

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Misc. Application No.454 of 2025

DATE **ORDER WITH SIGNATURE(S) OF JUDGE(S)**

1. FOR ORDER ON OFFICE OBJECTION AT 'A'
2. FOR ORDER ON MA NO.7528/25
3. FOR HEARING OF CASE

Date of hearing: 18.9.2025

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Ms. Azra Hameed, advocate for applicant Muhammad Hanif
Ms. Seema Zaidi, Addl. P.G. Sindh a/w SIP Elahi Bux PS Gulshan-e-Iqbal.

ORDER

SIP Ilahi Bux of PS Gulshan-e-Iqbal, Karachi submits his report that the injured respondent has moved in Korangi area and he has duly informed on phone and the respondent has assured that due to his illness, his relative Anas will appear. However, no one appeared for complainant.

2. I have heard the counsel for applicant and learned Additional Prosecutor General.

3. I have considered the contention of counsel for applicant that the XIIIth Judicial Magistrate, Karachi East has passed an order dated 03.3.2025 during Remand proceeding while acting as a Remanding Magistrate when the Police has come to take remand of the applicant under Section 167 CrPC. The learned XIIIth Judicial Magistrate, Karachi East in its order has placed reliance upon the letter issued by the Commissioner of Karachi and directed the I.O. to insert Section 322 PPC in addition to Section 320 PPC in the said crime bearing Cr. Case No.131/2025 at PS Gulshan-e-Iqbal, Karachi. Per learned

counsel for applicant, she impugned the order before the learned Sessions Judge, Karachi East in Cr. Revision No.50 of 2025 and the same has been upheld through the impugned order.

4. **Legal Determination and Propositions:** The core legal issue arising for adjudication in the present Criminal Miscellaneous Application concerns the extent of powers conferred upon a Magistrate under the Code of Criminal Procedure, 1898 (Cr.P.C.), specifically whether a Magistrate is competent to add or delete penal sections of the Pakistan Penal Code (PPC) while dealing with a police report submitted under Section 167 or Section 173, Cr.P.C.

5. It is imperative to delineate the statutory framework governing the Magistrate's jurisdiction. Under Section 173(2), Cr.P.C., the police are empowered to submit a final report upon conclusion of investigation, reflecting their opinion regarding the commission or non-commission of an offence. However, such opinion is not binding upon the Magistrate. The Magistrate, upon receipt of the report, is vested with discretion under Section 190, Cr.P.C., to (i) Accept the report and take cognizance of the offence; (ii) Disagree with the report and drop the proceedings; or (iii) Direct further investigation under Section 156(3), Cr.P.C. This judicial discretion must be exercised upon application of mind to the material collected during investigation, independent of the conclusions drawn by the investigating officer. The statutory scheme under Chapter XIV of the Cr.P.C. assigns the role of evidence collection and opinion formation to the police, whereas the Magistrate's role commences with judicial scrutiny under Section 190.

Legal Proposition I: The Magistrate is not bound by the police report and may take cognizance under Section 190(1)(b), Cr.P.C., even where the report opines that no offence is made out, provided the material on record justifies such action.

Legal Proposition II: The Magistrate cannot compel the investigating officer to adopt a particular legal view, nor can he assume the role of the trial court at the pre-trial stage. The exercise of cognizance must remain within the procedural confines of the Cr.P.C., and any evidentiary assessment must await the commencement of trial.

Legal Proposition III: A Magistrate is not empowered to unilaterally alter, add, or delete penal sections at the pre-trial stage without adherence to the prescribed procedure.

6. The Honourable Supreme Court of Pakistan, in the case of *Muhammad Ajmal and others v. The State and others (2018 SCMR 141)*, has authoritatively delineated the limits of a Magistrate's powers in this context. The apex Court held that the Magistrate cannot, at the pre-trial stage, unilaterally alter or reframe charges by adding or deleting sections of law without following the proper procedure of trial and evidence. Furthermore, any evidentiary exercise, such as examining an expert such as medical officer without framing of charge or recording formal evidence, has been held to be alien to the established scheme of Cr.P.C. and the Qanun-e-Shahadat Order, 1984.

7. Learned Additional Prosecutor General has conceded and confirmed that the final challan has not been submitted before the trial Court. Therefore, the paramount consideration in criminal investigation is the opinion of I.O. in the shape of Police report/

charge-sheet prepared under Section 173 CrPC and it is the I.O. who has to firstly decide as to which provision of law attracts on the basis of investigation in the light of statements of witness, inspection of crime scene and collecting of material or evidence. No doubt, the trial Court is empowered to add or delete any provision of law on the basis of material that would present to a trial Court and may pass any appropriate orders.

8. In view of the above, the impugned order passed by the Additional Sessions Judge, Karachi East is premature order and preempt with investigation, and would consider as pre-determine being contrary to the principles of fair trial. Therefore, Cr. Revision Application is allowed, impugned order is set-aside with the direction to the Investigation Officer to apply his independent mind on the basis of material, record and statement of the prosecution witnesses and submit final challan by applying relevant provisions within 15 days hereof before the Judicial Magistrate concerned for further proceedings in accordance with law.

9. Cr. Revision Application stand disposed of. Office to apprise order to both Courts below for compliance.

J U D G E

asim/PA