

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Misc. Application No. S-272 of 2026

[Doulat Meer & another Vs. The State & others]

along with

Criminal Misc. Application No. S-335 of 2026

[Rasheed Khan & others Vs. Province of Sindh & others]

Applicants : Through Mr. Ayaz Ahmed Faras,
Advocate (Criminal Misc. Application
No.S-272 of 2026)
Mr. Abdul Rehman Khakhrani, Advocate
(Criminal Misc. Application No.S-335 of
2026)

The State : Through Mr. Nazir Ahmed Bhangwar,
Deputy Prosecutor General, Sindh
along with Inspector Munawar Ali
Pathan, DD ACE Office, Kashmore at
Kandhkot

Date of Hearing : **19-10-2026**

Date of Order : **19-10-2026**

ORDER

ARBAB ALI HAKRO, J:- Through this common order, I intend to dispose of both the aforesaid Criminal Miscellaneous Applications, as they arise out of the same FIR, assail the same order and involve common questions of law.

2. In brief, the facts are that FIR bearing Crime No. 55/2026 was registered at Police Station Guddu on 21.07.2026 under Sections 379 and 420, PPC. According to the complainant, Head Constable Atta Muhammad Bahalkani, a truck bearing registration No. C-1582 was intercepted at Dera Mor Check Post on the Sindh–Punjab border, carrying about 14 tons and 75 kilograms of iron/scrap. Some eight to ten persons jumped off and fled, while the driver, Doulat Meer, and the cleaner, Faisal Iqbal, the applicants in Criminal Misc. Application No. S-272 of 2026, were apprehended. The FIR records the driver's disclosure that two scrap contractors, with the connivance of officials and security staff of GENCO-II, Thermal Power Station Guddu, removed the scrap by managing false documents. The truck belongs

to Rasheed Khan, applicant No. 1 in Criminal Misc. Application No. S-335 of 2026.

3. On 02.08.2026, the Investigating Officer submitted an interim report under Section 173 Cr.P.C. before the learned Civil Judge & Judicial Magistrate-II, Kashmore (hereinafter referred to as '**the Magistrate**'), showing the two applicants in custody, five officials of GENCO-II on interim pre-arrest bail, and three persons as absconders. By order dated 07.08.2026 (the **impugned order**), the Magistrate, after examining the FIR and the police papers, formed a tentative view that the allegations were not confined to theft but, *prima facie*, attracted the ingredients of Section 409, PPC, a scheduled offence under the Anti-Corruption law, and that, under Rule 11 of the Sindh Enquiries and Anti-Corruption Rules, 1993, the district police had no jurisdiction to continue the investigation. He accordingly returned the interim report and the police papers to the Investigating Officer with directions (i) to comply with Rule 11; (ii) to hand over the entire record, as well as the custody of the two applicants through the jail authority, to the competent Anti-Corruption Establishment; (iii) to place the matter before the Anti-Corruption authorities for action, including approval of the competent authority; and (iv) that the Establishment would thereafter place its report before the Special Judge (Anti-Corruption).

4. The applicants assailed that order through Criminal Revision No. 03 of 2026, which was dismissed in *limine* by the learned Additional Sessions Judge-I, Kandhkot, vide order dated 08.08.2026, on the ground that the impugned order was administrative in character and not amenable to Sections 435 and 439, Cr.P.C., leaving the applicants at liberty to seek any other remedy under the Constitution or the law. Criminal Misc. Application No. S-272 of 2026 under Section 561-A Cr.P.C. challenges both orders. The owner of the truck and the same two applicants then filed Constitutional Petition No. D-718 of 2026 seeking the production and release of the applicants, the release of the truck, disclosure of the inquiry, and modification of the impugned order. By order dated 15.09.2026, the learned Division Bench directed that it be placed before the Single Bench along with Criminal Misc. Application No. S-272 of 2026, and it now stands numbered as Criminal Misc. Application No. S-335 of 2026.

5. The subsequent position is borne out by the statement filed by the Enquiry Officer, ACE Kashmore (respondent No. 4 in Criminal Misc. Application No. S-335 of 2026). Pursuant to the directions of the Director, ACE Larkana, dated 04.09.2026, the original police papers were produced on 08.09.2026 before the learned Special Judge Anti-Corruption (Provincial), Larkana, through the Assistant Prosecutor General, who, on 09.09.2026, advised that the matter be placed before the Prosecutor General, Sindh, for opinion. The papers were forwarded to the Prosecutor General on 28.09.2026 and remain there. As a result, since 07.08.2026, no Court has been seized of the interim report. The original record has travelled from the Investigating Officer to the Establishment and then to the Prosecutor General, and the two applicants have remained in the judicial lock-up at Kashmore since 21.07.2026.

6. Learned counsel for the applicants in Criminal Misc. Application No. S-272 of 2026 contends that the FIR was registered under Sections 379 and 420, PPC, and that the Investigating Officer submitted a positive interim report under those sections; that the Magistrate, at the pre-trial stage and without hearing the applicants, assumed the applicability of Section 409, PPC and changed the forum of the case; that the applicants are private persons and not public servants within the meaning of Section 21, PPC; that under Rule 11(2) of the Rules of 1993, no case can be registered against a public servant without prior approval of the competent authority, and that no Court can direct the police to submit its report in a particular manner or before a particular forum. He relies on **Muhammad Nasir Cheema, Syeda Afshan and Seeta Ram**.

7. Learned counsel for the applicants in Criminal Misc. Application No. S-335 of 2026 adopts those submissions and adds that the truck was carrying the consignment under a gate pass and a material removal request issued by GENCO-II itself; that neither the owner nor the drivers are shown to have had knowledge of any defect in the title to the goods; and that the owner and the drivers are suffering indefinite detention of their property and liberty while no forum is seized of the case.

8. Learned Deputy Prosecutor General, assisted by the Inspector of the Anti-Corruption Establishment, supports the impugned order. He submits that the substance of the FIR is misappropriation of government property by public servants, which is a scheduled offence; that Rule 11(5) of the Rules of 1993 is mandatory; that the Magistrate rightly declined to proceed with the report; and that the matter now rests with the Establishment and the Prosecutor General, so this Court ought not to interfere at the stage of investigation.

9. I have heard learned counsel for the parties and, with their assistance, perused the record.

10. A Magistrate dealing with a police report under Section 173, Cr.P.C. does not act as a criminal Court, and an order passed by him in that capacity is not open to revision under Sections 435 to 439, Cr.P.C.¹ Learned Additional Sessions Judge was therefore right in declining to entertain the revision, and his order dated 08.08.2026 calls for no interference. The same line of authority recognizes that where such an order amounts to an abuse of the process of the Court, the High Court may correct it under Section 561-A Cr.P.C.² Criminal Misc. Application No. S-272 of 2026 is, to that extent, maintainable. However, the limits of that jurisdiction must be kept in view. It operates upon proceedings before Courts; it does not extend to supervising or redirecting an investigation, and this Court cannot, under Section 561-A Cr.P.C., transfer an investigation from one agency to another.³ This Court can examine whether the Magistrate did what he had no power to do and undo it. It cannot itself choose the investigating agency.

11. Under the proviso to Section 173(1) Cr.P.C., the interim report is placed before the Magistrate through the public prosecutor, and the Court is to commence the trial on that report unless, for reasons to be recorded, it decides otherwise. A Magistrate receiving such a report is not a post office. He has to apply his own mind and decide whether the case is one of which he can take cognizance and try, or one that belongs to another Court⁴. That

¹ *Bahadur v. The State* PLD 1985 SC 62.

² *Hussain Ahmad v. Mst. Irshad Bibi* 1997 SCMR 1503; *Muhammad Sharif v. The State* 1997 SCMR 304; *Syeda Afshan v. Syed Farukh Ali* PLD 2013 Sindh 423.

³ *Shahnaz Begum v. The Hon'ble Judges of the High Court of Sind and Baluchistan* PLD 1971 SC 677; *F.I.A. v. Syed Hamid Ali Shah* PLD 2023 SC 265.

⁴ *Mehar Khan v. Yaqub Khan* 1981 SCMR 267; *Syeda Afshan* (n.2 above).

question turns on the substance of the allegations, not on the sections written in the FIR.⁵ If, on that basis, the Magistrate took the view that the offences disclosed were exclusively triable by a Special Judge, the proper course was to say so with reasons, decline cognizance, and return the report to the prosecution for submission before the competent Court. To that limited extent, the Magistrate's approach cannot be faulted. The grievance that he 'added' Section 409, PPC overstates the matter: he added no section, framed no charge, and himself described his observations as tentative.

12. The four directions in the impugned order are of a different character altogether. They do not deal with cognizance. They decide who will investigate, divest the police of the case, transfer the record and custody of the accused to the Anti-Corruption Establishment, and tell that Establishment what to do next. The Supreme Court has held that even the High Court has no power to transfer an investigation from one competent agency to another; that a Magistrate has no authority to interfere in the process of investigation or to guide the Investigating Officer as to how it is to be conducted; that his role is to ensure that the powers of the police are not abused and that the liberty of the accused is not violated; and that no Court can direct the officer-in-charge of a police station to submit his report in a particular manner, against particular persons, or for particular offences.⁶ Directions (i) to (iv) are not reconcilable with these authorities. The direction to handover the custody of two under-trial prisoners in judicial lock-up to an investigating agency through the jail authority stands on an even weaker footing: an accused in judicial custody can be remanded, released, or handed over only by order of a Court competent to pass such an order, and the Establishment was not shown to have any such power of its own.

13. The premise of the directions is also open to question. Rules 11(4) and (5) of the Rules of 1993 provide that, where no Anti-Corruption police station has been notified, a case may be registered at the local police station, and that the district police shall not continue the investigation but handover the record to the Establishment. These rules allocate work between two departments of the Provincial Government. The Supreme Court has held that a challan in a case under Section 409, PPC investigated by the

⁵ *Syed Hamid Ali Shah* (n.3 above).

⁶ *Seeta Ram v. The State* 2025 SCMR 2028; *Muhammad Nasir Cheema v. Mazhar Javaid* PLD 2007 SC 31.

ordinary police could be taken cognizance of by the Special Judge, since Section 4(1) of the Pakistan Criminal Law Amendment Act, 1958 permits cognizance on the report of any police officer; that a breach of the rule requiring investigation by the Establishment did not vitiate the proceedings; and that the Anti-Corruption law is in addition to, and not in derogation of, the general power of the police to investigate.⁷ Rule 11(5) could not, therefore, found a judicial declaration that the police had 'no jurisdiction whatsoever', still less a judicial direction enforcing the rule. If the Establishment considers that the rule applies, it is for the departments concerned to act under their own rules. There is a further question which the impugned order did not examine at all. The officials named in the FIR are employees of Central Power Generation Company Limited (GENCO-II), a company formed out of WAPDA and working under the Federal Power Division. If it is a body set up, controlled or administered by or under the authority of the Federal Government, the appropriate Government for its employees under Section 2(a) of the Act of 1958 is the Federal Government, and the Supreme Court has held that proceedings against such employees before a Special Judge (Provincial) are without lawful authority.⁸ None of this is being decided here; it depends on facts yet to be investigated. The point is narrower: on an interim report, without examining any of this, the Magistrate routed the case by mandatory directions to an agency and a Court whose competence is at least doubtful, and the Establishment's own reference to the Prosecutor General for opinion reflects that doubt.

14. The practical consequence of those directions is what renders the impugned order an abuse of the process of the Court. For more than two months, no Court has been seized of the case. The original police papers are out of the judicial file, and two accused, who are admittedly private persons, remain in custody. Where no report, complete or interim, is before the Magistrate, he cannot remand the accused under Section 344, Cr.P.C and the Supreme Court has repeatedly cautioned that an accused should not be kept in custody without legal justification, having regard to Articles 9 and 10 of the Constitution.⁹ The record does not show under what order of any Court

⁷ *Raja Amir Muhammad v. The State* 2004 SCMR 506; *M. Abdul Latif v. G.M. Paracha* 1981 SCMR 1101.

⁸ *The State v. Hafeez-ur-Rehman Najmi* 1993 SCMR 61.

⁹ *Rehan v. The State* 2009 SCMR 181.

the applicants have been detained since 07.08.2026. That state of affairs cannot be allowed to continue.

15. As regards the truck, its registered owner is *prima facie* entitled to seek interim custody under Section 516-A, Cr.P.C., and such custody neither prejudices the prosecution nor absolves anyone.¹⁰ That application, however, lies before the Court seized of the case, which can verify ownership, record identification particulars and fix surety. The owner has himself stated that he intends to apply under that provision. This Court should not decide it at this stage. The prayers in Criminal Misc. Application No. S-335 of 2026 for the release of the applicants fall within the bail jurisdiction of the competent Court. The remaining prayers, namely to call for the inquiry record, compel disclosure of the inquiry, restrain the respondents and direct action against officials of GENCO-II, and to seek directions to the investigating agencies, are beyond the scope of Section 561-A, Cr.P.C.; they are **declined**, without prejudice to any other remedy available in law.

16. For the foregoing reasons, Criminal Misc. Application No. S-272 of 2026 is partly **allowed** and Criminal Misc. Application No. S-335 of 2026 is **disposed of** in the following terms:

- (a) the order dated 08.08.2026, passed by the learned Additional Sessions Judge-I, Kandhkot, in Criminal Revision No. 03 of 2026, is maintained;
- (b) the impugned order dated 07.08.2026 is set aside to the extent of directions (i) to (iv), including the direction to transfer the custody of the applicants; the observations of the Magistrate regarding Section 409, PPC shall remain tentative and shall not bind the investigating agency or any Court;
- (c) the Prosecutor General, Sindh, and the Anti-Corruption Establishment shall forthwith return the original police papers of Crime No. 55/2026 to the Investigating Officer, Police Station Guddu, and the Investigating Officer shall, within seven days thereafter, place the interim report before the Magistrate through the public prosecutor;
- (d) the question of which agency is to investigate shall be decided by the competent authorities under the applicable law,

¹⁰ *Muhammad Akhtar Ali v. Additional Sessions Judge, Kot Addu* 2023 SCMR 711.

uninfluenced by the directions set aside; whichever agency investigates shall submit its report to the Court competent to take cognizance;

- (e) on receipt of the report, the Magistrate shall apply his independent mind under Section 190, Cr.P.C.; if he finds the offences disclosed to be exclusively triable by a Special Judge, he shall record his reasons, decline cognizance and return the report to the prosecution for submission before the competent Special Judge, without any direction as to the investigation;
- (f) the applicants, Doulat Meer and Faisal Iqbal, shall be produced before the Magistrate forthwith, and in any case within three days; the Magistrate shall pass orders regarding their custody strictly in accordance with law; they shall be free to apply for bail, which shall be decided on its own merits; and
- (g) the owner of the truck may apply under Section 516-A, Cr.P.C. before the Court seized of the case, which shall decide the application within fifteen days of its filing.

17. Copies of this order shall be sent to the learned Magistrate, the Prosecutor General, Sindh, the Director General, Anti-Corruption Establishment, Sindh and the Superintendent, Judicial Lock-up, Kashmore, for compliance. Both applications stand **disposed of** in the above terms, along with the listed application(s).

JUDGE