

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Misc. Application No.S-**647** of 2023  
(***Khadim Hussain v. The State & others***)

M/s Syed Tanveer Abbas Shah and Badaruddin Memon, Advocates along with applicants.

Mr. Anwar Ali Lohar, Advocate files power on behalf of respondents No.3 to 13.

Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

Date of hearing: **26-02-2024**

Date of decision: **26-02-2024**

### **ORDER**

**MUHAMMAD IQBAL KALHORO, J.-** FIR, amongst others, under section 324 PPC was registered on 18.06.2023 by complainant reporting an incident that occurred on 14.06.2023. It was duly investigated and Challan was submitted under the same section *inter alia* on 16.08.2023. Learned Magistrate while going through the papers, passed the order, on the same day, disagreeing with the conclusion of I.O by deleting section 324 PPC and taking cognizance in remaining offences against the accused. Thereby, keeping the case with himself as after deleting section 324 PPC, the case had become triable by the Magistrate. This order has been challenged by the applicant/complainant on the grounds, *inter alia*, that the Magistrate had no jurisdiction to pass such order and delete section 324 PPC summarily. It was within domain of learned Sessions Judge to decide in the trial whether section 324 PPC was made out or not and it was only he who could have sent back the case to the Magistrate for a trial after making such a conclusion.

2. He further submits that the Magistrate has jurisdiction to disagree with the conclusion of I.O only in the cases where negative reports have been filed before him disposing of the case and not in the cases where positive report holding that *prima facie* the case has been made out. He has relied upon the cases reported as *Muhammad Nasir Cheema v. Mazhar Javaid and others* (**PLD 2007 SC 31**), *Amanat Ali v. Ist Civil Judge and J.M Daharki and others* (**2015 YLR 2312**) and *Rab Nawaz v. The State and others* (**2017 PCr.LJ Note 195**) to support his arguments.

3. Learned counsel appearing on behalf of complainant and learned Deputy P.G have not disputed above legal position and have proposed that the Magistrate has *prima facie* erred in deleting section 324 PPC. Therefore, the case may be remanded back by setting aside the order with directions to the Magistrate to pass a fresh order.

4. It is settled, as per scheme of law, that in a positive report of I.O in investigation referring the accused to a trial, the Magistrate has no jurisdiction to disagree with him by disposing of the case or deleting a particular section. The conclusion drawn by the I.O that there is sufficient material to show that a particular offence or the case as reported has been made out for the Court to hold a trial thereon is always based on some material collected by him during investigation. The evidentiary value of which the Magistrate is not competent to discard on taking a summary tour of material before him. 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.

5. The Magistrate's power to disagree with the opinion of I.O 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 form his own opinion disagreeing with the opinion of I.O and take cognizance of offence against the accused by accepting the Challan or restoring the deleted provision. The ratio laid down in **1972 SCMR 516**, **1983 SCMR 370** (para-8), **SBLR 2010 Sindh 306** and **2015 YLR 2312** postulates that the Magistrate has no power to dispose of the case recommended for trial by the I.O on the basis of 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 I.O on the basis of material collected in the investigation.

6. The concerned Magistrate here without applying his mind and going through the case law as above on the point has passed

the order. Therefore, with consent, the order dated 16.08.2023 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 cases, within 15 days.

7. Accordingly, this Crl. Misc. Application along with pending application is **disposed of** in the above terms.

**JUDGE**

Ahmad