

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Crl. Misc. Appln. No.245 of 2024

Date	Order with signature(s) of Judge(s)
------	-------------------------------------

For hearing of Main Case.

28.03.2025

Mr. Tanzeer Rauf Farooqi, advocate for the applicant.
Mr. Muhammad Ibrahim Shaikh, Advocate for respondent No.4.
Ms. Hina, Asstt. P.G, Sindh.

=====

Through this Criminal Miscellaneous Application, the applicant Zunair Hassan has challenged the order dated 25.01.2024, issued by the learned Vth Judicial Magistrate, Karachi (South), emanating of the case bearing crime No. 402/2023, offence u/s 420 & 406 PPC of P.S. Clifton, Karachi.

2. At the outset of the proceedings, the learned counsel for the applicant referred the Court to paragraph No.4 of the contested order, which states as follows:

"It is also pertinent to note here that I.O served notice u/s 160 Cr.P.C to the accused, who submitted her written version with the I.O, which is part and parcel of the record wherein accused disclosed that she has purchased the vehicle from complainant for which complainant has handed over the original file and same has been sold to one Abdul Rahim on credit basis and handed over all the relevant original documents to Abdul Rahim. It is worthy to note here that I.O has collected photocopies of some delivery letters (08.04.2023, 12.04.2023 and 13.04.2023) for the said car. Perusal of said delivery letters shows that as per 08.04.2023 one Muhammad Salman Farooq (Seller) and Ammar Shoaib (Purchaser) are shown for the said vehicle, as per 12.04.2023 Ammar Shoaib (Seller) and Abdul Rasheed (Purchaser {complainant's father}) and as per 13.04.2023 Zunair Hassan (Seller {Complainant of this case}) and Raza Khalid (Purchaser) for the said vehicle, when delivery is shown to one Raza Khalid on 13.04.2023 then how the accused took the vehicle on 20.06.2023."

3. The learned counsel for the applicant contends that there is an inconsistency between the opinion formed by the Investigating Officer and the subsequent order issued by the concerned Judicial Magistrate. Moreover, the investigation was inadequately carried out, as it was finalized without securing a necessary report from the Excise and Taxation Office regarding vehicle registration. Although the Investigating Officer suggested disposing of the case under 'A' class, the learned Judicial Magistrate instead chose to dispose of it under 'C' class.

4. On the other hand, the learned counsel for respondent No.4 argues that the vehicle in question was not borrowed from the applicant due to their association as classmates as alleged, but rather, it was purchased by respondent No.4 for Rs.35,00,000/-. To substantiate this claim, he has provided WhatsApp messages from the applicant's mobile number (+923212488755), reflecting a payment of Rs.35,00,000/- received for the Honda VEZEL BG-2013 vehicle

5. The learned Assistant Prosecutor General highlighted that neither the complainant nor respondent No.4 held ownership of the said vehicle. She proposed referring the matter back to the Investigating Officer for obtaining the vehicle's official registration documents from the Excise and Taxation Office, after which the Investigating Officer could form an informed opinion regarding case disposal. Consequently, she requested the Court to set aside the impugned order.

6. Considering the submissions from the learned counsel representing both parties, it is evident that neither the Investigating Officer nor the concerned Court addressed the key issue of the vehicle's registered ownership, despite both parties asserting their claims to ownership. In such a scenario, this Court finds it necessary to exercise its inherent jurisdiction to intervene in the impugned order. Therefore, the Investigating Officer is instructed to obtain the registration documents from the Excise and Taxation Office, reassess the situation, and submit a comprehensive report before the concerned Magistrate. The learned Judicial Magistrate is fully empowered to arrive at an independent conclusion without being affected by the previous order under challenge in this application. The order is thus modified accordingly

7. Consequently, the present Criminal Miscellaneous Application is disposed of.

J U D G E

shahbaz