

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-2632 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:  
Mr. Justice Zafar Ahmed Rajput  
Mr. Justice Syed Fiaz ul Hassan Shah

Petitioner	:	Iftikhar Hussain son of Nazir Ahmed, through Khwaja Muhammad Azeem, Advocate.
Respondents	:	The State & others
Date of hearing	:	12.6.2025
Date of decision	:	___.6.2025

**J U D G M E N T**

**Dr. Syed Fiaz ul Hassan Shah, J.** Through this petition, the petitioner has impugned Notice dated 02.6.2025 (at the Prayer clause of the application, the date has wrongly mentioned as 03.6.2025) purportedly issued to the Petitioner on the Complaint filed by the Respondent No.2.

**Brief Facts:**

2. According to the contents of memo of petition, the petitioner is a Police Officer serving as Station House Officer (**SHO**) at Police Station Sahil Karachi South; that on 01.06.2025 the Respondent No.2 lodged FIR No.126 of 2025 at said Police Station for offences under Section 394, 397 & 34 PPC about snatching of one licensed pistol 9MM, two mobile phones, cash Rs. 10,000/- & ATM Cards; that prior

to registration of aforesaid FIR, the Respondent No.2 called 25/30 Advocates at said Police Station, who told that they do not want to register any FIR but only interested in recovery of robbed articles. The petitioner being SHO of the Police Station suggested them firstly to register FIR and such robbed articles could be recovered through proper investigation. Afterwards all Advocates started harassment and abused the staff on duty, threatened for blockage of roads and filing of Application under Section 22-A of Cr.P.C.

3. Thereafter, the petitioner somehow persuaded them and recorded the statement of Respondent No.2 under Section 154 of Criminal Procedure Code and also intimated to the Senior Superintendent of Police Karachi South about the situation.
4. Later, the Respondent No.2 filed a Private Complaint under Sections 190, 200 & 164 of Criminal Procedure Code before learned Vth Judicial Magistrate Karachi South [**Judicial Magistrate**] against the petitioner for alleged offences under Section 161, 166, 167, 218, 219, 220 & 216 PPC.
5. Thereafter, the Judicial Magistrate called the petitioner through Notice for 02.06.2025 with detailed and comprehensive report in the matter; and the petitioner appeared before the learned Judicial Magistrate and filed his reply/report/comments. The Judicial Magistrate has again called the petitioner on 05.06.2025 through Notice.
6. The petitioner has impugned the said Notices issued by the Judicial Magistrate in the instant petition.

7. We have heard the Counsel for the petitioner and perused the record. It appears that the Respondent No.2 has filed a complaint before the Judicial Magistrate, who called a comprehensive report through its notice dated 02.06.2025.
8. We have noticed that the impugned notice has been addressed to the SHO and it is not issued in the personal name of the petitioner. We reproduce the impugned notice dated 02.06.2025 for the better understanding and analysis:

*“To,  
Station House Officer (S.H.O)  
Police Station Sahil  
Karachi.*

***SUBJECT: FURNISH DETAILED REPORT.***

***Whereas, an application u/s 200 Cr.P.C. is filed before this Court, by applicant Amjad Ali S/o Hamzo Khan, therefore, you are hereby directed to submit detailed and comprehensive report in such regard before this Court by tomorrow i.e. 03.06.2025, without fail. You are also directed to appear in-person before Court alongwith Head Mohrer of P.S Sahil at 0900 hours, without fail.***

***Given under my hand and seal of this Court, on this 02<sup>nd</sup> day of June, 2025.***

*Sd/-*

***(ZAHID ALI)  
L/J CIVIL JUDGE & JUDICIAL MAGISTRATE-V  
KARACHI SOUTH***

***Enclosed:***

***Copy of application.”***

9. The impugned notice has not been issued to the petitioner in his personal capacity; rather, it has been addressed in his official capacity as the SHO of the relevant area. The report was sought as part of the petitioner’s official duty to compile a comprehensive account of the

incident. Evidently, this step was undertaken by the Judicial Magistrate to ensure due diligence or satisfaction before proceeding further with the matter before him.

- 10.** This conclusion is supported by the records, as the complaint was instituted under Sections 164, 190 & 200 of the Code of Criminal Procedure (Cr. P.C.). Consequently, the process of summoning and subsequent proceedings should have been initiated under Section 204 Cr. P.C. However, it remains an undisputed fact that the learned Judicial Magistrate has not issued any summons in accordance with the prescribed procedure under the Code of Criminal Procedure, 1898. Instead, an inquiry procedure was adopted, and a notice under Section 202 Cr. P.C. was issued by the learned Judicial Magistrate by inquiring factual position from the SHO of territorial jurisdiction.
- 11.** The learned counsel for the petitioner has failed to establish as to how the petitioner is aggrieved by the impugned notice, given that it is not addressed to the petitioner in a personal capacity but rather to the SHO. Furthermore, the petitioner has been unable to substantiate the claim that the notice cannot be classified as a summon under Section 204 Cr.P.C. On the contrary, the impugned notice explicitly seeks a comprehensive report on the alleged incident in accordance with Section 202 Cr.P.C.in respect of complaint filed by the respondent No.2.
- 12.** The counsel has merely placed on record a copy of the Show Cause notice dated 12.06.2025, issued by the Judicial Magistrate for non-

compliance. We find no merit in the learned counsel's argument, as the petitioner, in his official capacity, is obligated to comply with the notice dated 02.06.2025 by submitting a comprehensive report on the incident. The learned counsel has failed to provide a plausible explanation or valid justification for the non-compliance with the notice dated 02.06.2025, while simultaneously raising objections to the show cause notice.

13. Undoubtedly, the constitutional jurisdiction conferred under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, a High Court can quash an FIR or any proceedings or summons or warrant but such power cannot unstintingly and frequently exercise in the Constitutional or inherent jurisdictions by this Court to quash an FIR, summon, warrant or notice and it can exercise sparingly in exceptional cases within parameters settled by the Supreme Court of Pakistan. The Hon'ble Supreme Court of Pakistan in case "*Ajmeel Khan v. Abdul Rahim and others*" (PLD 2009 SC 102) held:

"6. Needless to emphasis, that functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function. If a criminal liability is spelt out from facts and circumstances of a particular case, accused can be tried upon a criminal charge. Quashment of FIR during investigation tantamount to throttling the investigation which is not permissible in law. However, FIR can be quashed by High Court in its writ jurisdiction when its registration appears to be misuse of

process of law or without any legal justification. The police are under a statutory duty under Section 154 of the Code of Criminal Procedure and have a statutory right under Section 156 of the Code of Criminal Procedure to investigate a cognizable offence whenever a report is made to it disclosing the commission of a cognizable offence. To quash the police investigation on the ground that the case is false would be to act on treacherous grounds and would tantamount to an uncalled for interference by the Court with the duties of the police.”

[Emphasis added]

14. In another case ***“Gulam Mustufa v. State” (2008 SCMR 76)*** the Supreme Court held that:

"High Court has no jurisdiction whatsoever to take the role of the investigating agency and to quash the FIR, while exercising constitutional power under Article 199 of the Constitution or under section 561-A Cr. P.C. unless and until very exceptional circumstances existed."

15. These exceptional grounds have been rendered down by the apex Court, for instance in case ***“FIA, Director General FIA and others v. Syed Hamid Ali Shah and others” (PLD 2023 SC 265)***, the Supreme Court of Pakistan highlighted that High Court can quash FIR under its writ jurisdiction when FIR is patently illegal or contrary to law or it did not constitute a cognizable offence. Although, there is no restriction has put on the High Court to invoke the provision of writ jurisdiction for quashment of FIR, however, the said obstruction or rampart thrown up across a way or relief to check the balance and

importance of provisions related to cognizance or criminal procedure and recognized principles that no disputed facts can be resolved in the constitutional jurisdiction and it must proceed within the operative statutes. Notably, the intent of legislatures is clearly understandable as various provisions are available under the Criminal Procedure Code, 1898 with the Investigation Officers or Prosecutor or even Judicial Magistrate of area while supervising investigation or even during the trial by the Court of Judicial Magistrate or Court of Sessions under the provisions of Sections 63, 249-A, 265-K or 203 and in the presence of such alternate remedies, the quashment of FIR or Summons in writ jurisdiction for the grievance which can conveniently be attributed under the statutory provision, cannot be invoked or this Court does not appreciate as per the settled legal principles of power and scope under the Constitutional jurisdiction. The Supreme Court of Pakistan has highlighted the fundamental points; “exceptional circumstances” and “alternate remedy” or “disputed facts”, where a High Court ought not to interfere with the FIR or criminal proceedings and prefer to proceed the investigation or trial to its logical way, in a landmark case ***“Col. Shah Sadiq versus Muhammad Ashiq and others” (2006 S C M R 276)***

“7. It is also a settled proposition of law that if prima facie an offence has been committed, ordinary course of trial before the Court should not be allowed to be deflected by resorting to constitutional jurisdiction of High Court. By accepting the constitutional petition, the High Court erred in law to short circuit the normal procedure of law as provided under Cr.P.C. and police rules while exercising equitable jurisdiction

which is not in consonance with the law laid down by this Court in A. Habib Ahmad v. M.K.G. Scott Christian PLD 1992 SC 353. The learned High Court had quashed the F.I.R. in such a manner as if the respondent had filed an appeal before the High Court against order passed by trial Court. The learned High Court had no jurisdiction to quash the impugned F.I.R. by appreciation of the documents produced by the parties without providing chance to cross-examine or confronting the documents in question. Respondents had alternative 'remedy to raise objection at the time of framing the charge against them by the trial Court or at the time of final disposal of the trial after recording the evidence. Even otherwise, respondents have more than one alternative remedies before the trial Court under the Cr.P.C. i.e. section 265-K, 249-A or to approach the concerned Magistrate for cancellation of the case under provisions of Cr.P.C. The respondents have following alternative remedies under Cr.P.C.:-

- (a) To appear before the Investigating Officer to prove their innocence.
- (b) To approach the competent higher authorities of the Investigating Officer having powers vide section 551 of Cr.P.C.
- (c) After completion of the investigation, the Investigating Officer has to submit case to the concerned Magistrate and the Magistrate concerned has power to discharge them under section 63 of the Cr.P.C. in case of their innocence.
- (d) In case he finds the respondents innocent, he would refuse to take cognizance of the matter.

(e) Rule 24.7 of the Police Rules of 1934 makes a provision for cancellation of cases during the course of investigation under the orders of the concerned Magistrate.

(f) There are then remedies which are available to accused persons who claim to be innocent and who can seek relief without going through the entire length of investigations.

8. The learned High Court erred in law in accepting constitutional petition by quashing the F.I.R. at the initial stage which was not in consonance with the law laid down by this Court in the following judgments:-

(i) Ghulam Muhammad v. Muzammal Khan and 3 others PLD 1967 SC 317; (ii) Mohsin Ali and another v. The State 1992 SCMR 229; (iii) Abdul Rehman v. Muhammad Hayat Khan and others 1980 SCMR 311; (iv) Marghoob Alam and another v. Shamas Din and another 1986 SCMR 303; (v) Sheikh Muhammad Yameen v. The State 1973 SCMR 622; (vi) Bashir Ahmad v. Zafar-ul-Islaam and others PLD 2004 SC 298; (vii) Kh. Nazir Ahmad's case AIR 1945 PC p.18; (viii) Shahnaz Begum v. The Honourable Judges of the High Court of Sindh and Balochistan and another PLD 1971 SC 677; (ix) Brig. (Retd.) Imtiaz Ahmad v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others 1994 SCMR 2142.

9. According to provisions of Cr.P.C. it is for the Investigating Officer to collect all the facts connected with the commission of offence and if he finds that no offence is committed, he may submit a report under section 173, Cr.P.C. to the Allaqa Magistrate. On the other hand, if on the basis of his investigation he is of the opinion that the offence has in fact been committed, he has to submit report accordingly. However, the report of the Investigating Officer cannot be the evidence in the case. The investigation is held with a view to ascertaining whether or not an offence has been committed. The inquiry, or trial, as the case may be has to be conducted by the Magistrate. If the police is restrained from investigating the matter, their statutory duty, it will in our opinion be tantamount to acting against the law as held in Kh. Nazir Ahmad's case AIR 1945 PC. p.18. The relevant observation is as follows:

"Just as it is essential that everyone accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in the matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as W.P No. 1976-Q of 2022 7 has been shown there is a statutory right on the part of the police under sections 154 and 156 to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the

Court under section 561-A. The functions of the judiciary and the police are complementary not overlapping and the combination the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Court to intervene in an appropriate case when moved under section 491, Criminal Procedure Code, to give direction in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then."

16. The mere statement of petitioner or assertion alone that a false case or complaint or FIR is registered against him is insufficient to establish constitutional jurisdiction and to adjudicate the *lis* under the Constitutional jurisdiction of this Court. The judicial propriety does not permit to quash the FIR or complaint or summon or notices of cases which are not squarely fall within defined parameters of the rules laid down by the Supreme Court of Pakistan and which involve disputed facts or controversial facts requires a full probe, inquiry or investigation and such procedure culminated in the shape of police report under section 173 Cr.P.C. or inquiry/investigation under section 202 Cr.P.C. The involvement of disputed facts or factual controversies cannot be adjudicated in exercise of its constitutional jurisdiction under Article 199 as held by this court in the cases of "*Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another* (2023 SCMR 246), "*Amir Jamal and others v. Malik Zahoor-ul-Haq and others*" (2011 SCMR 1023) and "*Fida Hussain v. Mst Saiqa and*

*others” (2011 SCMR 1990), “State Life Insurance Corporation of Pakistan v. Pakistan Tobacco Co. Ltd.” (PLD 1983 SC 280).*

17. The other contraceptive barrier for the petitioner to establish the constitutional jurisdiction is alternative remedy. The constitutional jurisdiction can only be invoked if the petitioner has no other efficacious and effective remedy available under the statutory provisions. The operative statutes and sub-ordinated legislation provide alternative avenues for the reliefs what have urged before us. Under the scheme of criminal jurisprudence in every criminal case, a criminal investigation culminated into a police report<sup>1</sup> or charge sheet<sup>2</sup> or reference<sup>3</sup> or confidential final report<sup>4</sup> or challan solely depends upon formation of independent views by a Judicial Magistrate as required under section 190(3) Cr.P.C. or under sections 202 or 204 or by a Special Court such as CNS, NAB or Anti-Terrorism Court while accepting or rejecting challan on evaluation of investigation report and material together collected thereto. Comparatively, the alternate remedy can conveniently accomplish the purpose of petitioner and is equally effective and efficacious and in this situation it again effectively bars the constitutional jurisdiction of this Court. Reliance can be placed on cases entitled a *“Gul Ahmed Textile Mills Ltd v. Collector of Customs Appraisement”, (1990 MLD 126)*, *“Pak. Metal Industries v. Assistant Collector”, (1990 CLC 1022)*, *“Allah Wasaya v. Tehsildar/AC 1st Grade”, (1981 CLC 1202)*, *“Syed Riaz Hussain Zaidi v. Muhammad Iqbal”, (PLD 1981*

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<sup>1</sup> As in the Criminal Procedure Code, 1898

<sup>2</sup> As in the Police Rules, 1934 or Anti-Terrorism Act, 1997

<sup>3</sup> As in the National Accountability Ordinance, 1999

<sup>4</sup> As in the Federal Investigation Agency Act, 1974 or the Anti-Corruption Act, 1991 or its Rules of 1993

*Lah. 215) & “Abdul Hafeez v. Chairman, Municipal Corporation”  
(PLD 1967 Lah. 1251).*

18. In the present case, no summon has been issued to the petitioner rather the learned Judicial Magistrate in order to test the propriety of the complaint has inquired from the petitioner in his official capacity and demanded a report of the incident which the petitioner is under obligation to submit before the Judicial Magistrate in the line of his duty. To sum up the discussion, the petitioner has failed to point out any good ground for the quashment of the Notice dated 02.06.2025 or Show Cause Notice dated 12.06.2025. Therefore, the constitution petition stands dismissed in *limine*.

**JUDGE**

**JUDGE**

*asim/PA*