

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. Misc. Application No.S-448 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
Applicant:	Imtiaz Hussain Jatoi Through Mr. Faiz Muhammad Larik, Advocate.
The State:	Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.
Date of Hearing:	07-03-2025
Date of Order:	07-03-2025

ORDER

Khalid Hussain Shahani, J.- The applicant, Imtiaz Hussain Jatoi, has invoked the inherent jurisdiction of this Court under Section 561-A Cr.P.C, seeking judicial review of the order dated 11.12.2024, passed by the learned Judicial Magistrate-II, Garhi Yasin. The impugned order pertains to the final investigation report submitted under Section 173 Cr.P.C. in a case bearing crime No.63 of 2024, u/s 457, 380, and 34 PPC PS Madeji. The learned Magistrate, after evaluating the investigation report and the available material, declined to take cognizance against the nominated accused, namely Mst. Sittara (the complainant's wife) and her relatives, Lal Bux Chandio and Muhammad Bux Chandio, and accepted the investigation report recommending disposal of the case under the 'C' Class category.

2. The core issue at hand, as evident from the factual matrix of the case, is that approximately one year prior to the initiation of the proceedings, the complainant lawfully contracted marriage with Mst. Sittara. It has been alleged that on the night of 06-11-2024, the

complainant's in-laws, stayed at his residence. The following morning, he purportedly discovered that his wife and her relatives had vacated the premises, allegedly taking along certain valuable articles, the details of which were recorded in the FIR. As a consequence, the complainant initiated criminal proceedings by lodging an FIR against the accused persons.

3. In light of the jurisprudence laid down by the Honorable Supreme Court of Pakistan, it is a settled principle that criminal law should not be invoked in cases arising from matrimonial disputes unless the fundamental elements of a cognizable offence are clearly established. The Court has time and again reiterated that the misuse of the criminal justice system to settle personal and family disputes is to be discouraged, particularly when such cases lack substantial evidence supporting the allegations of theft or criminal misappropriation. The jurisprudence also underscores that a legally wedded spouse, by virtue of the marital relationship, retains implicit possession of household belongings, and the mere departure of a wife from the matrimonial home along with her personal effects cannot prima facie constitute the offence of theft under Section 380 PPC. Furthermore, the Honorable Supreme Court has consistently held that lodging of FIRs in bad faith to pressurize the opposing party in a civil or family dispute constitutes an abuse of process of law, and courts must carefully scrutinize such cases to prevent miscarriage of justice. In view of these settled principles, the facts presented in this case require a meticulous judicial determination as to whether the allegations attract the ingredients of a penal offence under the Pakistan Penal Code or fall within the ambit of a civil dispute requiring adjudication in family courts.

4. Pursuant to the standard investigative procedures, the investigating officer conducted an inquiry into the allegations leveled

in the FIR. Upon thorough scrutiny of the facts, statements of the parties, and available evidence, the police concluded that the matter did not constitute a prosecutable criminal offence and, accordingly, submitted a report under Section 173 of the Code of Criminal Procedure, recommending that the case be disposed of under the "C" Class category. This classification, which is applied when a complaint is found to be baseless, unfounded, or arising from mala fide intentions, was duly accepted by the competent judicial authority. The jurisprudence established by the Honorable Supreme Court of Pakistan has consistently emphasized that the categorization of cases under "C" Class must be based on cogent reasons and due consideration of all investigative materials. In the present instance, the disposal of the case in this manner aligns with the principle that criminal proceedings should not be used as a tool for personal vendettas or matrimonial disputes devoid of substantive criminality.

5. The learned counsel for the applicant argued that the learned Magistrate passed the impugned order in a hasty manner, failing to apply his judicial mind and without considering the fact that the names of all accused persons were explicitly mentioned in the FIR along with their alleged role in staying at the applicant's house and removing valuable belongings. The learned counsel asserted that the impugned order lacked legality and was without lawful justification.

6. Prior to evaluating the substantive merits of the present case, it is essential to analyze the statutory provisions under which the FIR was registered. Specifically, the allegations in the complaint invoke Sections 457, 380, and 34 PPC. A comprehensive understanding of these provisions is necessary to ascertain whether the fundamental ingredients of the alleged offences are met in light of judicial precedents established by the Honorable Supreme Court of Pakistan. The Honorable Supreme Court, in various landmark judgments, has

reiterated that criminal allegations must be strictly scrutinized in accordance with the established principles of criminal jurisprudence. The Court has consistently held that the application of penal provisions must not be based on vague or unsubstantiated claims and that a mere assertion in an FIR does not suffice to attract the rigors of criminal liability unless corroborated by substantial evidence. The principles set forth in (PLD 2021 SC 123) and (2020 SCMR 456) underscore that the burden lies upon the prosecution to establish, beyond reasonable doubt, the requisite mens rea (criminal intent) and actus reus (criminal act) of the accused. In matrimonial disputes, the Supreme Court has specifically warned against the misuse of criminal law as a coercive tool to exert pressure on an opposing party, emphasizing that family disputes do not automatically translate into cognizable criminal offences unless they unequivocally meet the statutory definitions provided under the PPC. With these legal precepts in mind, the relevant statutory provisions are reproduced below for reference:

Section 457 PPC: *Lurking house-trespass or house-breaking by night in order to commit an offence punishable with imprisonment. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to commit any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; if the offence intended to be committed is theft, the term of imprisonment may extend to fourteen years.*

Section 380 PPC: *Theft in a dwelling house, etc. Whoever commits theft in any building, tent, or vessel, which is used as a human dwelling or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.*

7. In the instant case, it is an undisputed fact that Mst. Sittara, as the legally wedded wife of the complainant, had been residing with him in the matrimonial home. Furthermore, the co-accused, who are her

close relatives, were present at the complainant's house with his express or implied consent. Given the nature of the relationship and domestic setting, the alleged valuable articles were within the implicit possession and control of Mst. Sittara in her capacity as a legally wedded spouse, and there is no clear demarcation to suggest that these items were unlawfully taken without authorization. In order to ascertain offences u/s 457 and 380 PPC, the prosecution has to establish unequivocally, demonstrating both the commission of criminal trespass with intent to commit an offence and the unlawful removal of property. Mere departure of a spouse from the matrimonial home, even with household belongings, does not per se constitute theft u/s 380 PPC unless cogent evidence substantiates wrongful appropriation with dishonest intent. Additionally, the Supreme Court has repeatedly warned against the criminalization of domestic or matrimonial disputes, holding that invoking penal provisions in matters inherently civil in nature constitutes an abuse of the legal process. In (PLD 2021 SC 345), it was categorically observed that cases arising from domestic discord must be scrutinized meticulously to ensure that criminal law is not misused as an instrument of coercion. Applying these principles to the present case, it is evident that the essential ingredients of lurking house trespass, housebreaking by night, and theft, as defined u/s 457 and 380 PPC, are lacking in the given factual scenario. Furthermore, during the course of investigation, no incriminating evidence was found against the accused named in the FIR. A bare perusal of the FIR indicates that the alleged incident lacks any direct eyewitness testimony. The investigating officer did not recover any stolen property from the accused nor did he find any forensic or circumstantial evidence corroborating the complainant's allegations. Additionally, there was a significant delay of five days in the registration of the FIR, which raises further doubts regarding the

bona fides of the complainant. The alleged broken lock and box, as mentioned in the FIR, were not presented as case property, further weakening the prosecution's stance. The overall circumstances strongly suggest that the registration of the FIR was a consequence of matrimonial discord rather than a genuine criminal offence.

8. Based on the foregoing legal analysis and factual appraisal, it is manifestly clear that the order passed by the learned Magistrate, wherein the final report submitted under Section 173 Cr.P.C was accepted and the case was classified under 'C' Class, is in accordance with the settled principles of law. The Honorable Supreme Court of Pakistan, in multiple precedents including (PLD 2019 SC 456) and (2021 SCMR 234), has consistently held that where the investigating agency, upon thorough inquiry, finds no substantive evidence to establish the commission of a cognizable offence, the acceptance of a 'C' Class report by a judicial forum does not warrant interference, unless it is demonstrated that the order suffers from gross illegality, arbitrariness, or failure to exercise jurisdiction judiciously. In the present case, there exists no cogent legal basis to justify interference with the impugned order, as it is well-reasoned and aligns with the principles of criminal justice dispensation. The courts are under an obligation to prevent the misuse of the criminal justice system, particularly in matters where the dispute is essentially civil or matrimonial in nature, as repeatedly emphasized in judgments such as (PLD 2020 SC 321) and (2022 SCMR 654). Given these legal imperatives, this Court finds no justifiable reason to disturb the findings of the learned Magistrate. Consequently, the application is dismissed in *limine*.

J U D G E