

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Misc. Application No. 633 of 2022

Date Order with signature of Judge

1. For orders on MA No. 12784/22
2. For hearing of Mian case.

20.11.2023

Mr. Amjad Hussain Shar, advocate for the applicant.
Ms. Rubina Qadir APG

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Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant Muhammad Ismail has assailed the legality of the order dated 30.09.2022 passed by the learned Ist Civil Judge & Judicial Magistrate Thatta in Criminal Case No. Nil of 2022 whereby report under section 173 Cr.P.C. submitted by the Investigating Officer in Crime No. 137 of 2022 of PS Makli registered for an offense punishable Under Section 380 PPC under 'C' class, was approved and the SSP Thatta was directed to initiate inquiry and take stern departmental action against the delinquent official an excerpt of the report is reproduced as under:-.

“By this order, I intend to dispose of instant report under section 173 Cr.P.C. by IO in Crime No. 137 of 2022 of PS Makli registered for offence punishable Under Section 380 PPC submitted under Section 173 Cr.P.C with the recommendations as 'C' class, through learned Prosecutor. Heard and perused. It is evident from the material available on record that the accused persons were discharge on 09.09.2022. Moreso, it is significant to mention here that during the course of the investigation nothing is come on record which could support the happening of the alleged incident For what has been discussed/stated above, I am of the humble view that prima facie no offence has been committed as alleged in the First Information Report by the complainant party, therefore instant report, is approved as 'C' class. Before parting this order it is imperative to mention here that learned ADPP for the state also highlighted that this Court has not issued any direction to discharge the case Record depicts that I.O. of me case shifts the burden over the Court by giving false impression as pointed out by learned ADPP for the state, surprising to note that such conduct of O raises eyebrows, so also failed to discharge his duty up to the mark which also creates hurdle in smooth functioning of the Court as well as misleading the Court. Further, perusal of the record shows that matters subjudice before this court and this court has not issued any verbal or written direction to I.O but as per the report under section 173 Cr.P.C by I.O shows that I.O has forwarded false information and malign the reputation of

this Court which is tantamount to gross negligence and offence punishable under section 166, 167, 175, 182, 186, 420, 468, 471 PPC. In view of the above facts and circumstances learned SSP Thatta is required to initiate inquiry and take stern departmental action against the delinquent official and submit the report before this Court within 07 days after receiving of this order.”

2. It is submitted by the learned counsel for the applicant that the opinion of the Investigation Officer was not binding upon the Magistrate but the Magistrate without applying the judicial mind concurred with the opinion of the Investigation Officer though not a single time respondent/accused remained in police custody as such recovery could not be effected from them and the case was erroneously recommended for C Class.

3. Ms. Rubina Qadir APG has supported the impinged order and submitted that there was an old enmity between the parties. It is also contended that there was no material against the accused to connect them in the commission of the offense. Lastly submitted that the Judicial Magistrate has rightly agreed with the opinion of the Investigation Officer.

4. I have carefully heard the learned counsel for the parties and perused the relevant record.

5. The Magistrate is empowered under section 173 Cr.P.C. to examine the material collected by the Investigation Officer during the investigation

6. Under the circumstances, I am of the humble view that there is no sufficient/tangible/material evidence available on record in support of the complainant/prosecution's allegations against the accused persons to implicate them, and even if cognizance is taken no positive result would be achieved. I.O. has rightly suggested for disposal of the instant case/crime in "C" Class, and the learned judicial magistrate has rightly concurred with the investigation carried out by the Investigating officer.

J U D G E