

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI
Constitution Petition No. 7977 of 2015
(Converted into Cr. Misc. Appl. No.146 of 2019 vide order
dated 29.03.2019)

DATE	ORDER WITH SIGNATURE(S) OF JUDGE (S)
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1. For hearing of main case.
2. For hearing of MA No.3097/2019.

01.11.2023

Mr. Muhammad Akbar, advocate for the applicant.

Mr. Saqib Khan advocate holds brief for Mr. Muhammad Nadeem Khan advocate for respondent No.6.

respondent No.6./Muhammad Nasir is present.

Mr. Talib Ali Memon, APG along with SI Muhammad Aziz P.S Preedy.

It is inter alia, contended by learned counsel for the applicant Muhammad Ashfaq that the trial court by the impugned order has allowed the final report under section 173 Cr.P.C., wherein the FIR No. 193 of 2007 registered for offenses under Section 384, 468, 420 and 471 PPC of P.S Preedy Karachi has been disposed of under B- class vide order dated 27.04.2007. He states that he would be satisfied if the impugned order is modified to the extent of canceling the case under C Class rather than B Class. An excerpt of the order is reproduced as under:-

“ I have carefully gone through the above submissions so also perused the police file. I see that the prosecution side has recorded the statement of the Witnesses under Section 161 Cr. P.C. and after proper inquiry submitted the subject report. A perusal of the police file, it also reveals that before lodging of this very FIR the accused had filed a complaint against the complainant with the Anti-corruption Establishment, it is also apparent from the record that there are civil litigation also pending for adjudication between the accused person and complainant before the Honourable Apex Court and there is obvious taiaf of a rift between them. Before parting with order any further I may say that the case law referred by the learned counsel for the complainant is distinguished from the facts and circumstances of present case, as such same is not attracted in this case. Being satisfied with the contents of report under Section 169 Cr.P.C as well as the

submission of the I.O. I hereby admitted such report as submitted by I.O.”

Respondent No.6./Muhammad Nasir who is present in court states that since sufficient time has elapsed as such he has no objection if the case is closed under C-Class.

Mr. Talib Ali Memon, APG agrees with the narration of the complainant.

From the perusal of the record, it appears that the Investigating Officer submitted a report in “B” class and the learned Magistrate approved the report, and consequent were/are required to be followed, however, the said report has been objected by the complainant on the premise that Investigation Officer conducted the defective investigation as the earlier report was for the disposal of the case under C class whereas the subsequent report shows disposal of the case under B Class this variance in the investigation report needs to be set at rest once for all, for the reason that the Investigation officer cannot blow hot and cold in the same breath.

Both parties have agreed to the disposal of the instant Criminal Miscellaneous application on the premise that the impugned order dated 27.04.2007 passed by the learned 3rd Judicial Magistrate Karachi South may be modified to the extent of conversion of the case from “B” class to “C” Class. The proposal seems to be reasonable and APG has candidly agreed to the aforesaid proposition.

In view of the consent of the parties, the impugned order 27.04.2007 passed by the learned 3rd Judicial Magistrate Karachi South is modified to the extent of conversion of a case from the “B” class to the “C” Class. The learned Magistrate shall do the needful accordingly.

The instant criminal Miscellaneous application is disposed of in the above terms.

JUDGE