

THE HIGH COURT OF SINDH, AT KARACHI

Criminal Misc. Application No.1227 of 2024

[Malik Saghir Ahmed Nazir v The State & 4 others]

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Mr. Mehmood Akhtar Qureshi, Advocate for the Applicant.
M/s Sarfraz Ahmed Metlo & Zia ur Rehman Tanoli, Advocate a/w
Respondent No.2.
Ms. Seema Zaidi, Additional Prosecutor General Sindh.

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Date of hearing **10.02.2025**

Date of Order **14.02.2025**

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ORDER

SHAMSUDDIN ABBASI, J:- The facts as reflected from the record are that Respondent No.2 Muhammad Nizar son of Aziz ur Rehman lodged FIR No.543 of 2024 at Police Station Ittehad Town, District Keamari, Karachi, for offences punishable under Sections 392, 397 and 34, PPC against applicant and three others stating therein that on 19.10.2024 four persons, duly armed with pistol, after breaking open the door of his house, forcibly entered the premises and by show of force on the pointation of pistol robbed Rs.200,000/- and went outside. Per complainant, they raised commotion, which attracted Mohallah people, who caught hold one person at spot, who disclosed his name as Malik Saghir whereas the others made their escape good on motorcycle.

2. Pursuant to the registration of FIR, the investigation was followed and in due course the police submitted a report under Section 173 Cr.P.C. against four accused including the applicant present on bail, Muhammad Shahzad in custody and two absconders. The learned Judicial Magistrate-VI, Karachi (West) took cognizance of the offence and accepted the challan vide order dated 19.11.2024, which is reproduced below:-

“Challan accepted as offence u/s 397 Cr.P.C. is exclusively triable by Hon’ble Court of Sessions. Let the R & P be sent to concerned court after completion of legal formalities. Issue NBW for absconded accused. Issue P.O. for accused in custody. Issue summon to accused Malik Sagheer”.

3. Aggrieved by the aforesaid order, the applicant has preferred this Crl. Misc. Application.

4. It is contended on behalf of the applicant that the impugned order is illegal, unlawful, improper, incorrect and based on evasive findings and without application of conscious judicial mind. It is next submitted that the learned Magistrate while accepting the report under Section 173, Cr.P.C. has failed to thoroughly examine the findings of the previous Investigating Officer, who in the first instance released the applicant under Section 497(ii), Cr.P.C. It is also submitted that the applicant is serving as Assistant Engineer in K-Electric and on the day of incident he alongwith his team was on field duty in connection with theft of electricity and disconnection of illegal hooks in the area of Ittehad Town, Block-A when he received information that K-Electric cable is dumped in an open bounded plot and on instructions of Line Manager made a call to police on 15 and reached the pointed place and while he was waiting for police, the respondent No.2 alongwith his accomplices came there, snatched his mobile phone as well as office card and also gave him beating and thereafter took him to a Dera, where he was subjected to severe beatings and then handed over his custody to police and showing his influence lodged FIR fabricating a false story. Per learned counsel, the complainant, who is an Advocate by profession, in order to save his skin from theft of K-Electric cable, has involved the applicant leveling false allegation and the learned Magistrate without considering the report of the previous investigating officer and peculiar facts and circumstances of the case unlawfully took cognizance of the offence. Lastly it was submitted that the learned Magistrate did not consider the material produced in investigation report and accepted the challan without assigning valid and cogent reasons, hence the impugned order same is liable to be set-aside.

5. The learned counsel for the respondent No.2, on the other hand, has refuted the submissions of learned counsel for the applicant and submitted that the applicant alongwith his companions has forcibly entered his house, armed with pistols, and committed robbery of Rs.200,000/- and was apprehended at spot whereas his companions managed to escape. It is next submitted that the learned Magistrate took cognizance of the offence on the basis of material collected during investigation and such findings are just and proper, hence calls for no interference.

6. The learned Additional Prosecutor General has supported the impugned order and submitted that the impugned order is based on fair evaluation of record and no illegality, infirmity of material irregularity has been pointed out by the learned counsel for the applicant and prayed for dismissal of the instant revision application.

7. Heard arguments of respective parties and perused the entire material available on record with their able assistance.

8. Admittedly, the respondent No.2, is an Advocate by professions. Per claim of the applicant, he is Assistant Engineer in K-Electric and on the fateful day he alongwith his team was on official duty assigned to prevent theft of electricity when he received information that K-Electric cable is dumped in an open plot so while calling police on 15 he reached the pointed plot and was busy in capturing photographs from his mobile phone when some persons including the respondent No.2 came there, gave beatings and forcibly took him to a Dera where too he was subjected to torture and then was handed over to police. The record is suggestive of the fact that after registration of the case, the investigation was entrusted to ASI Naeem Abbas, who produced the applicant in Court where per claim of the applicant, respondent No.2/complainant alongwith other Advocates was already present, they have beaten the applicant in police custody within Court premises. Record further reflects that applicant Malik Saghir obtained protective bail from this Court and alongwith his counsel went to the Court of learned Magistrate for submission of certain documents where respondent No.2/complainant with the help of his companion lawyers again mishandled the applicant and his counsel, who save his life by taking shelter in the chamber of the learned Magistrate and such an incident was reported to P.S. City Court, Sessions Judge, Karachi (West) as well as Registrar of this Court. I am also cognizant of the fact that during investigation, the I.O. confirmed that the applicant was on official duty and he called police through 15. Medical Certificate available on record also suggests that he was beaten and maltreated. Based on such material, the previous Investigating Officer prepared his report and recommended disposal of case under "B" class, but instead of accepting such report, the high-ups of police ordered transfer of investigation perhaps due to influence of

respondent No.2 /complainant and thereafter the second Investigating Officer submitted challan and cognizance was taken by Court.

9. It is a well settled that purpose of "investigation" is to dig out the truth regarding the crime/ occurrence and put up the same before Court of competent jurisdiction. It is the duty of the Investigating Officer to collect entire relevant material of the occurrence irrespective of the fact that such material favours prosecution or accused. He is also under obligation to collect the evidence honestly, justly and fairly for bringing the truth on record not only to build up the case of complainant with evidence enabling the Court to record conviction but also enabling Court for reaching to a just and fair decision. In the case in hand, the first Investigating Officer after thorough investigation found the applicant innocent and submitted relevant report before his high ups seeking approval for disposal of case in "B" class, but the same was declined and fresh investigation was ordered and pursuant to that order the investigation was entrusted to SIO Nasir Khan, who after recording further statement of complainant and witnesses submitted a charge sheet against the applicant and others, which was accepted by the learned Magistrate through impugned order dated 19.11.2024. It is, however, felt that certain aspects regarding basic/ constituting elements of offence or version of the applicant collected during already conducted investigation could not be taken into consideration either by the second Investigating Officer or by the learned Magistrate while accepting the report under Section 173, Cr.P.C., wherein an Advocate is complainant, which raises significant implications for the legal profession. A Division Bench of this Court in an unreported judgment dated 07.11.2024, passed in C.P. No.D-2230 of 2024, took serious note of Advocates coming forward as complainant and observed as under:-

"Pursuant to that order, AIGP Legal has submitted a report showing therein the chart of FIRs lodged by advocates from 01st January 2024 to 31st October 2024. Being relevant, the same is reproduced herewith:-

**"REPORT OF FIRs LODGED BY THE ADVOCATES /
LAWYERS AGAINST (A) THEIR CLIENTS (B) THIRD**

**PERSONS (C) POLICE OFFICIALS FROM 01.01.2024
TO 31.10.2024**

S.No	District	Against Their Clients	Against Third Persons	Against Police Officials	Total
1	CIA	-	-	-	-
2	CTD	-	-	-	-
3	East	3	73	1	77
4	Malir	3	106	2	111
5	Korangi	2	31	1	34
6	West	-	8	1	9
7	Central	1	14	-	15
8	South	-	32	-	32
9	City	5	185	4	194
10	Keamari	-	-	-	-
11	Hyderabad	-	26	1	27
12	Dadu	-	1	2	3
13	Thatta	-	6	-	6
14	Badin	-	2	-	2
15	Jamshoro	-	9	-	9
16	Matiori	-	-	-	-
17	T.A. Yar	-	1	-	1
18	T.M. Khan	-	6	-	6
19	Sujawal	-	-	-	-
20	Sukkur	-	6	-	6
21	Ghotki	-	17	1	18
22	Khairpur	-	20	-	20
23	Larkana	-	9	-	9
24	Kamber	-	9	-	9
25	Shikarpur	-	-	-	-
26	Jacobabad	-	2	-	2
27	Kashmore	-	-	-	-
28	Mirpurkhas	-	-	1	1
29	Umerkot	-	2	-	2
30	Tharparkar	-	-	-	-
31	SBA	-	10	-	10
32	Sanghar	-	6	-	6
33	Naushero Feroz	-	-	-	-
	Total	14	581	14	609

3. Upon examining the above-referenced details, it becomes evident that advocates have lodged a total of 609 FIRs, comprising 14 FIRs against their own clients, 14 against police officials, and an overwhelming 581 against third parties. Annexure "B" outlines the current procedural status of these cases; particularly, in a majority of instances, police reports have been filed under "A" and "C" Class categories, while investigations in others FIRs remained pending. This extensive volume of FIRs raises significant concerns, especially given that even members of the legal profession are among the complainants, citing threats of dire consequences, incidents of theft, and cheque dishonor as grounds for registration. A substantial portion of these FIRs involve allegations under Sections 506-B and 489-F of the Pakistan Penal Code. This

substantial influx of FIRs suggests a troubling scenario showing smoke on the screen, indicating either a failure of the state to safeguard the legal community or a potential misuse of their professional privileges by these individuals.

4. *It is imperative to take immediate steps to address the proliferation of motivated FIRs that are tainted with malice against innocent individuals, while ensuring that genuine FIRs against actual offenders are not hindered. Failure to do so may result in a situation where it becomes too late to rectify the injustices, leading to irreparable harm and a complete breakdown of the rule of law.*

5. *In light of the foregoing circumstances, this Court is cognizant of the fact that the present matter bears significant implications for the legal profession, particularly concerning the regulation of professional conduct and ethics, which fall within the domain of the Bar Council. Therefore, this matter is hereby referred to the Executive Committee of the Sindh Bar Council with directives to scrutinize the ethical dimensions outlined in the Code of Conduct, specifically regarding the registration of FIRs by advocates against their own clients under various sections of law. The Committee is tasked with investigating any misuse of professional privileges by lawyers throughout the Sindh region, with particular attention to occurrences in Karachi, to uphold the dignity and integrity of the legal fraternity. Should the Committee identify any instances of malicious or unwarranted FIRs filed against innocent individuals, it is further instructed to initiate appropriate disciplinary actions through the relevant disciplinary committee. This measure aims to safeguard ethical standards and prevent any conduct that may undermine the honor of the legal profession.*

6. *Additionally, the Inspector General of Police (I.G.P.) Sindh is directed to ensure the maintenance of law and order, guaranteeing equal treatment for all citizens regardless of profession, caste, creed, or community. The I.G.P. Sindh shall further ensure that police officers uphold the decorum of the police force while providing safety and security to all citizens within their jurisdiction, including the Courts. Moreover, the I.G.P. Sindh shall ensure that any FIRs lodged with malicious intent against innocent individuals are thoroughly investigated, while also safeguarding the registration and progression of legitimate FIRs against actual offenders.*

7. *In view of the reasons stated above, the present petition is hereby disposed of in accordance with these directives.*

Office shall send copy of this order to Vice Chairman and Secretary of Sindh Bar Council for compliance”.

10. The version one put-forth by the applicant and others taken by the respondent No.2 /complainant, if seen in juxtaposition, then the version of the applicant, in the background of previous investigation, seems to be true whereas the plea taken by the respondent No.2/

complainant seems to be based on malafide intention and prima facie reflects ulterior motives and does not appeal to reasons.

11. A bare perusal of the order, impugned herein, reveals that the same has been passed in haste without application of conscious judicial mind, overlooking peculiar facts and circumstances of the case, referred herein above, which cannot be sustained in the eyes of law. There is no denial of the fact that the applicant is an officer of K-Electric and has entered the premises of the complainant in discharge of his duties; besides it has come on record that while entering the open gated premises, he did inform the police on 15. An incident of such a nature cannot be allowed to go unchecked merely the complainant is practicing Advocate and can manhandled an officer of K-Electric, who is responsible to take care of theft being a public servant. In the mentioned circumstances, the impugned order is set-aside and proceedings emanating from FIR No.543 of 2024 registered at P.S. Ittehad Town, District Keamari, Karachi, for offences under Section 392, 397 and 34, PPC are quashed.

12. Before parting with this order, it need to state that the Investigating Agency to prosecute those against whom the applicant and his team has suffered after collecting requisite material during investigation, which shall be supervised by SSP (Investigation) concerned. It is, however, open to the applicant to approach the Sindh Bar Council with a complaint, if he is so desired. The Council on receipt of the complaint shall hold enquiry according to Bar Council Act /Rules and record findings.

13. This Crl. Misc. Application No.1227 of 2024 stands allowed in the foregoing terms.

14. Office to communicate a copy of this order to Secretary Sindh Bar Council and Inspector General of Police (Sindh) for information and compliance

JUDGE