

ORDER SHEET
IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Criminal Misc. Application No.S-85 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For hearing of M.A No.3503/2017.
- 2. For hearing of main case.

01-10-2025

Mr. Tahseen Ahmed H. Qureshi, advocate for the Applicants No.1&4.

None is present on behalf of the respondent.

Mr. Neel Parkash, Deputy Prosecutor General Sindh.

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Amjad Ali Sahito, J. Through this Criminal Miscellaneous Application, the applicant has impugned the Judgment dated 04.05.2017 passed by the learned Sessions Judge, Mirpurkhas, in Criminal Revision Application No.05 of 2017, whereby he dismissed the Criminal Revision Application and maintained the order dated 29.04.2017 passed by the learned Magistrate.

Learned counsel for the applicant contended that the learned trial Court, while entertaining the direct complaint, heard only the counsel for the complainant and straightaway proceeded to bring the case to trial, thereby ignoring the mandatory procedure provided in Chapter XVI of the Code of Criminal Procedure. He further argued that under Section 200 Cr.P.C., once a Magistrate takes cognizance of an offence on a complaint, he is bound to examine the complainant on oath, and the substance of such examination must be reduced into writing and signed both by the complainant and the Magistrate. Thereafter, under Section 202 Cr.P.C., the Magistrate is required to examine the witnesses, if any, and after considering such material, pass an appropriate order in accordance with law. In the present case, however, the learned Magistrate, without recording the statement of the complainant and without examining the witnesses, directly took cognizance and proceeded with the complaint, which is in clear violation of Sections 200 and 202 Cr.P.C. Therefore, the learned trial Court

acted illegally, and the impugned proceedings are liable to be set aside.

On the other hand, learned D.P.G. has supported the impugned judgment and order passed by the courts below.

From a perusal of the record, it transpires that one Allemuddin had filed a direct complaint before the learned Magistrate, and the Magistrate, after hearing the counsel for the complainant, directly brought the case to trial, which is in violation of the mandatory provisions of Section 200 Cr.P.C. The learned Magistrate neither recorded the statement of the complainant on oath nor examined the witnesses before taking cognizance. Since the procedure prescribed under Sections 200 and 202 Cr.P.C. was not followed by the learned Civil Judge & Judicial Magistrate-I, Mirpurkhas, nor properly scrutinized by the learned Sessions Judge, Mirpurkhas, the instant Criminal Miscellaneous Application is hereby allowed. Consequently, the judgment and orders passed by the courts below are set aside, and the matter is remanded back to the trial Court for decision afresh in accordance with law.

JUDGE

Adnan Ashraf Nizamani