

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Criminal Misc. Application No.S-78 of 2025

For Applicant:	Mr. Aftab Ahmed Channa, Advocate
For Respondent/State:	Mr. Muhammad Afzal Jagirani
Date of hearing:	16.04.2025
Date of Judgment:	16.04.2025

ORDER

Jan Ali Junejo, J:- This Criminal Miscellaneous Application, filed under Section 561-A of the Code of Criminal Procedure, seeks to challenge and set aside the Order dated 14.02.2025 (hereinafter referred to as the "Impugned Order"), passed by the Family/Civil Judge and Judicial Magistrate, Kashmore at Kandhkot. The said Order pertains to Crime No. 07 of 2025, registered under Sections 489-F, 419, and 420 of the Pakistan Penal Code at Police Station A-Section Kandhkot. Through the Impugned Order, the Judicial Magistrate accepted the Final Report submitted under Section 173 Cr.P.C. by the Investigating Officer, and proceeded to take cognizance of the offences allegedly committed by the applicant.

2. The respondent, Ghulam Murtaza Bajkani, lodged an FIR alleging that on 15.03.2024, the applicant purchased his Alto car for Rs.28,00,000, paying Rs.10,00,000 in cash and issuing a post-dated cheque (No. 0000000137) for the remaining Rs. 18,00,000. The cheque was dishonored on 19.07.2024 due to insufficient funds. Despite demands, the applicant allegedly refused payment and admitted to fraudulent intent during a confrontation on 31.10.2024. The IO investigated, collected evidence (cheque, dishonor memo, sale agreement, witness

statements), and filed a charge sheet. The learned Judicial Magistrate, after hearing arguments, accepted the report and took cognizance.

3. The learned counsel for the applicant argued that the cheque in question was issued merely as a security and not in discharge of any outstanding liability. He further argued that the remaining amount was settled amicably through an *Iqrar Nama*, duly attested by Notary Jetha Nand, which clearly establishes that no liability remained. He argued that the Magistrate failed to appreciate the evidentiary value of this document, which was unjustly ignored. He also argued that the FIR was lodged after an unexplained delay of four months following dishonor of the cheque, suggesting mala fide intent. He maintained that the learned Magistrate blindly relied on the Investigating Officer's report without independently scrutinizing the material on record. He further argued that the prosecution witnesses were all interested parties and therefore their statements should not have been treated as credible. The learned counsel for the applicant prayed that the impugned order dated 14.02.2025 be set aside and the proceedings against the applicant be quashed in exercise of the Court's inherent jurisdiction under Section 561-A Cr.P.C.

4. The learned counsel for Respondent No. 5 and the learned APG argued that the cheque was issued towards discharge of a lawful liability arising from a sale transaction, and its dishonor squarely attracts penal consequences under Section 489-F PPC. They further argued that the *Iqrar Nama* was a fraudulent document, fabricated without the complainant's presence or CNIC verification, as admitted by the notary Jetha Nand himself. They submitted that the delay in lodging the FIR is not fatal, particularly when the applicant confessed to the fraudulent conduct during a confrontation. They argued that the Judicial

Magistrate had full authority under Section 190 Cr.P.C. to take cognizance of the offence, even in the face of a police report, if sufficient material existed on record. They maintained that the Magistrate conducted a proper and independent evaluation of the evidence, including documentary and witness accounts, before passing the impugned order. They, lastly, prayed that the instant application be dismissed as devoid of merit and that the order dated 14.02.2025 be upheld in the interest of justice.

5. After carefully considering the arguments put forth by the learned counsel representing the Applicant, the learned counsel for Respondent No. 5, and the learned Deputy Public Prosecutor (DPG) appearing for the State, and upon meticulous scrutiny of the case records, it is evident that under Section 190 of the Criminal Procedure Code (Cr.P.C.), a Magistrate is not obligated to accept the conclusions drawn by the Investigating Officer (IO). Instead, the Magistrate possesses the authority to independently evaluate the evidence gathered during the investigation and arrive at his own conclusion. The impugned order reflects a reasoned analysis of the cheque, dishonor memo, sale agreement, and witness statements. The Magistrate validly exercised discretion to accept the charge sheet, noting the *Iqrar Nama*'s defects (fraudulent attestation) and the applicant's admission of guilt. The dishonored cheque (prima facie issued to discharge liability) and sale agreement substantiate the transaction. Notary Jetha Nand's statement exposes the *Iqrar Nama* as a fraudulent document, weakening the applicant's defence. Witnesses (including a neutral party to the sale) corroborate the complainant's version. It is important to note that Section 173 of the Criminal Procedure Code (Cr.P.C.) mandates that upon completion of an investigation, the concerned Station House Officer (SHO) is required to submit a

report detailing the outcome of the investigation, in the manner prescribed by law, to the Judicial Magistrate who is competent to take cognizance under Section 190 of the Cr.P.C. No court, including the High Court, is vested with the authority to override this statutory obligation by directing the police either to withhold the submission of such a report or to prepare and present it in a specific manner. This principle is firmly supported by the precedent established by the Supreme Court of Pakistan in the case of ***Naseer and others v. Khuda Bakhsh and others (2011 SCMR 1430)***. It is now a well-established principle of law that a Magistrate is empowered to take cognizance of an offence even in instances where the police, upon conclusion of the investigation, submit a negative report stating that the allegations are unfounded and that no case has been made out against the accused persons. This legal position is firmly supported by the authoritative judgment of the Supreme Court of Pakistan in the landmark case of ***Safdar Ali v. Zafar Iqbal and others (2002 SCMR 63)***. In the present matter, the Magistrate acted within the bounds of this settled legal framework by relying on credible and reliable material available on record to initiate proceedings against the applicant. A mere delay in the registration of the First Information Report (F.I.R.) does not, by itself, invalidate the legal proceedings. Such delay can only be considered detrimental if the Complainant is given an opportunity to explain the reasons for the delay, and the trial Court subsequently concludes, upon due examination, that the delay was both unexplained and made with deliberate intent. The impugned order is legally well-founded and rests upon a comprehensive and thorough assessment of the evidence gathered during the course of the investigation. There is no indication of any jurisdictional defect, material irregularity, or misuse of the judicial process that would warrant interference.

6. In view of the foregoing analysis and legal position, the present Criminal Miscellaneous Application filed by the applicant, having been found devoid of substance and lacking any tenable legal grounds, is hereby dismissed. The impugned order dated 14-02-2025 stands affirmed, and no case for interference by this Court is made out.

JUDGE

S.Ashfaq