IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-698 of 2024

Applicant	:	Rab Nawaz son of Shah Nawaz, Through M/s Qurban Ali Malano & Syed Naimat Ali Shah, Advocates
Respondent No.3	:	Through Mr. Shabir Ali Bozdar, Advocate
The State	:	Through Mr. Zulfiqar Ali Jatoi, Additional P.G
Date of hearing	:	18.09.2025
Date of order	:	26.09.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. — Applicant Rabnawaz has invoked the inherent jurisdiction of this court, seeking to set aside the impugned order dated 15.11.2024 passed by the learned 1st Civil Judge & Judicial Magistrate, Ghotki, whereby cognizance was taken for offence under Section 379 PPC despite the Investigating Officer's report recommending the case for disposal in B-Class.

2. The factual matrix reveals that an FIR was registered on 05.05.2024 at Police Station Adilpur for offence under Section 379 PPC, alleging theft of four Tamarix trees. The complainant Abdul Rafique alleged that on the morning of 05.05.2024, he discovered the applicant and co-accused cutting trees from his agricultural land. After thorough investigation, the Investigation Officer submitted a final report under Section 173 Cr.P.C. classifying the case as B-Class, declaring all accused persons innocent. However, the learned Magistrate disagreed with the police report and took cognizance for offence under Section 379 PPC vide impugned order dated 15.11.2024.

3. The learned counsel for the applicant contends that the impugned order was passed hastily without proper judicial application of mind. Several grounds have been raised including: delayed FIR registration creating doubt on veracity; mahsir nama of 06.05.2024 indicating cut trees appeared old rather than freshly cut; Call Data Record (CDR) evidence showing co-accused was in District Badin at the time of alleged incident; statements of independent defense witnesses recorded under Section 161 Cr.P.C. establishing alibis; and absence of any recovered stolen property.

4. *Per contra*, the learned Assistant Prosecutor General objects to the maintainability of the application, arguing that Section 561-A Cr.P.C. cannot be invoked to interfere with the Magistrate's discretionary power to take

cognizance against police opinion, and that no exceptional circumstances exist warranting this Court's intervention.

5. Section 561-A of the Criminal Procedure Code preserves the inherent powers of the High Court "to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice". The Supreme Court in *Ali Gohar and Others v. Pervaiz Ahmed and Others* (PLD 2020 Supreme Court 427) has categorically held that inherent jurisdiction under Section 561-A cannot be invoked as a substitute for any other remedy provided under the Cr.P.C. The jurisprudence consistently establishes that Section 561-A should never be understood to provide an additional or alternate remedy, nor can it override express provisions of law. These powers can ordinarily be exercised only where no provision exists in the Code to cater for a situation, or where the Code offers no remedy for redress of grievance. Inherent powers can be invoked to make departure from normal course only in exceptional cases of extraordinary nature, and reasons must be offered to justify such deviation.

6. The fundamental principle governing cognizance is well-settled. In *Muhammad Akbar v. State* (1972 SCMR 335), the Supreme Court observed that "even on the first report alleged to have been submitted under section 173, Cr.PC, the Magistrate could, irrespective of the opinion of the Investigating Officer to the contrary, take cognizance, if upon the materials before him he found that a prima facie case was made out against the accused persons".

7. The Court further held that "the police is not the final arbiter of a complaint lodged with it. It is the Court that finally determines upon the police report whether it should take cognizance or not in accordance with the provisions of section 190(1)(b) of the Code of Criminal Procedure". This principle finds consistent support in subsequent judicial pronouncements.

8. For this Court to exercise inherent jurisdiction under Section 561-A, exceptional circumstances of extraordinary nature must be established. The applicant has raised several contentions regarding the investigation, including the significance of mahsir nama showing old cut marks, CDR evidence, and defense witness statements under Section 161 Cr.P.C. However, these are essentially matters of evidence requiring judicial determination during trial. The Supreme Court in *Murad Gul v. The State* (PLD 2013 Peshawar 58) emphasized that "in the matter of quashing criminal proceedings the trial must ordinarily be permitted to take its regular course envisaged by law and the provision of

section 561-A, Cr.P.C. should be invoked only in exceptional cases for reasons to be recorded".

9. Regarding the mahsirnama dated 06.05.2024, while such documentation forms part of investigation record, its interpretation involves questions of fact best determined by the trial court after recording evidence. Similarly, CDR evidence, though significant in criminal matters, requires proper authentication through cellular company officials and formal procedures for admissibility. The mere presence or absence of such evidence at the cognizance stage does not constitute grounds for quashing proceedings under Section 561-A.

10. Defense witness statements recorded under Section 161 Cr.P.C., while forming part of investigation material, cannot be treated as substantive evidence without proper examination in court. The Supreme Court in recent pronouncements has reiterated that Section 161 statements have no evidentiary value unless witnesses confirm them during trial examination.

11. The learned Magistrate's order reveals application of judicial mind to the materials before him. The order specifically notes that "complainant has implicated accused in FIR and Witnesses have supported the version of complainant in their statements U/S 161 CrPC" and concludes that "I am not satisfied with report of I.O and take cognizance U/S:379 PPC". This demonstrates that the Magistrate examined the available material and formed an independent judicial opinion contrary to the police recommendation.

12. The law is well-settled that a Magistrate is competent to take cognizance even when police recommend cancellation or declares accused innocent in B-Class report. In *Muhammad Arif v. State* (1970 SCMR 178), the Supreme Court held that "a magistrate is competent to direct police to submit fresh report even though the police recommend that there is no case against the accused".

13. After careful consideration of all contentions raised, this Court finds that no exceptional or extraordinary circumstances exist that would justify interference with the normal course of criminal proceedings. The matters raised by the applicant are essentially questions of evidence and fact that require adjudication during trial. The existence of contradictory evidence or alternative interpretations of investigation material does not constitute grounds for quashing proceedings at the cognizance stage.

14 The Supreme Court in various pronouncements has consistently held that High Courts should not interfere with cognizance orders unless there is clear abuse of judicial process or complete absence of material warranting cognizance. The impugned order demonstrates judicial application of mind and cannot be termed arbitrary or perverse.

15. Based on the settled principles of law and after thorough examination of the record, this Court finds that, the present application under Section 561-A Cr.P.C. is not maintainable in the absence of exceptional circumstances warranting extraordinary judicial intervention. The learned Magistrate exercised his lawful jurisdiction in taking cognizance under Section 190(1)(b) Cr.P.C. despite contrary police opinion, which power is well-recognized and cannot be interfered with in ordinary circumstances. The contentions raised regarding investigation material constitute questions of evidence requiring adjudication during trial and do not justify quashing proceedings at this preliminary stage. No abuse of judicial process or extraordinary circumstances have been established that would warrant deviation from the normal course of criminal law. The trial must be permitted to take its regular course as envisaged by law, where all evidence and contentions can be properly evaluated.

16. For the foregoing reasons, this Criminal Miscellaneous Application filed under Section 561-A of the Code of Criminal Procedure is dismissed as not maintainable. The impugned order dated 15.11.2024 passed by the learned 1st Civil Judge & Judicial Magistrate, Ghotki, is maintained. The applicant shall appear before the trial court on the date fixed and proceed with the case according to law. The trial court is directed to expedite the proceedings while ensuring fair trial rights of all parties.

J U D G E