

Order Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D- 800 of 2023

[Prof. Dr. Umar Kazi & others v. Province of Sindh & others]

Before :

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Riazat Ali Sahar

Petitioners : Through Mr. Sajjad Ahmed Chandio, Advocate

Respondent No.7: Nemo.

Mr. Rafiq Ahmed Dahri, Asstt: A.G., along with ASI Shamsul
Haq Qureshi, PS B-Section Dadu.
Mr. Shahid Ahmed Shaikh, Asstt: P.G.

Date of Hearing
& Decision: 15.12.2025

ORDER

ADNAN-UL-KARIM MEMON, J.- Through the captioned Constitutional
Petition, the Petitioners have prayed as under:-

- a) Set aside the impugned order dated 13-06-2022 passed by the 2nd Civil Judge & Judicial Magistrate Johi at Dadu as being non-speaking, based on presumptions, assumptions, and contrary to the facts and material available on record.
- b) Declare the F.I.R. No. 54 of 2022 U/S 506/2, 420, 147, 148, 149, 504 PPC of P.S. B-Section, District Dadu as false, baseless, and bogus with directions to the concerned Police Officials to initiate the proceedings U/S 182 P.P.C against the complainant.
- c) Set aside the Letter dated. 13-04-2023 issued by the learned I/C Civil Judge and J.M./Judge Consumer Protection Court, Dadu, regarding digitally impounding CNICs of the Petitioners.
- d) Direct the respondent No.06 (NADRA) to restore/activate/ unblock CNICs of the petitioners.
- e) Direct the respondents No. 01 to 03 to produce details of the FIRs registered against the petitioners at any Police Station of Sindh Province.
- f) Retrain the respondents No. 02 and 03 from registration of fresh F.I.R against the petitioners, without prior permission of this Honorable Court.
- g) Grant any other relief as this Honorable Court deems fit and proper

2. The petitioners are claiming to be highly educated individuals who have held the highest academic positions at Isra University. They submitted that for past one and half year, a civil dispute over the administration of Isra University, Hyderabad,

has been ongoing between the petitioners and the Laghari Group. This dispute has given rise to litigation pending in various courts, including this Court. They submitted that the rival group opposing the petitioners is backed by a powerful feudal and political family from District Dadu, whose members hold positions in both the National and Provincial Assemblies and are affiliated with the ruling political party in Sindh. Owing to this political backing, they submitted that police officials have acted as a private force for this group, attempting to convert civil dispute into a criminal one. This conduct was noted by this Court vide orders dated August 17, 2022, September 22, 2022, and October 4, 2022, passed in C.P. No. D-2725 of 2022, C.P. No. D-2821 of 2022, and Cr. Revision Application No. S-121 of 2022. The petitioners assert that, with the assistance of police officials, the rival group has orchestrated the registration of false, baseless and frivolous FIRs against them. Specifically, respondent No.7, acting as an agent of the rival group, colluded with police officers on April 28, 2022, to file a fabricated FIR in Dadu, intending to bring the petitioners into the district under the threat of harm. In compliance with a Magistrate's order, the Investigating Officer submitted challan under Section 512 of the Cr.P.C. before the Civil Judge and JM/Consumer Protection Court Dadu on June 18, 2022, wrongly listing the petitioners, along with co-accused Nisar Ahmed and Muhammad Yaqoob, as absconders. They submitted that learned Magistrate, in passing the impugned order, ignored critical facts, including that the complainant's case was based on a purported sale agreement and related documents such as cheques and title deeds, none of which were produced during investigation or before the Magistrate.

3. Learned counsel for the petitioners submitted that the impugned order dated June 13, 2022, passed by 2nd Civil Judge and JM-Johi, Dadu, reflects non-reading, misreading, and mis-appreciation of mandatory legal provisions, as well as disregard for well-settled principles of criminal justice, thereby causing grave miscarriage of justice. He added that it is an undisputed fact that Petitioner No.1, Umar Kazi, has no bank account at National Bank of Pakistan, a fact confirmed by the bank's Senior Vice President / Regional Head. He emphasized that the petitioners are distinguished academics who have long served the province and the country and reside with their families at the stated addresses, leaving no possibility of intentional disappearance. Previously, at the instigation of rival group, the Sindh Police attacked the residence of Petitioner No.3, harassing women and elderly family members and forcibly abducting the petitioner without explanation. CCTV footage of this illegal act circulated widely on social media and news channels. Subsequently, a false FIR No. 162 of 2022 under Sections 420, 467, 486, 471 and 34 PPC was registered at Police Station Hatri, Hyderabad, falsely implicating petitioners 2 and 3 and misrepresenting the abduction as a lawful arrest. Petitioners 2 and 3 filed C.P. No. D-2821 of 2022 before this Court to challenge this illegal police action. As per counsel, the police,

acting as a private force for the rival group, have repeatedly subjected the petitioners' academics of high standing to lawless harassment, mental torture, and humiliation, simply because the petitioners refused to yield to feudal and corrupt pressures. He argued that allowing the continuation of proceedings arising from the impugned FIR and the June 13, 2022, order would effectively provide politically backed police officials the license to act as enforcers for a few powerful individuals without accountability. He added that in these circumstances, the petitioners have suffered grave miscarriage of justice and are "aggrieved persons" within the meaning of Article 199 of the Constitution of Pakistan. Their fundamental rights to fair investigation and justice have been violated, leaving them with no efficacious or alternate remedy but to seek redress through this Court under its constitutional jurisdiction. He prayed to allow this Petition.

4. This Court vide order dated 17.5.2023, while suspending the order of Judicial Magistrate, directed learned A.A.G. and APG to submit a report showing the list of cases registered against the petitioners. In compliance of above order DSP / Legal for DIGP Hyderabad Range submitted his report that Crime No. 54 of 2022 under Section 420, 506/2, 147, 148, 149 & 504 PPC of PS B-Section DAdu was registered against the Petitioner Dr. Umar Kazi and others, the same was disposed off under cancelled 'C' class, such report under Section 173 Cr.P.C. was submitted before the concerned Magistrate for summary orders but learned Magistrate disagreed with the investigation and issued directions to submit challan of the case and in compliance whereof challan has been submitted.

5. Learned AAG and APG assisted this Court by submitting that since the challan has already been submitted, the proceedings cannot be quashed at this stage, and the petitioners may avail the remedy available under Section 249-A, Cr.P.C. They further contended that under Sections 173 and 190 Cr.P.C., although the Investigating Officer is required to submit final report upon conclusion of investigation, however, the Magistrate is not bound by the police opinion and is competent to apply an independent judicial mind to the material placed on record. They submitted that where the Magistrate finds the police conclusion unsustainable, he may lawfully disagree and exercise his discretion in accordance with law. They submitted that such discretion, however, is not unfettered. Where the Investigating Officer submits a positive report finding sufficient grounds for trial, the Magistrate lacks jurisdiction to dispose of the case or delete offences on a tentative appraisal of evidence, as the assessment of evidentiary worth falls within the exclusive domain of the trial court after recording evidence. In such circumstances, the Magistrate's authority is limited to taking cognizance, accepting the challan, or restoring omitted charges. It was argued that in the present case, the learned Magistrate, upon disagreeing with the conclusion of cancellation or disposal of the subject F.I.R.,

found prima facie material to proceed and therefore directed submission of the challan, which is permissible in law. They added that once the challan is submitted, the scope for further or fresh investigation becomes highly restricted and can only be exercised in exceptional circumstances. In the absence of any manifest illegality or perversity in the investigation, the Magistrate was / is not bound to order re-investigation. Any grievance regarding the investigation ought to have been raised under Section 156(3) Cr.P.C., at the appropriate stage. Accordingly, the learned Magistrate cannot be said to have acted without jurisdiction or in excess of authority by directing submission of challan based on material available on record. They lastly prayed to dismiss the petition.

6. A perusal of record shows that this Court has, for a considerable period, repeatedly directed the personal appearance of Respondent No.7, the complainant in the subject FIR; however, he has consistently failed to appear. On the last date of hearing, i.e., 08.12.2025, the SSP concerned was also directed to ensure his attendance. The Court further observed that, in the event of his non-appearance, appropriate orders would be passed in his absence. It is noted that, despite being properly served notice by the police, the complainant did not appear before this Court. A police official present in Court submitted that the complainant had assured his attendance to defend the case, but remained absent. Therefore, this Court is left with no option but to hear the parties present in court on the subject issue.

7. We have heard learned counsel for the parties and perused the record with their assistance.

8. Before examining the merits and looking into the contentions of learned AAG and APG, it is reiterated that there is clear distinction between quashment of criminal proceedings and quashment of an FIR. Under Section 561-A Cr.P.C., the High Court may quash judicial proceedings to prevent abuse of process or secure the ends of justice. Still, it cannot quash police actions such as registration of an FIR or investigation based on sufficient material for the trial of the accused, subject to all just exceptions as provided under the law. This position was settled by a five-member bench in *Shahnaz Begum v. High Court of Sindh and Balochistan* (PLD 1971 SC 677) and reaffirmed in *FIA v. Syed Hamid Ali Shah* (PLD 2023 SC 265).

9. Conversely, under Article 199(1)(a)(ii) of the Constitution, the High Court has constitutional jurisdiction to quash an FIR, as FIR registration and investigation are acts of the police, as held by the Supreme Court in the case of *Ayesha Tayyab*, 2025 SCMR 1117. Even the submission of a report under Section 173 Cr.P.C. does not bar the High Court from exercising constitutional jurisdiction where such exceptional circumstances exist.

10. Coming to the issue at hand as raised by the parties, primarily, under Section 173(2), Cr.P.C., the police submit final report upon completion of the investigation; however, such opinion is not binding on the Magistrate. In exercise of powers under Section 190, Cr.P.C., the Magistrate may accept the report, disagree and drop the proceedings, or direct further investigation under Section 156(3), Cr.P.C., upon independent application of judicial mind to the material on record. The statutory scheme under Chapter XIV, Cr.P.C. assigns evidence collection to the police and judicial scrutiny at the stage of cognizance to the Magistrate. The Magistrate may take cognizance under Section 190(1)(b), Cr.P.C., even where no offence is opined, but cannot compel the Investigating Officer to adopt a particular view, assume the role of trial court, or alter penal sections except in accordance with law.

11. The Supreme Court of Pakistan, in the case of Muhammad Ajmal and others v. The State and others (2018 SCMR 141), has clearly defined the limits of a Magistrate's authority at pre-trial stage. The apex Court held that a Magistrate cannot, without following the prescribed procedure of trial and recording of evidence, unilaterally add, delete, or reframe charges. It was further held that any evidentiary exercise, before framing of charge and formal recording of evidence, is foreign to the scheme of Cr.P.C. and the Qanun-e-Shahadat Order, 1984. Therefore, in criminal proceedings, the primary consideration at the investigation stage is the opinion of Investigating Officer as reflected in the police report or charge-sheet prepared under Section 173, Cr.P.C. It is the Investigating Officer who, in the first instance, determines the applicable provisions of law on the basis of investigation, including statements of witnesses, inspection of crime scene, and collection of relevant material or evidence. However, the trial court remains competent to add or delete any provision of law in the relevant charge, based on concrete material brought before it during trial, and to pass appropriate orders in accordance with law.

11. It is now settled principle of law that while dealing with report under section 173, Cr.P.C. Magistrate is under legal obligation to satisfy himself with regard to material placed before him and there is cavil to the proposition of law that when a report under section 173, Cr.P.C. is submitted before the Magistrate he is required either to agree or dis-agree and he is bound to apply his judicial mind to assess that whether material collected through investigation is sufficient for trial or not. In the instant matter the investigating officer found no substance for trial of the accused and proposed for the cancellation of FIR in 'C' Class instead of 'B' Class, so that further litigation may not create more differences between the parties.

12. In view of the above facts and circumstances of the case the impugned order dated 13.6.2021 passed by the learned Magistrate on final report wherein he has taken cognizance of criminal case under section 190 Cr.P.C. is set-aside and

the case / Crime No. 54 of 2022 stands disposed of under 'C' class as opined by the Investigating Officer being non-cognizable offence in view of PLD 2013 Sindh 423 (Syed Afshan v. Syed Farukh Ali and others).

This petition stands allowed in the above terms.

JUDGE

JUDGE

karar_hussain/PS*