

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Criminal Misc. Application No.1019 of 2023

---

DATE: ORDER WITH SIGNATURE OF THE JUDGE

---

1. For orders on office objection at A
2. For hearing of main case
3. For hearing of MA No.15632/2023

**17.05.2024**

Mr. Haq Nawaz Talpur, advocate for the applicant  
Mr. Mustafa Safvi, advocate for the private respondent  
Ms. Deeba Ali Jafferri, Assistant Advocate General  
Mr. Mumtaz Ali Shah, Assistant Prosecutor General for the State

-----

Based on the allegation of the theft of his bag containing certain chequebooks and papers from his car, the applicant lodged an FIR with PS Korangi Industrial Area Karachi. On investigation, it was recommended by the Investigating Officer concerned to be disposed of under `A` Class. Learned XXXth - Judicial -Judicial Magistrate East Karachi disposed of the same under `B` Class with direction to SHO PS Korangi Industrial Area Karachi to initiate proceedings u/s 182 PPC against the applicant vide order dated 04.12.2023, which is impugned by him before this Court by making the instant Crl. Misc. Application under Section 561-A Cr. PC.

It is contended by learned counsel for the applicant that the learned trial Magistrate has passed the impugned order by discussing the merits of the case without recording evidence, therefore, it is liable to be set aside.

Learned AAG and learned counsel for the private respondent by supporting the impugned order have sought dismissal of the instant CrI. Misc. Application by contending that it is filed incompetently by an attorney; on the date of the incident the applicant was out of the country; he to satisfy his grudge with the private respondent has lodged the FIR of the incident falsely with a delay of more than one year and it has rightly been cancelled by learned trial Magistrate under `B` Class. In support of their contentions, they relied upon the case of *Qasim v. Ghulam Mustafa alias Gulo and others* (2019 PCr.LJ 1249).

In response to the above, it was contended by learned counsel for the applicant that an FIR was quashed by the Division Bench of this Court on a petition filed by an attorney in the case of *Mst. Tasneem Abid Sheikh and another v. SHO Defence & others* (SBLR 2013 Sindh 199) and case of *Abdul Hafeez v. Usman Farooqui through his daughter Sharmila Farooqui and another* (2008 PSC (CrI.) 959).

Heard arguments and perused the record.

Admittedly, the report furnished by the Investigating Officer concerned was for the disposal of the subject FIR under `A` Class, which always remained open for further investigation. The learned trial Magistrate without considering such a report has disposed of the subject FIR under `B` Class by making irrelevant and unnecessary observations concerning the merits of

the case directing to initiate the proceedings u/s 182 PPC against the applicant, which could only be initiated on a direct complaint in terms of mandate contained by Section 195 Cr.PC. Consequently, the impugned order is set aside with a direction to the learned trial Magistrate to pass the same afresh by providing a chance of hearing to all the concerned.

The case law which is relied upon by leaned AAG and learned counsel for the private respondent is on distinguishable facts and circumstances. In that case, the complainant sought recording of his evidence through his attorney. In the instant case, the impugned order is illegal patently, therefore, the same could not be protected under the deception that it is challenged by the applicant through his attorney.

The instant Crl. Misc. Application is disposed of accordingly.

**JUDGE**

Nadir\*