

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Misc: Application No. S-438 of 2025

Abdul Ghaffar and another v. The state and another.

Date	Orders with signature of Judge
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1. For orders on office objection flag 'A'.
2. For hearing of main case.

30-03-2026

Mr. Jam Zuhaib Ahmed, Advocate for applicants.
Mr. Sajid Hussain Mahessar, Advocate for respondent No.2.
Mr. Sardar Ali Solangi, D.P.G for the State.

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Through this application under Section 561-A, Cr.P.C., the applicants have called in question the order dated 29.11.2025 passed by the learned Family/Civil Judge and Judicial Magistrate, Kashmore at Kandhkot, whereby the report submitted under Section 173, Cr.P.C. recommending disposal of Crime No.27/2025, registered at Police Station Tangwani for offences under Sections 395, 427, 506(2), 148 and 149, P.P.C., in 'B' class, was declined and the case was ordered to be challaned against the nominated accused.

Briefly, the case of the applicants is that after registration of the F.I.R. at the instance of respondent No.2, the matter was investigated. During investigation, accused Shabir Ahmed Noonari, Deputy Director Agriculture, expressed lack of confidence in the Investigating Officer and SHO, whereupon the SSP entrusted the inquiry to ASP/SDPO Kashmore, who conducted a detailed inquiry, collected Call Detail Record (CDR), recorded statements of complainant, witnesses, accused and independent witnesses, and submitted a comprehensive report dated 23.04.2025. On the basis thereof, the Investigating Officer submitted final report under Section 173, Cr.P.C. recommending disposal of the case in 'B' class. It is further contended that the Deputy Public Prosecutor also endorsed such recommendation and even suggested initiation of proceedings under

Section 182, P.P.C., though noting that statements under Section 164, Cr.P.C. had not been recorded. Initially, the learned Magistrate disagreed with the report and ordered submission of challan vide order dated 05.08.2025, which was set aside by this Court on 30.10.2025 with direction to pass a fresh speaking order. Thereafter, the learned Magistrate, after hearing the parties, again declined the 'B' class report and ordered submission of challan, hence this application.

Learned counsel for the applicants contended that the impugned order is illegal, arbitrary and passed without proper application of judicial mind. It was argued that the Investigating Officer, after fair investigation, found no sufficient material against the applicants; that there is delay in lodging of F.I.R.; that independent witnesses support the plea of alibi; and that Call Detail Record negates presence of the accused at the place of occurrence. It was further argued that the impugned order does not satisfy the requirement of a speaking order within the meaning of Section 24-A of the General Clauses Act, 1897.

Conversely, learned Deputy Prosecutor General and learned counsel for respondent No.2 opposed the application and submitted that disputed questions of fact, including plea of alibi, can only be adjudicated after recording of evidence at trial. It was further contended that the opinion of police is not binding upon the Magistrate and no case for interference under Section 561-A, Cr.P.C. is made out.

I have heard learned counsel for the parties and perused the record. The scope of jurisdiction under Section 561-A, Cr.P.C. is well-settled and is to be exercised sparingly, only to prevent abuse of the process of the Court or to secure the ends of justice. Such jurisdiction is not to be invoked for reappraisal of evidence or to substitute the discretion exercised by the subordinate Court with that of this Court, unless the

impugned order suffers from patent illegality, perversity or jurisdictional defect. It is also a settled principle that the Magistrate is not bound by the opinion of the Investigating Officer and is competent to disagree with the report submitted under Section 173, Cr.P.C., if from the material available on record a prima facie case is made out requiring trial. In the present case, the report submitted by the Investigating Officer is primarily based upon the plea of alibi and supporting material such as statements of witnesses and Call Detail Record. The plea of alibi, however, is essentially a defence, which is required to be established during trial through evidence, and ordinarily cannot be conclusively adjudicated at the stage of submission of report under Section 173, Cr.P.C. A perusal of the impugned order reflects that the learned Magistrate has afforded opportunity of hearing to the parties and has assigned reasons for disagreeing with the 'B' class report. The order cannot be termed as non-speaking or suffering from non-application of mind. No jurisdictional defect, misreading or non-reading of material evidence has been pointed out which may warrant interference by this Court in exercise of its inherent jurisdiction.

In these circumstances, the case does not fall within the parameters laid down for exercise of jurisdiction under Section 561-A, Cr.P.C. Consequently, instant application is dismissed along with listed applications, if any. However, it is clarified that the observations made herein are tentative in nature and shall not prejudice the case of either party. The learned trial Court shall decide the matter strictly in accordance with law, on the basis of evidence, without being influenced by any observation made herein or in the impugned order.

JUDGE