IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Miscellaneous Application No.993 of 2026

Applicants	:	1. Muhammad Ali Zafar son of Malik Zafar 2. Faiz Uddin Usmani son of Ala Uddin Usmani *Through* M/s. Muhammad Sami and Asif Ali, Advocates.
Respondents 1to3	:	The State *Through* Mr. Zahoor Shah, Addl. P.G. Sindh.
Respondent 4	:	Ahmed Ali son of Muhammad Ali *Through* Mr. Faiz Durrani, Advocate.
Date of hearing	:	04.11.2026
Date of order	:	12.11.2026

O R D E R

KHALID HUSSAIN SHAHANI, J. **-** Applicants Muhammad Ali Zafar and Faiz Uddin Usmani invoke the inherent jurisdiction of this court, assailing the order dated 22.09.2026 passed by the learned VIII Civil Judge and Judicial Magistrate, Karachi South, declining the investigating officer's recommendation for disposal of FIR No.333/2026, Police Station Boat Basin, under "A" class and taking cognizance of offences under sections 365, 448, 452, 427, 511 and 506-B read with section 34, P.P.C. They seek annulment of that order and quashment of the consequential proceedings to their extent.

2. The prosecution case originates from a dispute concerning Plot No.BC-04, Block-1, Scheme 5, Clifton, Karachi. Respondent No.4, Ahmed Ali, alleged that during the night intervening 14/15.05.2026 armed persons restrained his watchman, Saif-ur-Rehman, removed him in the complainant's Toyota Surf and occupied the plot. Upon receiving information through his supervisor, Janat Gul, the complainant reached the property, found its gate locked and an ownership board removed, and confronted the persons present after his driver opened the gate. Those persons allegedly attributed their presence and instructions to the applicants and threatened the complainant and his companions. The FIR also referred to a telephone number and video material depicting the unidentified participants.

3. The applicants assert that the prosecution is an instrument of pressure in a property dispute. They rely upon the original allotment to Hajra Bai, the

subsequent KDA mutation in favour of Muhammad Asif, an agreement dated 17.10.2023, payment and possession receipts, and Asif's statement acknowledging the transaction. Their counsel contended that neither the watchman's judicial statement nor the remaining investigation material directly identifies either applicant as a participant; that the alleged perpetrators remain unidentified; and that no reliable identification, electronic, forensic or telecommunication material establishes the requisite nexus. The earlier "B" class and subsequent "A" class recommendations; the Police-15 verification and third-party registration of the vehicle and telephone number were also pressed into service.

4. Respondent No.4 opposed final quashment, maintaining that a proprietary claim cannot answer independently supported allegations of abduction, intimidation and forcible interference with possession. He nevertheless expressly acknowledged that the watchman's supplied statements do not directly identify the applicants as his abductors and did not defend the contrary description in the impugned order. He further disputed non-production of documentary and electronic material, referring to Diary No.23-A dated 23.08.2026 concerning receipt of 189 pages and a memorandum dated 26.08.2026 concerning seizure of an 8 GB Kingston USB. Alternatively, he sought reconsideration of the police report upon the complete record.

5. Having heard learned counsel and the learned Deputy Prosecutor General and examined the record, the principal questions are whether the impugned order rests upon a faithful appraisal of the material and, if not, whether the appropriate relief is final termination of the proceedings or a confined corrective order.

6. The jurisdiction preserved by section 561-A, Cr.P.C., is exceptional and curative. It cannot ordinarily supplant the remedies available under sections 249-A and 265-K, Cr.P.C., or convert this Court into a forum for determining disputed facts before trial. PLD 2016 SC 55[1] and PLD 2013 SC 401[2] underscore that restraint. The supplied orders in Criminal Miscellaneous Applications Nos.S-213/2021 and S-120/2022, Criminal Revision Application No.S-158/2018 and C.P. No.D-2301/2023 proceed upon the same ordinary rule.

---

[1] *Muhammad Farooq v. Ahmed Nawaz Jagirani and others*
[2] *Director-General, Anti-Corruption Establishment, Lahore and others v. Muhammad Akram Khan and others*

7. That rule does not extinguish the inherent power where admitted and patent circumstances disclose that continuation would itself occasion abuse. In 2000 SCMR 122[3], exceptional intervention without first requiring recourse to sections 249-A or 265-K, Cr.P.C., was recognized where no offence emerged from the admitted record. The supplied report of 2026 SCMR 1379[4] similarly illustrates intervention where the essential ingredients of criminal breach of trust were absent. The Supreme Court's exercise of constitutional power in that matter must, however, be distinguished from this Court's statutory jurisdiction. The controlling distinction is between correcting a patent defect and adjudicating an unresolved defence.

8. An investigating officer's opinion under section 173, Cr.P.C., neither binds the Magistrate nor determines criminal liability. The Magistrate must exercise independent judgment under section 190, Cr.P.C., upon the facts and material reported. PLD 1967 SC 425[5], 2004 P.Cr.L.J. 1023[6] and 2015 P.Cr.L.J. 1329[7] support that proposition. Judicial independence, however, requires scrutiny rather than automatic disagreement: nomination in the FIR cannot dispense with identifying sufficient grounds for proceeding against the particular person.

9. The distinction between accepting a negative police report and judicially taking cognizance must also be maintained. *Talha Yousuf v. Syed Muhammad Ahsan and others*, Criminal Miscellaneous Application No.242/2024, and *Muhammad Sharif v. The State*, Criminal Miscellaneous Application No.S-562/2024, concerned acceptance of closure reports. Their discussion of the administrative character of such acceptance cannot indiscriminately govern an affirmative order taking cognizance. Their insistence upon complete presentation of the investigation record and independent scrutiny nevertheless remains pertinent. Likewise, *Syed Muhammad Ali Shah v. The State and others*, Criminal Miscellaneous Application No.S-53/2025, cannot be read as altogether excluding cognizance upon an "A" class report. A prohibition against directing the police to formulate a predetermined report is distinct from the Magistrate's authority to assess the reported facts independently.

---

[3] *Miraj Khan v. Gul Ahmed and others*
[4] *Liaqat Ali v. The State*
[5] *Falak Sher v. The State*
[6] *Farooq Sumar v. The State*
[7] *Gul Muhammad v. The State*

10. The decisive infirmity appears in paragraph 3 of the impugned order, which treats Saif-ur-Rehman's statement under section 164, Cr.P.C., as specifically describing his removal and release by the nominated accused. The supplied statement attributes the acts to unknown persons; it does not name or directly identify either applicant. This limitation is acknowledged in respondent No.4's objections. The statement may support the occurrence of coercive restraint and removal, but it does not, by itself, establish the applicants' identity or participation. The impugned order conflates these distinct propositions and employs that misreading as a material reason for proceeding against them.

11. The later statement dated 09.09.2026, recording the watchman's inability to identify the persons concerned, required corresponding consideration. The other supplied statements also demanded identification of their actual connecting content rather than a collective assertion that they supported the case against the applicants. This does not require a meticulous assessment of credibility or a premature trial; it requires an accurate account of what the witnesses have stated.

12. Conversely, absence of direct identification does not conclusively exclude liability through established instigation, intentional assistance or concerted participation. The FIR attributes instructions to the applicants through words allegedly spoken by persons at the plot. The identity of those persons, the circumstances and legal relevance of their statements, and any corroborative material must therefore be examined. Section 34, P.P.C., cannot be invoked merely because the applicants claim a common proprietary interest; nor can abetment be inferred from association or suspicion. 2011 P.Cr.L.J. 452[8] illustrates the necessity of material supporting an allegation of instigation. 2002 MLD 726[9], though arising from a defamation complaint, likewise emphasizes that criminal process requires its foundational facts. Neither decision warrants dispensing with examination of material whose production and treatment remain disputed here.

13. The applicants' property documents are relevant to their explanation but are not conclusive of title, possession or immunity from criminal liability. The agreement names Faiz Uddin Usmani as vendee and Muhammad Ali Zafar as a witness; it does not, without further explanation, record a joint purchase. Its payment and possession provisions, the numerical and

---

[8] *Abdul Hakeem v. The State*
[9] *Muhammad Ali and another v. Muhammad Aslam and another*

verbal discrepancy in the possession receipt, and its stamp particulars require reconciliation. These features do not themselves establish fabrication. Equally, KDA verification of Muhammad Asif's recorded interest is neither a mutation in favour of the applicants nor a determination of possession on the relevant night. The competing civil rights must remain for the competent forum. A proprietary claim does not authorize coercion, while the existence of that claim does not prove its claimant's participation in coercive acts.

14. The asserted absence of electronic material cannot be accepted without accounting for the USB said to have been seized on 26.08.2026. Recorded production is distinct from authentication and probative value. Its contents, source, integrity, custody and any examination undertaken must be ascertained; receipt alone establishes neither the identity of a speaker nor the truth of a conversation. The same applies to the 189 pages reportedly received during investigation. *Muhammad Sharif* is relevant precisely because material recorded as available cannot be omitted from judicial consideration and then treated as nonexistent. Article 164 of the Qanun-e-Shahadat Order, 1984, permits consideration of material obtained through modern devices, subject to lawful proof.

15. The technical objections also require precision. Whereas the FIR attributes the Police-15 report to the complainant, the later statements identify Tanzeel as the caller. A search restricted to the complainant's numbers does not necessarily exclude such a call; the underlying request, search parameters and available call and dispatch record must be considered. Third-party registration of the vehicle or SIM neither establishes nor conclusively excludes use by an applicant. Absence of CDR, forensic or identification corroboration remains a relevant limitation, but a missing connection cannot be supplied by conjecture, nor can one particular mode of corroboration invariably be demanded irrespective of the allegation.

16. The statutory ingredients require separate attention. Section 365, P.P.C., entails kidnapping or abduction with the prescribed intention of secret and wrongful confinement. Sections 448 and 452 require house-trespass within the meaning of section 442; a vacant enclosed plot does not automatically satisfy that requirement without examination of its structures and use. Section 427 requires the relevant mischief and qualifying loss; section 506-B requires the alleged threat, requisite intention and attribution; and section 511 requires identification of the attempted offence and an act towards its commission. Reproduction of the FIR provisions

cannot substitute for this provisional legal assessment. Nor could the transaction documents, official verification and recorded statements all be disposed of under a generalized characterization of the applicants' position as an alibi.

17. The earlier "B" class and later "A" class recommendations also carry different premises and cannot cumulatively be treated as declarations that no occurrence took place. Neither amounts to acquittal. Their supporting reasons must be examined alongside the remaining material. Similarly, the legality of non-bailable warrants is severable from the sufficiency of grounds for cognizance. The impugned order does not explain why immediate coercive process was necessary against persons not sent up for trial, and the supplied record does not disclose consideration of less restrictive means of securing attendance.

18. The impugned order thus cannot be sustained upon its existing reasoning. Its material misreading is not cured merely by referring the applicants to an eventual remedy before the trial court. Nevertheless, the unresolved questions concerning the electronic exhibit, documentary production and alleged instructions preclude a final conclusion that the prosecution must necessarily fail. The appropriate course is fresh consideration upon the complete record, without compelling either acceptance of the police recommendation or continuation of proceedings against the applicants.

19. Consequently, this application is partly allowed. The order dated 22.09.2026, together with the consequential process issued against the present applicants, is set aside. The matter is remitted to the learned VIII Civil Judge and Judicial Magistrate, Karachi South, to reconsider the report under section 173, Cr.P.C., after obtaining the complete relevant investigation record and affording an opportunity of hearing to the complainant, the prosecutor and the applicants through counsel. The investigating officer shall account particularly for the documents referred to in Diary No.23-A dated 23.08.2026 and the USB referred to in the memorandum dated 26.08.2026, including its custody and examination. The relevant Police-15 verification, KDA material and transaction documents shall also receive consideration; use of case diaries shall remain subject to section 172, Cr.P.C.

20. A fresh speaking order shall preferably be passed within thirty days of receipt of this order and the relevant record, separately addressing the alleged occurrence, each applicant's nexus and the applicable offences. Any further investigation considered necessary shall be ordered within the

limits of law, without prescribing its conclusion. Pending that decision, no coercive action shall be taken solely pursuant to the order and warrants hereby set aside. Any fresh process shall be determined independently in accordance with law.

21. Final quashment and unconditional termination of proceedings are declined at this stage. These observations neither determine civil title nor pronounce upon the truth of the occurrence or either applicant's guilt. The police recommendation remains open to independent consideration, and the prosecution's burden remains undisturbed. The application and pending miscellaneous applications stand disposed of accordingly.

J U D G E