

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS**

CP No. D- 734 of 2025

[Ghulam Shabir vs. Province of Sindh & others]

Before:

JUSTICE ADNAN-UL-KARIM MEMON.
JUSTICE RIAZAT ALI SAHAR.

Mr. Iftikhar Hussain Tareen, Advocate for petitioner.

Mr. Farhan Ahmed Bozdar, Advocate for respondents 4 & 5

Mr. Muhammad Sharif Solangi, Assistant Advocate General, Sindh alongwith
SIP Sher Muhammad PS Shahdadpur.

Date of hearing& decision: 10.12.2025.

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioner prayed that this Court may be pleased to:

- a. Set aside the impugned order dated 06.10.2025, passed by the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Shahdadpur;
- b. Direct Respondent No.3/S.H.O. PS Shahdadpur to record the statement of Petitioner and lodge the FIR against respondents No.4 to 8 under the relevant penal provisions;
- c. Grant any other relief deemed fit, just, and proper in the circumstances of the case.

2. The Petitioner, being aggrieved and dissatisfied with the order dated 06.10.2025 passed by learned Additional Sessions Judge/Ex-Officio Justice of Peace, Shahdadpur, in Cr. Misc. Application No.1824 of 2025 (Ghulam Shabbir v. SSP Sanghar & others) files the present Petition seeking to call for the record and proceedings of the aforesaid criminal miscellaneous application, examine the legality and propriety of the impugned order, set aside the same, and consequently allow the Petitioner's original application.

3. The Petitioner submitted that Respondent No.4 had longstanding civil disputes with him regarding agricultural land. The said civil dispute has already been decided in favor of the Petitioner, and possession of the land has duly been handed over to him through execution proceedings. On 21.08.2025 at about 12:00 PM, while the Petitioner was at his residence, he received a distress call from his brother Abdul Rasheed, who informed him that Respondents 4 to 8 were unlawfully digging mud from the Petitioner's land and cutting babul trees. The Petitioner, accompanied by his brother Bashir, immediately reached the site and witnessed that the said respondents had already cut and uprooted three babul trees and were removing the trees and mud on tractor trolleys. When the Petitioner and his brothers attempted to intervene, the respondents, who were armed with deadly weapons, abused and threatened them and fled from the scene. The Petitioner reported the incident at Police Post Maldasi, where he was advised to approach Police Station Shahdadpur for registration of FIR. At PS

Shahdadpur, the SHO (Respondent No.3) was not present. The Petitioner then approached DSP Office with a written complaint, which was forwarded with directions to the SHO for legal action. Despite repeated visits, the SHO remained unavailable. Ultimately, when the Petitioner managed to meet SHO Shahdadpur, he despite receiving information regarding a cognizable offence refused to record the Petitioner's statement. He advised the Petitioner to approach the court of law, stating that Respondents 4 to 7 were politically influential and beyond his reach. No site inspection was conducted, nor was any legal action initiated by the police. Having no alternate, adequate, or efficacious remedy, the Petitioner filed Criminal Misc. Application No.1824 of 2025 under Section 22-A(6)(i) Cr.P.C., seeking directions for registration of FIR against Respondents No.4 to 8 for committing theft of trees and mud from his agricultural land, causing a loss exceeding Rs. 400,000/-. The offences reported were clearly cognizable. The inaction of Respondents 2 & 3 is contrary to law. Upon receiving information of a cognizable offence, they were legally obligated to record the Petitioner's statement and proceed in accordance with law. Respondents 4 to 8 have committed cognizable offences for which they are liable to be prosecuted. The refusal of police to record the Petitioner's statement is unlawful, arbitrary, and violative of his legal rights. The incident occurred within the jurisdiction of PS Shahdadpur, and the Petitioner is also a resident of the same jurisdiction; therefore, the learned court had proper jurisdiction to entertain the application. Despite the above facts, learned Additional Sessions Judge, Shahdadpur dismissed the application solely on the ground of prior civil litigation between parties, ignoring that a cognizable offence can occur even during pendency of a civil dispute.

4. Learned counsel for the petitioner submitted that the impugned order dated 06.10.2025 is unlawful, unjust, and contrary to the principles of natural justice, and is therefore liable to be set aside; that the Petitioner has clearly alleged commission of cognizable offences by Respondents 4 to 7 involving theft of mud and three babul trees from his land; that learned Additional Sessions Judge wrongly discarded these allegations merely on the basis of existing civil litigation, although the existence of a civil dispute cannot justify refusal to proceed against cognizable offences; that learned Judge failed to consider or discuss the police report, which directly supported the Petitioner's version, rendering the impugned order defective and unsustainable. Respondents 4 to 7 have no joint ownership or legitimate claim over the Petitioner's land. Their earlier possession was based on a fabricated sale agreement that stood cancelled in civil proceedings, after which possession was restored to the Petitioner. Hence, dismissing application relying on civil dispute was wholly unjustified.

5. Police summoned both parties and recorded their statements. The petitioner stated that earlier civil litigation over the land bearing had already been decided in his favour and possession was handed over to him. He alleged that on 21.08.2025 at 12:00 PM, the proposed accused, along with unknown persons, unlawfully dug mud and cut three babul trees from his land, and upon his arrival, fled after issuing threats while taking away the trees and mud on tractor trolleys. The proposed accused No.1 to 4

denied the allegations, claiming the land is jointly owned by the parties, with the petitioner holding 03-29 acres and the remaining area belonging to them. They asserted that they only removed mud and trees from their own portion for leveling the land and accused the petitioner of fabricating the incident due to ongoing civil disputes. The SHO PS Shahdadpur reported that an inquiry confirmed that 2 to 3 trees had been cut and mud removed, but both parties claimed ownership of the disputed land. In view of these conflicting claims, the SHO was directed to verify the true ownership. If the land is found to belong to the petitioner, his statement under Section 154 Cr.P.C. shall be recorded and legal action initiated; if not, appropriate action shall be taken against the petitioner.

6. The learned court, after considering the police report and submissions of both sides, observed that the applicant alleged receiving a call on 21.08.2025 informing him that the proposed accused were cutting trees and removing mud from his land. However, the court noted that the applicant was not personally present at the spot when the alleged act began, nor had he provided details such as the number of tractor trolleys or the names of persons involved in his complaint. The police report reflected that both parties claimed ownership of the disputed land, with the applicant owning only 03-29 acres while the proposed accused asserted joint ownership. The proposed accused also admitted removing mud and cutting trees but stated it was done on their own land, showing no apparent mala fide intent. The report further confirmed that the parties are cousins and have ongoing civil disputes over the same land. In view of the civil nature dispute and the lack of sufficient grounds to treat the matter as criminal offence, the trial court held that no case for cognizance was made out and dismissed the application as being without substance.

7. From the material on record, it is clear that the petitioner and the proposed accused have directly conflicting versions regarding the ownership of disputed land and the alleged removal of mud and cutting of three babul trees. While the petitioner insists that the acts were committed on his land, the proposed accused assert that these acts occurred on their own land, which they claim to jointly own with the petitioner. The police report also confirms that both parties claimed ownership of the same land, resulting in a genuine civil dispute over property rights. In such circumstances, the trial court correctly observed that the controversy is essentially civil in nature, arising from conflicting claims of ownership. A civil dispute over land, even if it involves allegations of wrongdoing, does not automatically convert into a criminal case unless a *prima facie* cognizable offence is established by unambiguous facts. Mere allegation of cutting trees and removing mud without independent verification of ownership or specific evidence of criminal intent cannot form a sustainable basis for criminal proceedings. Furthermore, the law recognizes that police and courts must distinguish between civil disputes and genuine criminal acts. Where the ownership of land is in dispute, courts have held that directing immediate registration of an FIR without proper evaluation may be inappropriate if the complaint appears to be a device to convert civil dispute into a criminal. Judicial discretion must be exercised to prevent misuse of

criminal procedures and to ensure that only those complaints disclosing clear cognizable offence are pursued.

8. Section 154 Cr.P.C. mandates that the police must register information which discloses a cognizable offence, and the refusal to do so may be unlawful if the offence is clear on the face of complaint. However, when the facts themselves are contested or hinge on property ownership, the proper remedy in many cases is to first resolve the civil dispute or establish ownership before treating the matter as criminal. This is because the underlying element of criminal liability in property offences is unauthorized interference with another's property, which cannot be determined conclusively without ascertaining who truly owns the land in question. The Supreme Court in *Muhammad Bashir v. Station House Officer, Okara Cantt* has held that police are ordinarily bound to register an FIR when information discloses a cognizable offence and cannot refuse or delay registration merely on subjective evaluation of credibility. However, the courts have also consistently recognized that a direction to register an FIR cannot be issued mechanically where the complaint itself does not *prima facie* disclose a clear cognizable offence independent of unresolved civil disputes. Applying these legal principles, the trial court's conclusion that no case for cognizance was made out at this stage is supported by law. The petitioner's allegations remain contested and intertwined with civil claims of land ownership, and in the absence of clear admissible evidence showing that the alleged acts occurred on land belonging exclusively to the petitioner, the matter cannot be converted into a criminal offence. Therefore, the learned court's dismissal of the application as being without substance is a reasonable exercise of judicial discretion. Thus no case for indulgence in the matter is made out. This petition is dismissed.

JUDGE

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