

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.S-727 of 2024

For the Applicant : Zeeshan Arshad, Through:
Mr. Zamir Ahmed Kalhoro,
Advocate

For the Respondent-2 : Adnan Khalid, Through:
Syed Mustafa Mahdi, Advocate.

The State : Ms. Seema Zaidi, A.P.G.

Date of hearing : 26.01.2026

Date of Order : 24.02.2026

ORDER

Jan Ali Junejo, J:- Through the present Criminal Miscellaneous Application filed under Section 561-A, Cr.P.C., the applicant calls into question the legality of the order dated 08-07-2024 (hereinafter referred to as the "*Impugned Order*") passed by the learned XIV Civil Judge & Judicial Magistrate, Karachi South, whereby the learned Magistrate disapproved the final report submitted after re-investigation in "B" Class, took cognizance of the offence, and directed submission of the face sheet within three days.

2. The present proceedings arise out of FIR No. 94 of 2023, registered at Police Station Artillery Maidan, Karachi, under sections 380 and 506 PPC on the complaint of Adnan Khalid, alleging that on 09-06-2023 at about 12:00 noon, certain original documents relating to property were found missing from a cupboard in an office situated at Shafi Courts, Karachi, and that the present applicant Zeeshan Arshad had committed theft thereof and extended threats upon being questioned.

3. The matter was initially investigated by SIP Zulfiqar Ali Mirani, who submitted a final report under section 173 Cr.P.C. The said report, however, was disagreed with by the learned Judicial Magistrate, and re-investigation was ordered. Pursuant thereto, the matter was re-investigated by another Investigating Officer, who, after collecting oral as well as documentary evidence, submitted a final report recommending disposal of the case in "B" Class. It is this report of re-investigation which was subsequently disapproved through the impugned order dated 08-07-2024, whereby cognizance was taken, giving rise to the present application.

4. Learned counsel for the applicant submitted that the impugned order is arbitrary, legally unsustainable, and reflective of non-application of judicial mind. It was contended that the learned Magistrate ignored the fact that the re-investigation was ordered by the Court itself and that the final report in B-Class was based on positive documentary evidence, including the FIA/Immigration report dated 23-10-2023 and Call Detail Record (CDR), conclusively establishing that the complainant was outside Pakistan on the alleged date of occurrence. It was further argued that the complainant's own pleadings in Suit No. 1702 of 2018 contradict the allegation of theft. According to learned counsel, continuation of criminal proceedings in these circumstances amounts to abuse of the process of law, attracting the inherent jurisdiction of this Court under section 561-A Cr.P.C. Lastly, the learned counsel for prayed for allowing the present Criminal Misc. Application.

5. Learned counsel for respondent No.2 supported the impugned order and argued that under section 154 Cr.P.C., the complainant is merely an informant and his personal presence at the time of occurrence is not a mandatory requirement. It was submitted that the learned Magistrate rightly exercised jurisdiction in taking cognizance so as to afford the complainant an opportunity to establish his case through evidence at trial. According to learned counsel, the veracity of allegations and appreciation of evidence cannot be determined at the stage of a police report.

6. Learned Assistant Prosecutor General submitted that although the Magistrate is not bound to accept a police report, such discretion must be exercised judiciously. It was fairly conceded that the investigation record includes documentary material regarding the complainant's travel history and that the re-investigating officer had concluded that sufficient evidence was not available to proceed. However, reliance was placed upon the discretion exercised by the learned Magistrate.

7. I have heard learned counsel for the parties at length and have perused the record with anxious consideration. At the outset, it may be observed that under section 154 Cr.P.C., the complainant acts as an informant, whose obligation is confined to laying information regarding the commission of a cognizable offence. The law does not require that such informant must necessarily be an eyewitness or be physically present at the time of occurrence. Therefore, the mere absence of the complainant, by itself, does not invalidate the FIR. However, once information is laid, the statutory duty shifts to the

Investigating Officer to determine, through fair and impartial investigation, whether an offence has in fact been committed. The opinion under section 173 Cr.P.C. must be founded upon evidence collected during investigation and not on conjectures or assumptions. In the present case, the record reflects that the first investigation conducted by SIP Zulfiqar Ali Mirani was not accepted by the learned Judicial Magistrate, who ordered re-investigation. In compliance thereof, the case was re-investigated, and a final report recommending disposal in "B" Class was submitted. The impugned order relates specifically to the disapproval of the report of re-investigation, not the initial investigation. During investigation, the Investigating Officer collected the FIA/Immigration report dated 23.10.2023, which establishes that the complainant departed from Pakistan for the United States on 30-05-2023 and returned on 18.07.2023, thereby remaining outside Pakistan on the alleged date of occurrence i.e., 09-06-2023. This document, being an official record, carries evidentiary value of unimpeachable character. Furthermore, the complainant had earlier instituted Suit No. 1702 of 2018, wherein it was specifically pleaded that the property documents were lying in a locker, the key whereof was with the complainant, while duplicate keys were stated to be with the applicant and his father-in-law. A prayer was also made for issuance of directions to the Nazir to seize the cupboard/locker containing the documents. These admissions materially contradict the allegation of theft subsequently levelled in the FIR. The investigation also revealed that a settlement deed/family arrangement had been executed between the predecessors of the parties in respect of the

subject property Shafi Court Building, governing custody of documents, an aspect suppressed in the FIR. The investigation further disclosed that the presence of PW Farheen Asif at the alleged time and place of occurrence was not established, and statements recorded under section 161 Cr.P.C. did not corroborate the prosecution version. Additionally, the CDR of the complainant did not establish his presence in Pakistan on the relevant date. Thus, while the complainant's presence is not a sine qua non under section 154 Cr.P.C., the present case is not one of mere absence. Rather, the prosecution narrative, as set out in the FIR, stands controverted by documentary evidence and prior civil admissions. The conclusion reached by the re-investigating officer that sufficient evidence was not available cannot be termed arbitrary or perverse.

8. In such circumstances, the first Investigating Officer was justified in concluding that sufficient evidence was not available to proceed and in submitting the final report under "C" Class. The learned Magistrate, while disagreeing with the report, was required to assign cogent and legally sustainable reasons. A perusal of the impugned order shows that the learned Magistrate primarily proceeded on assumptions and generalized observations, without addressing the material and documentary evidence including the travel record of the Respondent No.2/Complainant collected during the course of investigation. Such exercise of discretion cannot be sustained. Continuation of criminal proceedings in the face of the above material would amount to harassment and abuse of the process of law, which this Court is empowered to prevent under

section 561-A Cr.P.C. In a similar case, *Ammad Yousaf v. The State and another* (PLD 2024 Supreme Court 273), the Honourable Supreme Court of Pakistan observed that: “Thus, if circumstances for exercise of inherent powers exist, the Court must use such powers at any stage of the proceedings on its own or upon an application by the accused, provided that an opportunity of hearing is afforded to the parties before making any order. The power assigned to the Courts by the legislature is to avoid the abuse of process of the Court; to protect the integrity of the criminal justice system; to safeguard a person involved in the case from the agony of a purposeless, malicious, and frivolous criminal prosecution; or otherwise, to secure the ends of justice. The exercise of the inherent powers is mandatory in nature, therefore, any departure therefrom would be a violation of the substantive provisions of law and would prejudice the interests of the accused, which is an illegality. If the Court considers that the available material is sufficient to proceed with the trial and refuses to quash the judicial proceedings, it does not preclude the Court from exercising its inherent power subsequently after recording some evidence or surfacing any material for the purpose of quashing the proceedings. However, the exercise of such power by the Courts must be in exceptional circumstances, with great caution and by applying its mind judiciously”. The underlining is supplied.

9. It is a matter of record that the first Investigating Officer submitted a report under “C-Class” on the basis of the FIA/Immigration report dated 23.10.2023 as well as the pendency of the Civil Suit. However, during re-investigation, the final report was submitted under “B-Class” while relying upon the very same

material that had been collected earlier, without presenting any fresh evidence or additional material obtained during the re-investigation. Consequently, the submission of the report under "B-Class" was not justified, as the circumstances warranted classification under "C-Class" on account of insufficient evidence, particularly in view of the fact that the dispute is predominantly of a civil nature. In these circumstances, the report submitted by the second Investigating Officer under "B-Class" ought to have been approved or treated as accepted under "C-Class".

10. For the foregoing reasons, this Court is of the considered view that the Impugned Order dated 08-07-2024 suffers from legal infirmities and reflects non-application of judicial mind. The reports submitted by both Investigating Officers were based on the material collected during investigation and warranted acceptance to the extent of approval under "C-Class", as the available evidence was insufficient to justify taking cognizance, particularly in view of the predominantly civil nature of the dispute. Accordingly, this Criminal Miscellaneous Application is allowed. The Impugned Order dated 08-07-2024 passed by the learned XIV Civil Judge & Judicial Magistrate, Karachi South, is hereby quashed. FIR No. 94 of 2023, Police Station Artillery Maidan, Karachi, is cancelled/disposed of under "C-Class". The bail bond of the applicant and surety, if any, shall stand discharged. Office is directed to communicate this order to the learned Judicial Magistrate forthwith for compliance.

JUDGE