

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Misc. Application No.445 of 2023

Date	Order with signature of Judge
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Priority cases

1. For orders on office objection.
2. For hearing of main case.
3. For hearing of MA No. 7850/2023

20.11.2023

Mr. Abrar-ul Haque advocate for the applicant.
Mr. Munsif Jan advocate for the respondent.
Ms. Rubina Qadir APG.

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Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C, the applicants have assailed the legality of the order dated 15.06.2023 passed by the learned XVIth Judicial Magistrate West Karachi, whereby the learned Magistrate disagreed with the Investigating officer and opined that the material produced by the investigating officer is not sufficient to dispose of the case under B Class and directed to take cognizance of the offense.

2. It appears from the record that the complainant lodged F.I.R against the applicants, however, the investigating officer recommended the case to be disposed of under "B" class on the premise that no sufficient evidence against the applicants, regarding the commission of alleged offense could be brought on record as to enable him to submit charge-sheet in the subject crime, however, the learned Magistrate vide impugned order has declined to concur with his opinion and directed to take cognizance of the offense.

3. Learned counsel representing the applicants has submitted that an alleged incident took place on 08.02.2023 and was reported belatedly. He emphasized that the complainant alleged that on an aforesaid day, he left his house on a motorcycle for work and when he reached Tando Chowk Qiamkhani Colony Ittehad Town Karachi where he was allegedly kidnapped by the applicants for money claimed to have escaped away from their custody and then moved application to police and F.I.R of the incident was lodged. Per learned counsel, this story is concocted and managed. Learned counsel representing the applicants has submitted that the police have rightly investigated the matter by considering all the aspects and facts and reached the right conclusion that the case lodged by

the complainant was false and recommended the case under B Class. Per learned counsel complainant to save his skin from returning the borrowed amount filed an application for lodging the F.I.R to pressurize the applicants to withdraw from their claim. It also appears from the contents of F.I.R that there was dealing between parties on financial matters and the FIR was registered after considerable delay with deliberation and consultation in order to pressurize the accused from withdrawing the claim of their money. Per learned counsel for the applicants, the investigation was fairly conducted by the investigating officer.

4. Learned counsel for the respondent/Complainant argued that the investigating officer had not investigated the case fairly and disposed of the report under "B" class by hiding and ignoring the facts of the case. He further argued that eyewitnesses fully supported the version of the complainant and evidence needs to be recorded in the case. He prayed for the dismissal of the instant criminal miscellaneous application.

5. Learned APG has supported the arguments made by learned counsel for the complainant and argued that People who signed Jirga failed to record their statement and the complainant moved an application against IO for not conducting the investigation fairly as per law and he also made an application to SSP Investigation for change of investigation.

6. It appears from the record that the alleged incident of abduction of the complainant took place on 08.02.2023 and was reported to police on 25.02.2023 after 16 days. The question involved in the present proceedings is whether the learned Magistrate has sufficient material to take cognizance of the offense when the Investigating Officer recommended the case for disposal under B Class as he found the complaint to be false on the premise that no incident of alleged abduction had taken place.

7. The applicant has filed the statement dated 20.11.2023 supported by certain documents and submitted that the subject FIR was lodged under the direction of the learned VII Additional Sessions Judge Karachi West vide order 23.02.2023 wherein it was mandated to the Investigating officer that if during investigation it comes on screen that the complainant without true substance registered a false FIR then proceeding under Section 182 PPC would be taken against him and this is the reason that the Investigating Officer found nothing on record to substantiate the allegation leveled by the complainant.

8. Prima facie the Investigation Report suggests that there was a business transaction between the parties; the FIR was lodged and nothing was brought on

record against the applicants and finally the case was recommended under B Class, however, the Judicial Magister did not concur within view of Investigating officer.

9. Before attending to the merits of the case, it is deemed appropriate to first discuss the difference between the role of the Investigating Officer and that of the Magistrate in investigation and the outcome thereof, which is germane to the case.

10. Foremost, there are three classes provided for disposal of a State Case namely (i) A-Class, (ii) B-Class and (iii) C-Class and the report of investigation under Section 173 of Cr.P.C. has to be filed either in the form of a charge-sheet if the accused is sent for trial or in the form of a Final Report, in other cases. As per practice/usage, the Class "A", "B" and "C" are defined as CLASS 'A': FIR is true, but the accused is untraceable, therefore, Magistrate can dispose of the case till the appearance/arrest of the accused; CLASS 'B': FIR is maliciously false and after passing summary orders by directing the SHO to initiate proceedings for an offense punishable under Section 182, P.P.C. against the complainant/ person, who gives information, which he knows or believes to be false; and CLASS 'C': FIR can be disposed of being a non-cognizable offense.

11. Going ahead on the subject issue, primarily, every investigation is conducted concerning Chapter XIV of the Criminal Procedure Code as well as the relevant Police Rules. The vitality of the role of Investigating Officer cannot be denied because it is the very first person, who as per law, is authorized to dig out the truth too, without any limitations including that of the version of the informant/complainant. However, after registration of the FIR, the Investigation Officer has the authority to determine the truthfulness or falsehood of the allegations leveled against the accused but the same is subject to affirmation of the competent Court. If the Investigation Officer concludes that the allegations contained in the FIR are incorrect, he may refer the matter under section 63, Cr.P.C. to the Magistrate for discharge of the accused. The Police Officer has also the authority to release the accused in terms of section 169, Cr.P.C. if he concludes that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to the Magistrate. Such Officer shall, if such person is in custody, release him on executing a bond with or without sureties and direct him to appear, if and when required before the Magistrate empowered to take cognizance of the offense. It is then the Magistrate to pass such order as deemed appropriate under section 173,

Cr.P.C. for discharge of such bond or otherwise as he deems fit. On the subject issue the authoritative view of the Supreme Court, given in the case of Mst. Sughran Bibi v. The State (PLD 2018 SC 595), is clear in its terms and needs no further deliberation on my part.

12. In principle upon conclusion of the investigation the report to be submitted under section 173, Cr.P.C. is to be based upon the facts discovered during the investigation irrespective of the version of the incident, advanced by the first informant or any other version brought to the notice of the investigating officer by any other person.

13. From above, it is quite clear that an Investigating Officer is not bound to base his conclusion on the version of the informant or defense but on facts, discovered during the investigation. Such conclusion shall be submitted in the shape of a prescribed form, as required by section 173 of the Criminal Procedure Code.

14. A bare perusal of the above provision explicitly makes it clear that after every investigation, a police report shall be forwarded to the Magistrate so empowered to take cognizance thereon which must include all details, as directed in the above provision. However, it is nowhere described as to how the Magistrate shall deal with such report, it empowers the Magistrate to agree or disagree with the act of Investigating Officer in releasing an accused during investigation under section 173, Cr.P.C.

15. The Supreme Court in the case of Bahadur v. State PLD 1985 SC 62 wherein it has authoritatively been laid down that a Magistrate in canceling a registered criminal case is required to act judicially in that he has to act fairly, justly and honestly, a duty common to the exercise of all state powers, there is no lis before him, there is no duty to hear the parties, there is no decision given, no finality or irrevocability attaching to the order. It was ruled that the party is left free to institute a complaint on the same facts and the same Magistrate does not even after passing such an order render himself functus officio. On the contrary, he is quite competent to entertain and deal with such a complaint on material presented to him. After such assessment, the Supreme Court concluded that these peculiarities establish beyond doubt that in so concurring with a report submitted under section 173, Cr.P.C. he does not function as a criminal court. The Supreme Court has expressed the view that some of the powers of the Magistrate are administrative, executive, or ministerial and he discharges these duties not as a court but as a 'personal designate'. This view was further followed in the cases of Arif Ali Khan v.

State 1993 SCMR 187, Muhammad Sharif v. State 1997 SCMR 304, and Hussain Ahmed v. Irshad Bibi 1997 SCMR 1503.

16. Ratio decidendi in all the above cases appears to be that since the Magistrate while concurring with a police report submitted under section 173, Cr.P.C. does not act as a Criminal Court inferior to the Court of Session and the High Court, his order cannot be revised and modified under the provisions of sections 435, 439, Cr.P.C. but in that case it is amenable to the inherent jurisdiction of the High Court under section 561-A, Cr.P.C. provided the order amounts to abuse of process of Court. However, it is made clear that the discharge of an accused by a Magistrate is not legally possible after taking cognizance of the case. It may also be added here that after taking cognizance by the trial court only three results are possible in a criminal case, firstly conviction of the accused either upon admission of guilt by him or based on the evidence led by the prosecution; secondly, the acquittal of the accused either under sections 249-A/265-K, Cr.P.C. or based on the failure of the prosecution to prove its case on merits beyond a reasonable doubt; and thirdly, withdrawal from prosecution by a Public Prosecutor under section 494, Cr.P.C.

17. However in the present case, the final report under "B" Class submitted by the Investigation Officer, has been disapproved by the learned Magistrate vide order dated 15.06.2023 on the premise that witnesses supported the case, however the learned Magistrate ignored the factum that Investigating Officer did not find any evidence of abduction of the complainant as such the offense punishable under Section 365 PPC could not be made out but the learned Magistrate insisted for trial of the accused on the aforesaid analogy. Primarily the learned Magistrate has failed to see the report of the Investigating Officer who conducted the investigation and after examining the witnesses by collecting other material opined that no case was made out. In such a situation this Court is left with no option but to concur with the view of the Investigating Officer who attempted to collect evidence of the alleged abduction of the complainant but there was no clue, as such no case for the alleged abduction of complainant is made out.

18. In view of the above facts and circumstances of the case, this criminal miscellaneous Application is disposed of in the terms that the summary order is set aside and the case of the applicant shall be treated to be disposed of under C class.

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