

IN THE HIGH COURT OF SINDH BENCH AT  
SUKKUR

*Crl. Misc. application No. 639 of 2024*

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| DATE OF<br>HEARING | ORDER WITH SIGNATURE OF JUDGE |
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Date of hearing      **28.02.2025**  
Date of order        **01.03.2025**

Mr. Saddam Hussain, Advocate for applicant  
Mr. Sikander Saddar Siddique, Advocate for Respondent No. 5  
Mr. Mansoor Ahmed, Deputy Prosecutor General  
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**ORDER**

**Riazat Ali Sahar, J:** - The applicant ass the impugned order dated 19.10.2024, wherein the learned Judicial Magistrate, Daharki, being dissatisfied with the opinion of the Investigating Officer (I.O.), had disposed of the case under *C Class*.

2. In the present matter, Mst. Rukhsana had lodged FIR No. 280/2024 at Police Station Daharki, offences punishable under Sections 452, 354, 504, and 34 of the Pakistan Penal Code (PPC), alleging that the accused persons (respondents) had unlawfully entered her house, maltreated her, and torn her clothes.

3. The learned counsel for the applicant contended that the Magistrate had passed the impugned order without affording a proper opportunity of hearing and without duly examining the record available before him. He further argued that the material collected by the

Investigating Officer was sufficient to justify taking cognisance under section 190 Cr.P.C of the matter.

4. The learned Deputy Prosecutor General (DPG) supported the impugned order passed by the learned Judicial Magistrate, Daharki, contending that the instant case amounted to *malicious prosecution*. He argued that the case lacked substantial evidence and was initiated with mala fide intent to harass the respondents.

4. The impugned order dated 19.10.2024 primarily relied upon the statement of Prosecution Witness (PW) Muhammad Aslam, who did not support the prosecution's version. The learned Magistrate specifically referred to his statement in Paragraph No. 4 of the impugned order, which reads as follows:

***"Witness Muhammad Aslam is present in Court and disclosed that when I came in my house, there was no accused. I have not seen any accused."***

5. The reliance placed solely on the version of Prosecution Witness (PW) Muhammad Aslam in the impugned order is insufficient to justify the disposal of the case under *C Class*, particularly when other material evidence exists that requires thorough examination at trial. The principle of ***"Fiat justitia ruat caelum"*** (Let justice be done though the heavens fall) is a guiding doctrine in criminal jurisprudence, which necessitates that every case be adjudicated on its merits, ensuring that justice prevails irrespective of external factors. Furthermore, under *Nemo debet esse judex in propria causa* (No one should be a judge in his own cause), the learned magistrate ought to have exercised judicial prudence and

directed further investigation instead of prematurely concluding the matter.

6. In view of the above legal principles, the Investigating Officer is directed to ensure that the statement of PW Muhammad Aslam is recorded under Section 164 Cr.P.C. before the concerned Magistrate, followed by the submission of a fresh report under Section 173 Cr.P.C., thereby allowing a just and fair determination of the matter.

7. Accordingly, the impugned order dated 19.10.2024 is ***set aside***. Upon submission of the fresh report under Section 173 Cr.P.C., an appropriate order shall be passed after affording both parties a proper opportunity of hearing and scrutinising the available record. In the above terms, the instant case stands disposed of.

***J U D G E***