

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

Criminal Miscellaneous Application No.S-288 of 2024

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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1. For orders on office objection
2. For hearing of main case
3. For hearing of M.A. 3658/2024

**06.08.2024**

M/s Muhammad Hashim Laghari and Syed Shafique Ahmed Shah advocates for applicant.

Mr. Hassnain Ali advocate for Akram @ Sheri.

Ms. Rameshan Oad, A.P.G.

**ZULFIQAR ALI SANGI, J** Through this Criminal Miscellaneous Application the applicant has challenged the order dated 08.05.2024 wherein learned Civil Judge & Judicial Magistrate-II Hyderabad has deleted section 324 PPC from the charge sheet submitted by the investigation officer.

2. Brief facts of the FIR are that complainant Mst. Naheed along with her sister in law Mst. Ghulam Fatima along with her sons each one Nishan Ali and Rohail and Furqan were present at their home on 13.03.2024 at 0115 where each one Mst. Rani, Shahzad having big knife (Bhagda) in his hand, Ghulam Shabbir having knife in his hand and Muhammad Akram @ Sheri and Ghulam Murtaza duly armed with pistols and two unknown persons with sticks in their hands entered in the house and started hurling abuses to them and extended threats that they would not spare them. Thereafter, accused persons caused kicks and lathies blows to the complainant party. Accused Muhammad Akram @ Sher and Ghulam Murtaza pointed their pistols upon them and asked that they would kill them while nephews of complainant namely Nishan Ali and Rohail tried to snatch pistols from the accused upon which Shahzad and Ghulam Shabir caused Bhagda and knife injuries to them and Furqan son of complainant. The complainant lodged FIR with police station Market Hyderabad on same date at 0200 hours.

3. After completing investigation, the IO submitted report u/s 173 Cr.PC for taking cognizance against the accused persons while deleting section 324 PPC and learned Magistrate agreed with the said report and took cognizance for offences u/s 114, 147, 148, 149, 137-A(i)(ii), 337-F(i)(ii)(vi) PPC, hence the applicant / complainant has filed instant miscellaneous application.

4. It is contended by learned Counsel for applicant/complainant that the learned Magistrate has passed the impugned order in slipshod manner; that the learned Magistrate did not issue any notice to the complainant party for personal

hearing and not scrutinized the statements and final medical certificates; that learned Magistrate was not empowered to remove / add any section at the time of final challan; that as per final challan the IO wrongly mentioned the section 337-F(iv) however as per the final certificate of the injured Rohail Ali, Rohail Ali received injury of section 337-F(vi) PPC which shows that the prosecution and learned Magistrate have not properly scrutinized the charge sheet. He, therefore, prayed for setting-aside the impugned order and requested for remand of the case. In support of his contention learned counsel relied upon 2021 P Cr. L J 242 and 2021 P Cr. L J 198.

5. Learned Assistant Prosecutor General Sindh opposed the contentions of learned counsel for applicant / complainant and prayed for dismissal of this application.

6. Heard learned counsel for the parties and have gone through the material available on record.

7. The law has now been settled that in a positive report of investigation officer in investigation referring the accused to a trial, the Magistrate has no jurisdiction to disagree with the said report by disposing of the case or deleting a particular section. When the investigation officer drawn his conclusion after collecting the material during the investigation that a particular offence or the case as reported has been made out for the Court to hold a trial thereon then the Magistrate is not competent to discard the same as it requires examination of witnesses. Therefore, it would be for the court, be it Magistrate's trial or the Sessions' trial, to apply its mind, in the trial, and decide whether the case is made out; or there is sufficient material to attract applicability of a particular section and then follow the procedure accordingly. The Magistrate's power to disagree with the opinion of Investigation Officer is limited to only reports disposing of the case or deleting a particular section. In such cases, the Magistrate by going through the material can from his own opinion disagreeing with the opinion of Investigating Officer and take cognizance of offence against the accused by accepting the Challan or restoring the deleted sections. The ratio laid down in ***Jalal and 2 others v The State and another (1972 SCMR 516)***, ***Habib v. The State (1983 SCMR 370)***, ***Abdul Hafeez Junejo vs. The State (SBLR 2010 Sindh 306)*** and ***Amanat Ali vs. 1<sup>st</sup> Civil Judge and J.M Daharki and others (YLR 2015 2312)*** postulates that the Magistrate has no power to dispose of the case recommended for trial by the Investigating Officer on the basis of his investigation. The same rule would be equally applicable in the case where the Magistrate proceeds to delete a particular provision, although the same has been opined to have been made out by the Investigating Officer on the basis of material collected in the investigation. The investigation of a criminal case falls within the exclusive domain of the police and if on the one hand independence of the judiciary is a hallmark of a democratic

dispensation then on the other hand independence of the investigating agency is equally important to the concept of rule of law. Undue interference in each other's roles destroys the concept of separation of powers and works a long way towards defeating justice as has been held by the Supreme Court in the case of **Muhammad Hanif vs. The State (2019 SCMR 2029)**. In the present case IO deleted Section 324 PPC as revealed from charge sheet available at page No.19 however the impugned order reflects that it was passed without awarding opportunity of hearing to the complainant which is totally against the natural justice.

8. Thus based upon the above discussion I am of the view that the Magistrate has passed order by violating the principle of audi alteram partem. Therefore, the impugned order dated: 08.05.2024 is set-aside and the case is remanded back to him for passing a fresh order keeping in view the ratio laid down by this court as well as by Supreme Court in the above cited cases, within 15 days after providing opportunity of hearing to complainant.

9. Accordingly, this CrI. Misc. Application along with pending application is disposed of in the above terms.

JUDGE