

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Criminal Miscellaneous: Application No. S-30 of 2024
Abdul Hakeem v. The State & others.

Date	Orders with signature of Judge
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1. For orders on office objections 'A'.
2. For hearing of main case.

10-08-2026.

Mr. Athar Abbas Solangi, Advocate for applicant.
Mr. Rafique Ahmed K.Abro, Advocate for respondent
No.4.
Mr. Nazir Ahmed Bangwar, Deputy Prosecutor General.

Ali Haider 'Ada' J:- Through the instant application, the applicant/complainant has called in question the order dated 02.12.2023 passed by the learned Judicial Magistrate-II, Mehar, in Summary Proceedings No.119 of 2023, whereby the learned Magistrate agreed with the report submitted by the Investigating Officer and approved the disposal of Crime No.337 of 2023 under "C" Class. The aforesaid crime was registered for offences punishable under Sections 506(ii), 147, 148, 149, 504 and 427, PPC.

2. The crux of the complainant's case, as set out in the FIR, is that on 08.10.2023, the accused persons, duly armed with weapons, allegedly trespassed upon the relevant property, cut trees standing thereon, engaged in a scuffle with the complainant party and extended threats of dire consequences. The incident was reported to the police on 09.10.2023.

3. Learned counsel for the applicant contends that the learned Magistrate, while considering the summary submitted by the

Investigating Officer, exceeded the scope of the jurisdiction vested in him by recording findings akin to those which a trial Court could properly render after appreciation of evidence. According to learned counsel, the learned Magistrate mainly relied upon the alleged non-availability of the land record and, on that basis, approved the "C" Class report. In contrast, such a disputed factual aspect could not have been conclusively determined at the stage of consideration of the police report.

4. Conversely, learned counsel appearing for respondent No.4 supports the impugned order and submits that the FIR was false and concocted. It is contended that the Investigating Officer, after conducting a lawful investigation and considering the material available on record, submitted the "C" Class report, which was thereafter duly considered and approved by the learned Magistrate; hence, no interference is warranted.

5. Learned State Counsel, however, does not support the impugned order. He submits that the material collected during investigation, including the statements of the prosecution witnesses, supports the version of the complainant and, therefore, the matter required further proceedings in accordance with law. He further contends that the learned Magistrate, while considering the police report, entered into an assessment of the merits of the allegations in a manner which falls within the domain of the trial Court.

6. Heard the learned counsel for the parties and perused the record.

7. Upon examination of the impugned order, it appears that the learned Magistrate principally declined to accept the prosecution version on the ground that the land record had not been produced during investigation and, consequently, concluded that the allegations levelled in the FIR lacked substance. Such an approach was not legally sustainable. The question whether the complainant had, or otherwise had a lawful interest in, the property in question,

and whether the absence or otherwise of land record affects the credibility of the prosecution case, are matters which may require appreciation of evidence. Such matters cannot ordinarily be conclusively determined at the stage of considering a police report, particularly where the allegations disclose the commission of cognizable offences, and there is other material collected during investigation requiring consideration.

8. It is settled that a Judicial Magistrate, while exercising jurisdiction over a police report submitted under Section 173, Cr.P.C, is not bound to mechanically accept the opinion of the Investigating Officer. The Magistrate is competent, in accordance with law, to agree or disagree with the conclusion drawn by the police and to pass an appropriate order upon independent consideration of the material placed before him. However, such jurisdiction must be exercised judicially and within the parameters prescribed by law. The Magistrate is not required, at that stage, to conduct a detailed appreciation of evidence or to record findings of the nature which ordinarily fall within the exclusive domain of the trial Court.

9. In the present case, the learned Magistrate, instead of examining whether the material collected during investigation disclosed sufficient grounds for proceeding further in accordance with law, proceeded to conclude the substance of the allegations primarily on account of the alleged non-production of the land record. Such an approach effectively amounted to an adjudication upon a disputed factual aspect at a pre-trial stage. The learned Magistrate also failed to properly consider the statements of the prosecution witnesses and other material collected during investigation which, according to the record, supported the complainant's version. At this stage, the Court was required to examine the material for the limited purpose of determining whether the allegations were supported by sufficient prima facie material warranting further proceedings, rather than undertaking an elaborate evaluation of the probative value of such evidence.

10. The Hon'ble Supreme Court in Mst. Khalida Bibi v. Nadeem Baig (PLD 2009 SC 440) has also emphasized the parameters governing the consideration of a police report and the duty of the Magistrate to exercise independent judicial discretion.

11. Consequently, the instant application is allowed. The impugned order dated 02.12.2023 passed by the learned Judicial Magistrate-II, Mehar, in Summary Proceedings No.119 of 2023, as well as the order whereby Crime No.337 of 2023 was approved for disposal under "C" Class, are hereby set aside. The matter is remitted to the learned Judicial Magistrate-II, Mehar, for consideration afresh in accordance with law, keeping in view the observations made hereinabove. The learned Magistrate shall independently examine the material available on the record and pass an appropriate order in accordance with law.

JUDGE

Irshad Ali M/Steno