

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Misc. Application No. S-293 of 2025

Applicant	:	Ali Asghar son of Muhammad Yaseen Solangi through Mr. Muhammad Qasim Kanasiro, Advocate.
Respondents		Station House Officer, P.S. Kanga, District Larkana and 3 others through Mr. Nazir Ahmed Bangwar, Deputy Prosecutor General {Sindh} a/w Inspector Ashique Hussain Chandio on behalf of DIGP Larkana.
Date of hearing		<u>18-09-2025</u>
Date of order		29-09-2025

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ORDER

Shamsuddin Abbasi, J:- Ali Asghar, applicant, is the first Investigating Officer of Crime No.14 of 2025 registered at Police Station Kanga, District Larkana, for offences under Sections 302, 114, 337-H(ii), 148 and 149, PPC, lodged on 16.03.2025 by Manthar Ali son of Illahi Bux Jagirani against Raza Muhammad son of Gul Muhammad, Gul Muhammad son of Shah Baig, Ghazanfar @ Ghazoo son of Muhammad Bachal, Hussain Bux son of Khadim Hussain and one unidentified person for commission of murder of his son Mudasir Ali inflicting him injuries with pistol shots.

2. Pursuant to the registration of FIR, the investigation was entrusted to applicant, posted as Inspector, against whom Mudasir Ali, complainant of FIR No.14 of 2025, made a complaint for favouring the accused party, taking illegal gratification from them, releasing the real culprits without due process of law and putting him undue pressure and also filed an application for change of investigation, which was allowed vide order dated 08.03.2025 upon which the investigation was transferred by the orders of DIG, Larkana and entrusted to DSP Asadullah Bhatti Miro Khan, who submitted final report under Section 173, Cr.P.C. before Civil Judge and Judicial Magistrate-I, Larkana, and also informed that he has referred the matter to high-ups for taking disciplinary action against first I.O. Inspector Ali Asghar. The learned Magistrate being not satisfied with such report directed the I.O. to

submit fresh report /challan by adding first I.O. Inspector Ali Asghar as accused for screening of evidence under the provisions of Sections 201 and 217, PPC read with the other relevant Sections for commission of murder of Mudasir Ali against other accused vide order dated 26.05.2025 and aggrieved of the order of learned Magistrate, the applicant has filed the instant Criminal Misc. Application.

3. It is contended on behalf of the applicant that the applicant has conducted fair and impartial investigation and submitted interim report in Court under the provision of Section 173, Cr.P.C. Next contends that the complainant has leveled false allegation against the applicant for dishonest investigation and obtained the orders on the back of the applicant. Also contends that no opportunity of hearing was provided to the applicant before taking action and passing the impugned order, which is bad in law and facts and prayed that the impugned order may be set-aside and the applicant may be exonerated from the charges of offences falling under Sections 201 and 217, PPC.

4. The learned D.P.G. for the State while controverting the submissions of learned counsel for the applicant has submitted that the case pertains to commission of murder providing capital punishment and the allegations of dishonest investigation and screening of evidence in like cases are serious in nature, which could only be determined at trial, therefore, he has opposed the application.

5. I have given my anxious consideration to the submissions of both the sides and perused the entire material available before me with their able assistance.

6. A keen look of the record reveals that the matter pertains to commission of murder entailing capital punishment. In each case especially in murder cases the Investigating Officer is an important character, who is under obligation to investigate the matter, honestly, fairly and justly, so as to bring on surface the truth. It is the bounden duty of the Investigation Officer not only to build-up the case with such evidence enabling the Court to record conviction by all means, but also to dig out the truth to light to reach at a just and fair decision. Meaning thereby that the purpose of investigation is to collect all relevant evidence pertaining to allegation of crime and to dig out the truth

enabling and facilitating the Court to administer justice and to bring the real culprits to book, however, it appears that the applicant being first Investigating Officer failed to discharge his duties in the manner as provided under the law and based on the allegations of dishonest investigation and screening off evidence, the complainant lost his faith on him and leveled serious allegations of taking illegal gratification, releasing the real culprits without due process of law and putting undue pressure on him.

7. Admittedly, the complainant is father of deceased and apparently has no reason to have involved the Investigating Officer of his own case falsely leveling allegations of corruption, dishonest investigation and screening of evidence. Had there been fair and transparent investigation, the complainant would not prefer to cause delay in the process of investigation by making a complaint and filing application for change of investigation and involve the applicant without any rhyme and reason especially when admittedly there was no previous enmity between him and the applicant, who was entrusted with the investigating of commission of murder of his son.

8. The learned Magistrate while taking pain of dishonest investigation, screening off important evidence and releasing the nominated accused has passed the impugned order dated 26.05.2025 directing the second I.O. to also add the name of applicant as accused in the challan for commission of offences under Sections 201 and 217, PPC read with other relevant Sections for commission of murder against other accused involved therein. For the sake of convenience, relevant extract of the said order is reproduced below:-

“As per submission by IO/DSP Asadullah Bhatti the effort for taking disciplinary action against the IO Asghar Ali Solangi is sent to DIG concerned. He recorded fresh statement of complainant whereby the complainant also implicated accused Akhtar for commission of murder of his son. Whereas, the IO did not find any circumstantial or direct evidence which connect accused Muhammad Ali as accused, therefore, he recommended the accused to be released under section 169, Cr.P.C. by keeping his name under column-II of the report. The complainant and PWs are silent in FIR and their other respective statements regarding involvement of accused Muhammad Ali. For what has been observed from discussion above, I find that the sufficient material on record against accused Akhtar and other absconding accused. Whereas the accused Muhammad Ali seems innocent as he is not nominated in FIR as well as statements of PWs u/s 161 Cr.P.C. as well as statement of complainant u/s 162 Cr.P.C.

and no any evidence come against him in record except the extra judicial confession before the SHO/IO Asghar Ali Solangi. The copy of report submitted to DIG concerned by the IO for taking disciplinary action against the SIO Asghar Ali Solangi reflects that SHO/SIO Asghar Ali Solangi is involved in screening of the evidence in offence punishable for capital punishment which comes u/s 201 of PPC r/w 217 PPC. Hence, the cognizance against the SIO Asghar Ali Solangi has been taken alongwith other accused. Whereas, the IO Asadullah Bhatti submitted intimation regarding the name of Muhammad Ali u/s 497 Cr.P.C. and in respective column No.2. IO Asadullah Bhatti is directed to submit the fresh final challan including the name of former IO Asghar Ali Solangi with under section as an accused in the challan sheet. The name of accused Muhammad Ali s/o Mehboob Ali Jakhro is kept in column No.2, issue such release writ of the accused Muhammad Ali Jakhro, and Superintendent District Prison Larkana is directed to release him forthwith if he is no more required in any other custody case crime”.

9. Reviewing the above order, it is noted that the learned Magistrate while entertaining the final report under Section 173, Cr.P.C. submitted by the second Investigating Officer Asadullah Bhatti took cognizance against the former Investigating Officer Inspector Ali Asghar Solangi, applicant herein, and directed the I.O. to submit fresh final report adding the name of applicant as accused for commission of offences under Sections 201 and 217, PPC. The allegations of corruption and screening off evidence against the applicant in a murder case are serious in nature and if he is let off free without action, it amounts to undermining public confidence in our justice system.

10. It is noteworthy that while taking pain of the allegations of spoiling the prosecution case and removing of evidence against the applicant, the Senior Superintendent of Police, Kamber Shahdadkot referred the matter to DSP /Sub-Division Police Officer, Miro Khan, who investigated the matter and submitted his report to Deputy Inspector General of Police, Larkana Range, Larkana on 13.05.2025. Relevant excerpt of the said report is reproduced below:-

“After that complainant namely Manthar Ali Jagirani filed a Criminal Misc. Application vide No.442/2025 in the Hon’ble Court of 3rd Additional Sessions Judge Larkana, in which he stated that I.O. Insp. Ali Asghar Solangi SHO PS Kanga has written a false statement and forged his signature to column-ii, in such passed order of Hon’ble Court an order has been issued that further statement of complainant may recorded again, in compliance of such passed order of Hon’ble Court undersigned recorded the further statement of complainant, in which he stated that nominated accused Gul Muhammad, Raza Muhammad, Hussain Bux, Ghazanfar alias Ghazon & Akhtar, all by caste Jakhro are the real culprits of his murder case, who killed his son namely Mudasir Jagirani and undersigned recorded the further statements of eye

witness of subject FIR, who have stated the same facts as narrated by the complainant in FIR. During the further investigation, it is observed that the arrested accused namely Muhammad Ali..... {not readable} innocent into this crime and the undersigned has recorded the statement of Pervez Khakhrani & Taj Muhammad Khakhrani, who have been{not readable} shown as impartial witnesses of this case, in which they have stated in their statements that Nazar Muhammad s/o Gul Muhammad had taken photographs of their CNICs from them to get (Ration). However, they have not appeared before any Police and have not given their statements and they have no any information about their statements, their false statements are written by above mentioned I.O. (such statements of DWs are enclosed.

After that, undersigned have verified the signature of the complainant from AIGP Forensic Division Sindh, Karachi, who has also disclosed that signatures of complainant on further statement dated 16.03.2005 are false /forged in his given report and the signature of complainant Manthar Ali Jagirani on further statement is also not signed by him.

After, that undersigned completing the investigation of the case and submitted the Original Police Papers to the senior Superintendent of Police Larkana through PDSP, Larkana for scrutiny and getting legal opinion on the original documents of this case, but PDSP Larkana returned the case papers without legal opinion.

Findings:- Keeping in view of above, it is submitted that this case has been investigated by I.O. Insp. Ali Asghar Solangi SHO PS Kanga, from the perusal of case, it has been observed that he has knowingly forged the further statement of the complainant and there is also a discrepancy in the statement of the accused Akhtar Jakhro who says that I appeared at Kanga Police Station with my brother alongwith weapon on 20.03.2025 hours @ night, but SHO has shown his false arrest and they have also taken false statements from two impartial witnesses, during investigation and declared them innocent by giving them benefits in this case and has kept them on column-ii. The I.O. has not even obtained the verification diary and opinion from his superiors in this case, and the said I.O. has bypassed his superiors and the interim challan of the case has been voluntarily submitted in Hon'ble Court, the I.O. Insp. Ali Asghar Solangi SHO PS Kanga has dishonestly and negligently concealed the evidence of this murder case, which has committed the crime of section 201, PPC. Therefore he should be punished appropriately and departmentally action may be initiated against him".

11. The Hon'ble Supreme Court in the case of *Ikramuddin Rajput v Inspector General of Police Sindh and others* {2024 SCMR 510} has highlighted the role of Investigating Officer and ruled as under:-

"No doubt, an Investigating Officer plays a crucial role in the administration of the criminal justice system and the constituent of investigation report and its worth keeps hold of plenteous value and repercussions on the outcome of any criminal

case. However, at times, a botched-up investigation can become a top impediment and stumbling block in the administration of justice, either intentionally with the aim to favour the accused or unintentional due to inefficiency, incompetence, or unskillfulness of the Investigation Officer. The criminal justice system signifies the procedure for adjudicating criminal cases in order to award a sentence to the culprits for the offence committed by them; and the foremost objective is to penalize the offenders subject to the proof whether the offense has been committed or not, and this very important aspect is attached with the burden of proof on the prosecution which has direct nexus with the investigation report and the material and evidence collected by the Investigation Officer in discharge of his sacred duty to bring out the truth without engaging in any manipulation, favoritism, or exceeding the bounds of the law. A defective investigation gradually contaminates the judicial process and poses a hazard to human rights. In unison, it is the duty of superior officers and officers in charge of police stations to ensure that the Investigating Officer follows the provisions of law conscientiously, without any breach, conducting an impartial and honest investigation with the sole aim of bringing the truth to light. The task of investigation is an art and for attaining the proficiency in the job of investigation, extensive on job training is also required to ensure integrity and uprightness, without any temptation for personal gains or advantages. It is also a foundational pathway for the prosecution case, and being a sacrosanct duty of an investigation officer, it should be performed without any recklessness, sluggishness, or greediness.

8. According to section 4(1), Cr.P.C. the term "investigation" includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person. The importance of this duty or task was also given much significance under Rule 25.2 of the Police Rules, 1934 which deals with the power of Investigating Officers, and under sub-rule 3, it is provided that 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. At this juncture, it would also be advantageous to point towards section 166(2), P.P.C., which lays down that whoever being a public servant entrusted with the investigation of a case fails to carry out the investigation properly or diligently or fails to pursue the case in any court of law properly and in breach of his duties shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both. Whereas section 27 of the Anti-Terrorism Act, 1997, provides that if an Anti-Terrorism Court or a High Court comes to conclusion during the course of or at the conclusion of the trial that the investigating officer, or other concerned officers have failed to carry out investigation properly or diligently or have failed to pursue the case properly and in breach of their duties, it shall be lawful for such Court or, as the case may be, the High Court, to punish the delinquent officers with imprisonment which may extend to two years, or with fine or with both by resort to summary proceedings. While a similar provision has been incorporated under section 22 of the Anti-Rape (Investigation and

Trial) Act, 2021, which explicates that whoever, being a public servant, entrusted to investigate scheduled offences, fails to carry out the investigation properly or diligently or causes the conduct of false investigation or fails to pursue the case in any court of law properly and in breach of duties, shall be guilty of an offence punishable with imprisonment of either description which may extend to three years and with fine. According to section 2(v) of the Sindh Police (Efficiency and Discipline) Rules, 1988, "misconduct" means conduct prejudicial to good order or discipline in the Police Force, or contrary to Government Servants (Conduct) Rules, or unbecoming of a Police Officer and a gentleman, any commission or omission which violates any provision of any law or rules regulating the function and duty of Police Officer or to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Police Officer. Even under Article 4 of the Police Order, 2002, it is *inter alia* provided that the duty of every police officer is to protect life, property and liberty of citizens; preserve and promote public peace; ensure that the rights and privileges, under the law, of a person taken in custody, are protected; prevent the commission of offences and public nuisance; detect and bring offenders to justice; apprehend all persons whom he is legally authorized to apprehend and for whose apprehension, sufficient grounds exist; prevent harassment of women and children in public places; afford relief to people in distress situations, particularly in respect of women and children, etc. Further, Article 155 of the Police Order, 2002, underlines various instances of misconduct that impose penalty on the delinquent, which includes any willful breach or neglect of any provision of law or of any rule or regulation or any order which he is bound to observe or obey or any violation of duty.

9. In the *Sughra Bibi v. State* [PLD 2018 SC 595], it was held that during the investigation, the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934. 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. In the case of *Gajoo v. State of Uttarakhand* [(2012) 9 S.C.C. 532], the Supreme Court of India not only identified serious lapses in the investigation but also directed the Director General of Police of the state to take disciplinary action against the officer whether he is in service or has since retired, for such serious lapse in conducting investigation. Whereas in the case of *Babubhai v. State of Gujarat and others* [(2010) 12 SCC 254], the Supreme Court of India held that investigation must be fair, transparent and judicious as it is the minimum requirement of the rule of law. In the case of *State of Gujarat v. Kishanbhai* [(2014) 5 SCC 108], it was held that if the acquittal is the result of defective investigation, the investigating and/or the prosecuting official responsible for such acquittal must be identified and the nature of lapses are to be ascertained as innocent or blameworthy.

10. The purpose and sagacity behind initiating disciplinary proceedings by the employer is to ascertain whether the charges of misconduct levelled against the delinquent are proven or not and, if so, to determine the appropriate action against him under the applicable Service Laws, Rules and Regulations, which may include the imposition of minor or major penalties in accordance with the sound sense of judgment of the competent Authority. In contrast, the justification and *raison d'etre* for initiating criminal prosecution is entirely different, where the prosecution has to prove the guilt of the accused beyond any reasonable doubt. Both processes have distinctive characteristics and attributes concerning the standard of proof. The object of a departmental inquiry is to investigate allegations of misconduct in order to maintain discipline, decorum, and efficiency within the institution, strengthening and preserving public confidence. In a departmental enquiry, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not "proof beyond reasonable doubt", which is a strict standard required in a criminal trial, where the potential penalties are severe.

11. According to the statement of allegations, the Medico-Legal Report declared that the hymen of the victim was freshly torn and bleeding, the chemical analysis report confirmed the presence of human sperm in the vaginal swab and shalwar of the victim. In the disciplinary proceedings, the competent authority concluded that there was no justification for the petitioner to insert section 511, P.P.C. based solely on the statement of a seven-year-old minor girl, recorded under section 164, Cr.P.C., while ignoring the ocular testimony of the victim's father who caught the accused with the help of neighbors and handed him over to the police. Even the victim in her recorded section 164, Cr.P.C. does not absolve the accused but he prematurely added section 511, P.P.C. which provides that "whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of imprisonment provided for that offence or with such fine [daman] as is provided for the offence, or with both".

12. As an Investigation Officer, it was the responsibility of the petitioner to submit the Final Report under section 173, Cr.P.C. and subsequently, it was the function of the Trial Court to consider all evidence and materials collected by the Investigation Officer and proceed further in accordance with the law. Though the punishment for rape is provided under section 376, P.P.C., the offence of "Rape" is defined under section 375, P.P.C., and the attached Explanation emphasizes that "penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape". The police force is a disciplined force with significant accountability and the responsibility of maintaining law and public order in the society. Therefore, any person who wants to be part of the disciplined force should be a person of utmost integrity and uprightness with an unimpeachable, spotless character, and clean antecedents. In the case in hand, we feel that disciplinary

action was taken after complying with due process of law and on the basis of self-evident and self-explanatory documents. The enquiry officer, Muhammad Tariq Nawaz (PSP), Superintendent of Police, Investigation Central, West Zone, Karachi, rightly found the petitioner guilty in his report dated 21.05.2020 for further necessary action.

13. It is clarified that this judgment only pertains to the disciplinary action taken by the department against the petitioner and affirmed by the Tribunal. The findings of this judgment will not prejudice or affect the case of either party before the proceedings of Trial Court arising from FIR No.240/2018, lodged under section 376, P.P.C. at P.S. Mominabad, Karachi which will be decided on its own merits and in accordance with the law.

14. In view of the above discussion, we do not find any illegality or perversity in the impugned judgment passed by the learned Tribunal. Consequently, this Civil Petition is dismissed and leave is refused”.

12. For what has been discussed above and placing reliance on the case {supra}, I am of the view that the learned Magistrate was fully justified in taking cognizance against the applicant for commission of offences under Sections 201 and 217, PPC. The impugned order is based on fair evaluation of record and does not suffer from any legal infirmity, misreading of evidence, or non-application of judicial mind. The exercise of discretion by the Magistrate is consistent with settled legal principles and withstands judicial scrutiny. The learned counsel for the applicant has failed to place on record any unimpeachable material that may provide a valid ground warranting interference. The applicant shall have ample opportunity to substantiate his defence during the trial where he may produce concrete and admissible evidence to disprove the allegations leveled against him. The order, impugned herein, is, therefore, upheld and the Criminal Misc. Application No.S-293 of 2025 is bereft of any merit stands dismissed.

13. Before proceeding with this order, it need not to state that the observations recorded herein above are meant for the purpose of the instant proceedings, therefore, the learned trial Court shall not be influenced in any manner whatsoever while deciding the case on merits.

JUDGE