or immediate evidence connecting the accused persons to the scene of occurrence. Neither the complainant nor the purported eyewitness, Azhar Chadhar, have been shown to have witnessed the incident firsthand. Their statements are based entirely on what was allegedly narrated to them by the injured party after the event. In the absence of any direct observation or contemporaneous presence at the site of the occurrence, such statements amount to hearsay and fall short of the legal standard required for direct evidence as contemplated under the Qanun-e-Shahadat Order, 1984. At this stage, therefore, the evidentiary foundation of the prosecution's case lacks the requisite substantive support necessary to proceed against the accused on the basis of personal knowledge or credible eyewitness testimony. The recovery of the bullet casings (empties) has also been justifiably questioned. Instead of being recovered and documented by the police from the scene of the crime through proper procedure, they were allegedly retrieved and handed over by a private person—Azhar Chadhar—after being kept in his pocket. Such a method of recovery undermines the integrity and chain of custody of crucial forensic evidence, and raises legitimate suspicion about its authenticity. In criminal jurisprudence, particularly in firearm-related cases, forensic evidence must be secured strictly in accordance with law to retain its evidentiary value. Furthermore, the Call Data Records (CDRs) and CCTV footage relied upon by the Investigating Officer were considered by the Magistrate to cast doubt on the prosecution's version. These digital tools, which fall within the ambit of modern and scientific evidence under Article 164

of the Qanun-e-Shahadat Order, 1984, indicated that the accused persons were not present at or near the alleged crime scene at the relevant time. The CCTV footage, in particular, reportedly shows that the vehicle allegedly used in the offence did not leave its parking spot, thus contradicting a key aspect of the complainant's narrative. The Magistrate also took into account the absence of final medico-legal reports, ballistic analysis, and chemical examination results, which are typically essential in cases involving firearm injuries. The failure to submit such foundational reports undoubtedly limits the prosecution's ability to substantiate its claims through independent and scientific evidence.

8. In view of the above, the learned Magistrate, on the basis of the material placed before him, was justified in exercising judicial discretion by disposing of the matter under "C" class, which denotes insufficiency of evidence rather than outright falsity of the FIR. This classification leaves the door open for revival of proceedings if new, credible evidence surfaces at a later stage. The Magistrate did not declare the case as maliciously false or recommend penal action against the complainant, which further reflects a cautious and balanced approach. Accordingly, the Magistrate's findings reflect an application of mind to the available investigative material and digital evidence, and the classification of the FIR under "C" class appears to be in line with legal standards governing the treatment of inconclusive or unsupported allegations.

9. The learned Magistrate, upon considering the police report submitted under Section 173 of the Code of Criminal Procedure (Cr.P.C.), exercised his judicial discretion in classifying the case under "C" class. This classification was made after due application of mind and an evaluation of the material placed on record. The exercise of such discretion appears to be in consonance with settled legal principles, and no procedural impropriety, illegality, or misapplication of law is discernible from the impugned order. It is a well-settled proposition of law that when a Magistrate concurs with a summary report submitted under Section 173 Cr.P.C., he does not act as a full-fledged criminal Court

adjudicating guilt or innocence. Rather, the scope of his authority is limited to determining whether sufficient grounds exist to take cognizance of the offence. It is equally established that if such an order reflects manifest abuse of the process of the Court, or is passed without lawful authority or jurisdiction, it may become amenable to correction under the inherent jurisdiction of the High Court under Section 561-A Cr.P.C. In this regard, reference may be made to the authoritative judgment of the Honourable Supreme Court of Pakistan in ***Muhammad Sharif and 8 others v. The State and another (1997 SCMR 304)***, wherein this legal principle was definitively laid down. However, in the present case, no such abuse of process or jurisdictional defect has been demonstrated. The impugned order reflects a considered exercise of discretion by the learned Magistrate within the bounds of law, and does not attract the invocation of this Court's inherent jurisdiction under Section 561-A Cr.P.C.

10. In view of the foregoing discussion, this Court is of the considered view that the learned Magistrate committed no legal error, procedural irregularity, or jurisdictional impropriety in passing the impugned order dated 30.07.2024. The classification of the case under "C" class was made after due application of judicial mind and within the scope of lawful discretion, based on the material and evidence available on record at the relevant time. No sufficient grounds have been established to justify interference by this Court in exercise of its inherent jurisdiction. Consequently, this Criminal Miscellaneous Application, being devoid of merit, is hereby dismissed.

JUDGE

