

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.**

Criminal Misc. Application No. S-94 of 2024

<b>Date of hearing</b>	<b>Order with signature of Judge</b>
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- 1. For orders on office objections.
- 2. For hearing of main case.

**30.09.2024**

Mr. Riaz Ali Panhwar, Advocate for applicant.  
Mr. Naseem Ahmed Siyal, Advocate for Respondents.  
Mr. Khalil Ahmed Maitlo, D.P.G.

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**Mehmood A. Khan, J.** Applicant Kamran Ali has challenged the order dated 16.01.2024 as passed by Judicial Magistrate-I Khairpur whereby the ‘C’ class report filed in crime No.315/2023 of P.S Shaheed Murtaza Mirani Khairpur was accepted.

2. The background as alleged is that on 13.07.2020 complainant Kamran Ali along with his father Qurban Ali, his uncle Aijaz Ali and other family members were available in the house when at 9.30 pm accused/SHO Badaruddin Bhutto, asi Muhammad Yousif Narejo, PC Nadeem Siyal, PC Hajan Jagirani and three unidentified persons entered in the house and caused injures on the person of the complainant. Accused dragged complainant and took him to Police Station where police tortured the complainant and thereafter thrown him outside the house and went away.

3. Learned counsel for the applicant contended that the impugned order has failed to consider that the said FIR was lodged on account of earlier proceedings of Criminal Misc. Application No. S-405/2020 and order passed by this Court on 12.10.2020. It is further contended that the observations made in the impugned order as to the nature of injury and grounds for accepting the 'c' class are in violation of the medical record present before the said court. It is contended that the said order is liable to be set aside and the cognizance under the crime as stated in the FIR is liable to be prosecuted.

4. Learned counsel for the private respondents who are otherwise having official capacities or had been holding the offices states that as the remedy under section 200 Cr.P.C is still available. Learned counsel in this regard specifically stated that the order impugned may not stand in the way of such an exercise. Learned APG also reiterates this statement.

5. Learned counsel for the applicant was called upon to show to this Court the wisdom in proceeding of the FIR case specially where no investigation or recovery is apparently is found required. Learned counsel, however, in this regard and in rebuttal contended that the impugned order has been challenged and the same is liable to be set aside .

6. Having heard learned counsel for the parties and gone through the record.

7. It has been observed that the matter is at the preliminary stage. This Court at one hand had to ensure that the available remedy in accordance with law is not restricted while at the same time it is to be considered that the applicant has to come up with the case wherein he should have the ability to prove his allegations. The said proving of allegations cannot be so conveniently understood and found feasible if not available in presence of disturbing the impugned order rather the same require providing the opportunity under section 200 Cr.P.C. Learned counsel for the applicant has not given any wisdom to this Court for the same not to be utilized as provided under Section 200 Cr.P.C is naturally and practically efficacious for the applicant. The approach to this Court on account of the said availability as provided under section 200 Cr.P.C also clouds the status of being aggrieved person. Irrespective to the same as no wisdom has been shown to this Court as to why the applicant prefers the prosecution in a certain pre-determined specified manner without the same being better and efficacious then the proceedings under section 200 Cr.P.C wherein the applicant himself is supposed to be in the driving seat. The disturbance to the impugned order as called for setting aside is not found available. As the statements by the learned counsel for the respondents is made, this Court is not found required to go into details of the allegations made and assessment as to quality of investigation even otherwise it is not very proper for this Court to discuss the said material present on record as the same is liable to prejudice the case of parties. Accordingly on account of forgiven discussion this Criminal Misc. Application is disposed of as it is not

found restricting the applicant to approach to avail the remedy under Section 200 Cr.P.C by way of private complaint. The learned Presiding Officer shall not be prejudiced by the contents of the impugned order as the conclusion of proceedings is not available under acceptance of 'c' class report and only the report is accepted so that the matter of FIR is closed and same is not a determination otherwise, let alone a judicial decision as to conclusion . Ordered accordingly.

JUDGE

Irfan/PA