

## IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Misc. Application No. 865 of 2024

Applicant : Naz Afreen present in person.

Respondent Nos.4 & 5 : Through Mr. Shahid Hussain, Advocate.

Respondent : The State through Ms. Amna Ansari,  
Additional Prosecutor General Sindh.

Date of hearing : 21.04.2026.

Date of order : 21.04.2026.

### **ORDER**

*TASNEEM SULTANA, J* :- Through the instant Criminal Miscellaneous Application under Section 561-A Cr.P.C, the applicant Naz Afreen has assailed the impugned order dated 16.05.2024 passed by the learned IIIrd Civil Judge & Judicial Magistrate, Karachi West, whereby the report submitted under Section 173 Cr.P.C in FIR No. 160/2024 under Sections 452/324/34 PPC, Police Station Surjani Town, Karachi, was accepted and the case was disposed of under "C" Class.

2. Brief facts of the prosecution case are that the complainant/applicant Naz Afreen stated in the FIR that she had rented Flat No.205, 2nd Floor, Excel Tower, Sector 5-D, Surjani Town, Karachi from the accused persons, who after some time allegedly started harassing her by disconnecting electricity and water, visiting the premises on different pretexts, and in her absence locking the house with their own lock, causing distress; she further stated that she issued a notice to vacate the premises which was signed by the accused, however upon demand of advance/security amount they refused and started threatening her, and on 07.10.2023, between Asar and Maghrib, the accused allegedly opened the gas line despite the presence of a cylinder in the house, as a result of which when she lit the stove, fire broke out in the kitchen and she narrowly escaped, while neighbours extinguished the fire and the accused refused to provide CCTV footage when demanded; it was further alleged that on 28.02.2023 the accused attacked the house and broke the kitchen window and on 10.03.2023, in her absence, broke the lock and took away her belongings. On the above facts, FIR was lodged.

3. The applicant, appearing in person, contends that the material available on record warranted submission of challan and trial of the accused persons, as the allegations disclosed serious cognizable offences, including house trespass, threats, and an act endangering life; that the Investigating Officer conducted a defective and incomplete investigation and failed to collect material evidence, particularly the CCTV footage installed on the relevant floor, which could have substantiated the occurrence, and erroneously recommended disposal of the case under "C" Class; that despite specific allegations regarding the gas incident, no effective steps were taken to verify the same through independent sources, and the statements of witnesses were not properly appreciated; and that the learned Magistrate mechanically accepted the report submitted under Section 173 Cr.P.C without independent application of judicial mind and without proper examination of the material on record, thereby resulting in miscarriage of justice.

4. Conversely, the learned Deputy Prosecutor General as well as learned counsel for the private respondents contend that the investigation was conducted strictly in accordance with law; that the Investigating Officer recorded statements of the complainant and other relevant witnesses, including neighbours and the watchman, and examined all available material; that no independent incriminating evidence surfaced during investigation to substantiate the allegations in the manner alleged; that the dispute between the parties primarily pertains to tenancy, possession and allied civil matters; that the non-collection of CCTV footage, in the circumstances of the case, does not vitiate the entire investigation, particularly when reasons were assigned by the Investigating Officer; and that the learned Magistrate, after due consideration of the material and after directing further investigation at an earlier stage, rightly concurred with the report submitted under Section 173 Cr.P.C and accepted the same under "C" Class, which does not call for interference.

5. I have heard the applicant in person, the learned Deputy Prosecutor General as well as learned counsel for the private respondents and have carefully examined the material available on record. The controversy in the present matter essentially revolves around whether the learned Magistrate, while concurring with the report submitted under Section 173 Cr.P.C, has appreciated the record in its true perspective and whether such concurrence suffers from any illegality, perversity or non-application of judicial mind warranting interference by this Court in exercise of its inherent jurisdiction.

6. Before advertent to the merits of the case, it would be advantageous to recapitulate the settled legal position governing the role of the Investigating Officer and that of the Magistrate in the matter of investigation and its culmination. It is by now well settled through authoritative pronouncement of the Hon'ble Supreme Court in the case of **Mst. Sughran Bibi v. The State (PLD 2018 SC 595)** that an Investigating Officer is under a statutory obligation to investigate the matter from all possible angles and to discover the truth of the occurrence, and in doing so he is not bound by the version advanced by the complainant or any other person, but is required to base his conclusions on the facts discovered during investigation. The said principle flows from Rule 25.2(3) of the Police Rules, 1934, which mandates that the object of investigation is to discover the truth and to bring the real offender to book without committing prematurely to any view. It has further been clarified that upon conclusion of investigation, the report to be submitted under Section 173 Cr.P.C must be founded upon the material collected during investigation and not merely on the allegations contained in the FIR. Therefore, even if serious allegations are levelled in the FIR, the same by itself cannot compel the Investigating Officer to submit a challan unless such allegations are substantiated by some supporting material collected during investigation.

7. In the present case, the record reveals that after completion of initial investigation, the Investigating Officer submitted a report under Section 173 Cr.P.C on 20.02.2024 recommending disposal of the case under "C" Class; however, the learned Magistrate, instead of accepting the same, directed further investigation. Pursuant thereto, after conducting further inquiry, the Investigating Officer again submitted report under "C" Class on 11.05.2024 maintaining the earlier conclusion, which was subsequently approved by the learned Magistrate vide impugned order dated 16.05.2024. During the course of investigation, the Investigating Officer recorded statements under Section 161 Cr.P.C of the complainant as well as other witnesses, including neighbours and the watchman, inspected the place of occurrence, and examined the competing versions of the parties. The material collected during investigation indicates that the dispute between the parties primarily relates to tenancy, possession and allied matters, and no sufficient independent incriminating material was available to substantiate the allegations in the manner stated by the complainant, nor has any such material been shown before this Court which could justify taking a contrary view. The seriousness of the allegations alone is not sufficient; they must be supported by material, which is lacking in the present case. This

sequence of events clearly demonstrates that the matter was not disposed of in a mechanical manner; rather, the earlier report was subjected to judicial scrutiny and reconsideration before the final decision was taken.

**8.** At this juncture, it is also necessary to delineate the scope of powers of a Magistrate while dealing with a report under Section 173 Cr.P.C. The Hon'ble Supreme Court in the case of *Bahadur v. State* (PLD 1985 SC 62) has held that while concurring with a police report submitted under Section 173 Cr.P.C, the Magistrate is required to act fairly, justly and honestly; however, such proceedings do not constitute a lis between the parties and the Magistrate does not function as a criminal court in the strict sense. It has further been held that there is no statutory requirement of hearing the parties at that stage, and such order does not attain finality so as to preclude the complainant from instituting a complaint on the same facts. The said view has consistently been followed in subsequent cases, including *Arif Ali Khan v. State* (1993 SCMR 187), *Muhammad Sharif v. State* (1997 SCMR 304), and *Hussain Ahmed v. Irshad Bibi* (1997 SCMR 1503).

**9.** The ratio emerging from the above judgments is that although such orders are amenable to the inherent jurisdiction of the High Court under Section 561-A Cr.P.C, interference is warranted only where the impugned order amounts to abuse of process of law or suffers from patent illegality, perversity or miscarriage of justice. This Court, while exercising such jurisdiction, does not sit as a court of appeal to reappraise the evidence or to substitute its own view in place of the opinion formed by the Investigating Officer and concurred with by the Magistrate. In the present case, no such exceptional circumstance has been pointed out which would justify interference. The investigation cannot be said to be wholly absent, nor can it be termed as mala fide or dishonest. The conclusions drawn by the Investigating Officer are based on the material collected during investigation and have been concurred with by the learned Magistrate after directing further inquiry at an earlier stage. The fact that the learned Magistrate had earlier not accepted the report and directed further investigation, and thereafter, upon submission of the subsequent report, concurred with the findings of the Investigating Officer, reflects due application of mind and negates the allegation of mechanical exercise of jurisdiction.

**10.** The applicant also relied upon the serious nature of the occurrence and the possibility that another view of the matter could have been taken. It is indeed possible that where allegations involve threats, trespass, or an act endangering life, the complainant may honestly feel that the accused ought

to face trial. Yet, the present proceedings under Section 561-A Cr.P.C are not meant to determine whether the applicant's accusation is true, nor are they designed to assess the innocence of the accused. The limited inquiry before this Court is whether the investigation, as accepted by the learned Magistrate, suffers from such illegality or perversity as would justify interference. Once the Investigating Officer has examined the available material and formed an opinion, which has been concurred with by the learned Magistrate after directing further investigation, this Court cannot re-open the factual controversy merely because the complainant insists otherwise.

**11.** At the same time, it must be clarified that dismissal of the present application does not amount to judicial affirmation of the innocence of the private respondents on merits in the manner of an acquittal after trial. The acceptance of a report under Section 173 Cr.P.C under "C" Class has its own legal consequences and does not foreclose other remedies available under the law. The complainant, if so advised, may avail the remedy of a complaint under Section 200 Cr.P.C, where she would be at liberty to bring on record such material as she may possess in support of her allegations.

**12.** For the foregoing reasons, I am of the view that the impugned order dated 16.05.2024 does not suffer from any illegality, perversity or non-application of mind so as to warrant interference by this Court in exercise of inherent jurisdiction under Section 561-A Cr.P.C.

**13.** Accordingly, this Criminal Miscellaneous Application is dismissed along with listed application.

**JUDGE**