

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**PRESENT:-**  
**Mr. Justice Naimatullah Phulpoto;**  
**Mr. Justice Shamsuddin Abbasi.**

**Constitutional Petition No. D – 5219 of 2016**

Yousuf Ali Khan Ghouri son of  
M. Ehteram Ali Khan Ghouri. ... Petitioner

Versus

The State & 2 others. ... Respondents

Petitioner Through Mr. Abid Akram,  
Advocate.

Respondents No.1 & 2 Through Mr. Muhammad Iqbal Awan,  
DPG.

Respondent No.3 In person

Date of hearing 07.03.2018

Date of Judgment 16.03.2018

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**ORDER**

**Shamsuddin Abbasi, J:** Petitioner has assailed the order dated 19.09.2016, passed by the learned Civil Judge/Judicial Magistrate-IX, Malir, Karachi, in FIR No.352 of 2016 under Sections 392, 506-B, 504 & 34, PPC registered at police station Shah Latif Town, Karachi, on the final report submitted by investigating officer under 'B' class, whereby the learned Magistrate did not agree with such report and directed the investigating officer to submit final report under Section 173, Cr.P.C. in a prescribed form within 10 days.

2. Feeling aggrieved by the aforesaid order, the petitioner has filed this petition for setting aside order dated 19.09.2016 and direction to the Respondent No.1 to accept the report of investigating officer under 'B' class.

3. Precisely, the case of the petitioner is that on 17.08.2016 Respondent No.3/complainant, Mir Hazar Bajiskani, on account of previous enmity, lodged a report against petitioner and others, vide FIR No.352 of 2016 under Sections 392, 506-B, 504 & 34, PPC at police Station Shah Latif Town, Karachi, stating therein that he is eye-witness of Crime No.395 of 2016, he was receiving constant threats of dire consequences from unknown persons, consequently he left Karachi and went to his town Kashmore. It is alleged that after some period, he returned back to Karachi. On 07.08.2016 at about 8.15 pm, the Respondent No.3/complainant was present near Jama Masjid Aqsa, Sector 17B, Shah Latif Town, Karachi, where it is stated that four persons armed with firearms appeared, out of them two were identified as Rehan and Yousuf, and two were unknown persons. They used abusive language, extended threats of murder and robbed cash of Rs.1,300/- and mobile phone from him and fled away. Complainant lodged aforesaid FIR at Police Station.

4. After registration of the FIR, the investigation was entrusted to ASI Sohail Ahmed, who conducted investigation and found the case of Respondent No.3/complainant as false and recommended for disposal of the case under 'B' class, but the learned Civil Judge/Judicial Magistrate-IX, Malir, Karachi, declined to accept such report and directed the investigating officer to submit final report under Section 173, Cr.P.C. within 10 days.

5. Learned counsel for the petitioner submits that Respondent No.3/complainant, Mir Hazar Bajiskani, is a front man of Umair Ahmed Khan and he has lodged a false FIR on his instructions, who had enmity with the petitioner. He further submits that not only this case, but series of cases have been registered against the petitioner party, some cases have been disposed of under

'B' class and some cases have been decided on merits and ended in acquittal of the petitioner. In support of this contention, he has placed copies of the judgments/orders on record. Learned counsel also submits that the investigating officer has rightly recommended for disposal of the case under 'B' class on the basis of CDR of mobile number collected by him. Learned counsel lastly submitted that the impugned order is unjust, improper and without any sound reason, hence the same may be set-aside.

6. On the other hand, learned DPG has controverted the submissions raised by the learned counsel for the petitioner and contended that the witnesses have supported the case of the Respondent No.3/complainant and the learned Magistrate has rightly exercised his powers and took cognizance of the offence.

7. Respondent No.3/complainant present in person adopted the arguments advanced by the learned DPG and prayed for dismissal of the petition.

8. Heard arguments of respective parties and perused the entire material available before us.

9. Complainant has implicated the accused in FIR. PWs have implicated the accused in their 161, Cr.P.C. statements. Duty of investigation officer was only to collect evidence, not to decide the case. The Magistrate is very much empowered under Section 190, Cr.P.C. to take cognizance of the offence and he is not bound to accept the investigation conducted by police. The Magistrate has to apply his judicious mind and very much competent to take cognizance of the offence on the final report. Reliance is placed on the case of *Safdar Ali versus Zafar Iqbal and others* (2002 SCMR 63), wherein the Hon'ble Supreme Court of Pakistan has observed as under:-

*“We are of the considered view that the order passed by the learned Illaqa Magistrate dated 8.11.1997 is neither perverse nor capricious but on the other hand it has been passed after having an in-depth scrutiny of the entire record and thus, it cannot be termed as non-speaking as held by the learned High Court in the impugned judgment and being unexceptionable it hardly calls for any interference. We are inclined to convert this petition into appeal and accordingly while allowing the same the impugned order, dated 11.05.2001 is hereby set aside being violative of the relevant provisions of law and consequently order, dated 8.11.1997 is restored. The learned trial Court is directed to proceed with the case in accordance with law”.*

10. In another elaborate judgment, rendered by the apex Court, in a case of *Muhammad Farooq versus Ahmed Nawaz Jagirani and others* (PLD 2016 Supreme Court 55), it has been held as under:

*“Exercise of jurisdiction under Section 561-A, Cr.P.C. by the High Court is akin to the exercise of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973; exercise of such jurisdiction is not to be exercised in routine and or as a matter of course merely because such jurisdiction is available and or could be exercised. Exercise of inherent jurisdiction is dependent on non-availability of alternate and efficacious remedy and or existence of some extraordinary circumstances warranting exercise of such jurisdiction by-passing such alternate remedy by the High Court. Another rule of propriety, that has evolved by precedent law must not lose sight is that where two Courts have coextensive or concurrent jurisdiction, than the propriety demands that jurisdiction of Court of the lower grade is to be invoked in the first instance”.*

11. For the reasons, discussed herein above, the impugned order is just, proper and based on overwhelming findings, hence calls for no interference by this Court. The petition is, therefore, dismissed.

JUDGE

JUDGE

Naeem