

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

CrI. Misc. Appln. No.S-224 of 2021  
CrI Misc. Appln. No.S-230 of 2021

Applicants : Mir Mujeeb-ur-Rehman Jakhrani  
in Cr. Misc. Appln. No.S-230/2021.

1) Aijaz Hussain Jakhrani, 2) Rafay Hussain  
Jakhrani, in Cr. Misc. Appln. No.S-230/2021.

Respondent : The State.

Mr. Athar Abbas Solangi, advocate for the applicants in both  
Matters.

Mr. Ali Anwar Kandhro, Addl. P.G.

Date of hearing : 01.09.2021.

Date of decision : 3.09.2021.

ORDER.

Omar Sial, J.: The applicants Aijaz Hussain Jakhrani, Rafay Hussain Jakhrani and Mujeeb-ur-Rehman Jakhrani have impugned an order dated 19.7.2021 of the learned 1<sup>st</sup> Civil Judge & Judicial Magistrate, Jacobabad. In terms of the said order the learned Court had given directions that the applicants be added as accused and be charged with further offences in the case arising out of F.I.R. No.43 of 2021 registered under sections 353, 427, 506/2, 342, 504, 120-B 148 and 149, P.P.C. at the Civil Line police station in Jacobabad.

2. The relevant background to the present proceedings is that the aforementioned F.I.R. was lodged on behalf of the State on 28-6-2021 against a number of persons for holding a team of NAB and police officers hostage and further mistreating them when they had gone to conduct a raid on the house of the applicant Aijaz Hussain Jakhrani. All 3 applicants were not nominated as accused. After the usual investigation, a section 173 Cr.P.C. report was filed by the State in the court of the learned 1<sup>st</sup> Civil Judge & Judicial Magistrate, Jacobabad against 17 persons, which once again did not contain the names of the 3



applicants. The learned magistrate after going through the *challan* ordered that not only should the names of the 3 applicants be added as accused but that the accused should also be charged for committing offences under section 224 and 226, P.P.C.

3. I have heard the learned counsel for the applicants as well as the learned Addl. P.G. Both counsels argued that the order that has been passed was blatantly an unlawful order. My observations and findings are as follows.

4. By now it is a settled principle that a court does not have the power to order specific persons, who do not find a name in the *challan*, to be added as accused in that *challan*.

5. In the case of **Muhammad Nasir Cheema v. Mazhar Javaid and others (PLD 2007 SC 31)** it was held that "No power vests with any Court including a High Court to override the said legal command and to direct the S.H.O. either not to submit the said report (mentioned as *challan* in the Police Rules and also in the impugned order) or to submit the said report in a particular manner i.e. against only such persons as the Court desires or only with respect to such offences as the Court wishes." In **Naseer Khan and others v. Khuda Bux and others (2011 SCMR 1430)** the apex court observed that "It may be stated that section 173, Cr.P.C. provides that on conclusion of investigation the concerned SHO is required to submit a report of the result thereof in the prescribed manner to the Judicial Magistrate competent to take cognizance under section 190, Cr.P.C. No power vests with any court including a High Court to override the said legal provision and to direct the police, either not to submit the said report or to submit the said report in a particular manner i.e., against certain persons as the Court desires or only with regard to such offences as the Court wishes." Similarly in **Muhammad Hanif v. The State (2019 SCMR 2029)** the Honorable Supreme Court yet again observed that "the law is settled by now that no court can insist that a *Challan* of a case must be submitted against any particular person and this legal position had been clarified by this Court in the case of **Muhammad Nasir Cheema v. Mazhar Javaid and others (PLD 2007 SC 31)**. The said principle has also been reiterated by a Larger Bench of this Court in the recent case of **Mst. Sughra Bibi v. The State (PLD 2018 SC 595)**."



6. It appears that the learned magistrate while basing his decision on the judgment of a learned Single Bench of this Court reported at PLD 2008 Karachi 280, was not assisted properly and the aforementioned judgments of the Honorable Supreme Court were not brought to his attention. The learned judge appears to have also erred on ordering that section 226 P.P.C. be added in the *challan* as the said section is no longer on the statute books having been omitted by the Law Reforms Ordinance, 1972 (XII of 1972). As far as section 224 P.P.C. is concerned, there is nothing stopping the learned trial judge from including that charge against the accused in the case, if at trial the evidence reveals the commission of such an offence.

7. In view of the above, the impugned order, as far as it ordered that the applicants be added as accused in the *challan* and a further breach of 2 sections of law be added against them is concerned, is set aside. The learned magistrate may proceed further in accordance with law.

 3/9/21  
JUDGE