

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Miscellaneous Application No.74 of 2022

Applicants : Muzammil Latif & Zulfiqar Ali,  
Through Mr. Amir Nawaz Waraich, Advocate

Respondents 1,3to10 : The State  
Through Mr. Muhammad Mohsin Mangi APG Sindh.

Respondent No.2 : Waqar Ismail son of Muhammad Ismail  
Through M/s Paras Ali Lodhi & Saddam  
Hussain, Advocates.

Date of hearing : 22.05.2025

Date of order : 30.05.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.-** This Criminal Miscellaneous Application, filed under Section 561-A of the Code of Criminal Procedure, 1898, seeks to set aside the order dated January 25, 2022, passed by the learned XIth Judicial Magistrate South-Karachi, whereby the learned Magistrate disagreed with the 'B' class report submitted by the Investigating Officer in FIR No. 390/2021 and proceeded to take cognizance.

2. The case was registered on December 11, 2021, at P.S. Nabi Bux, on the complaint of Waqar Ismail (Respondent No. 2), alleging an incident of assault, criminal intimidation, and injuries on November 10, 2021, involving the applicants. The Investigating Officer, subsequent to investigation, submitted a 'B' class report, deeming the FIR to be maliciously false. However, the learned XIth Judicial Magistrate, vide order dated January 25, 2022, disagreed with this 'B' class report and took cognizance of the offenses under Sections 506-B/337-A(1)/337-F(1)/337-L(ii)/109/34 PPC. The learned Magistrate, in his detailed order, noted the presence of a property dispute between the parties but emphasized that this did not automatically negate the criminal allegations. He particularly highlighted the availability of medical reports of the injured witnesses, the statements of the complainant and injured persons on record, and the legal principle that the veracity of witnesses can only be determined after recording evidence at trial. The Magistrate explicitly relied on various pronouncements of the superior courts, including *2011 PCrLJ 732*, *2019 YLR 2178*, *2002 SCMR 63*, and *PLD 2009 Kar 7*, which affirm the Magistrate's power to take cognizance of an offense

even in the face of a negative police report if, upon tentative assessment, sufficient material exists to proceed. He found no "crystal clear evidence available on record to proof that no such alleged incident occurred at all."

3. Learned counsel for the applicants, reiterated the points raised in the application, primarily arguing that the Magistrate's decision was perverse and an abuse of the court's process. His contentions revolved around that the 'B' class report by the IO, suggesting malicious falsity. The absence of proof regarding the complainant's possession of the shops from the Market Committee. Discrepancies in the injured person's name (Sarfaraz S/o Ashraf vs. Kamran S/o Ashraf), and their relationship (employees vs. friends). Inconsistencies in the medical report's date (medical letter on 10.11.2021, medical certificate on 11.11.2021), and the minor nature of the injury ('Shajah-e-Khafifah') not supporting a pistol butt hit. Allegations of a forged pre-dated application for FIR by the complainant. The argument that the underlying dispute is civil, with a counter-FIR (No. 366/2021) already registered against the complainant, Waqar Ismail, in which challan was accepted and summons issued. The claim of an acquittal under Section 249-A Cr.P.C. in a counter-version case and dismissal of Cr. Revision No. 38/2022 by this Court on 08-11-2023. No witness from the Market Committee being produced.

4. The learned counsel for Respondent No.2 strongly defended the Magistrate's order. He submitted that the applicants had not challenged the medical certificate before a Medical Board, implying its acceptance. He emphasized that the applicants had an alternative remedy before the trial court after cognizance was taken and failed to avail themselves of it. He relied on several pronouncements of the superior courts, including *2002 SCMR 63*, *2019 YLR 2178*, *2011 P.Cr.L.J 732*, *PLD 2009 Karachi 7*, *PLD 2013 401*, to underscore the wide discretion available to a Magistrate to take cognizance even against a negative police report, and that at the stage of cognizance, a deeper appreciation of evidence is not required.

5. The learned APG, for the State, while acknowledging the existence of a civil dispute between the parties, noted that the medical certificate indeed showed 'Shajah-e-Khafifah'. However, he did not explicitly support the 'B'

class report, leaving the matter to the discretion of the Court based on the material.

6. The inherent powers of the High Court under Section 561-A Cr.P.C. are to be exercised in exceptional circumstances, primarily to prevent abuse of the process of any court or to secure the ends of justice. This is not a substitute for appellate or revisional jurisdiction, nor is it meant to convert findings of facts into findings of law, or to re-appreciate evidence, particularly at the nascent stage of cognizance. The core issue before this court is whether the learned Magistrate's decision to disagree with the 'B' class report and take cognizance was perverse, arbitrary, or constituted an abuse of process, warranting intervention under Section 561-A Cr.P.C. Upon review, I find myself in consonance with the learned Magistrate's reasoning and the arguments advanced by the learned counsel for Respondent No. 2. It is a well-established principle of law, as reinforced by the case law cited by the learned Magistrate himself (*2002 SCMR 63, 2019 YLR 2178*), that a Magistrate is not bound by the opinion of the police in a 'B' class or negative report. The Magistrate exercises independent judicial discretion and can take cognizance if, upon examining the FIR, police report, and other available material, he finds sufficient grounds to proceed. The Magistrate's role at this stage is not to conduct a mini-trial or a deeper appreciation of evidence, but to form a tentative opinion as to whether a prima facie case exists.

7. The contradictions highlighted by the applicants, such as the discrepancies in names, relationships, and medical report dates, are indeed matters of evidence. The veracity of the complainant's claims, the extent of injuries, the details of the incident, and the alleged manipulation of documents, are all factual questions that can only be properly determined after the recording of evidence, including cross-examination of witnesses, during the trial. The learned Magistrate correctly observed that "veracity of the witnesses could be determined by the trial court only after recording of evidence."

8. The existence of medical reports, even if showing 'Shajah-e-Khafifah', provides some prima facie support to the complainant's version of injuries. The argument that the medical certificate was not challenged before a medical board has force, as such a challenge is the proper procedure to discredit a medical document. While the nature of the injury might be minor,

it does not automatically negate the occurrence of an offense under the sections charged. While there is indeed an undeniable civil dispute concerning property possession, this does not necessarily preclude the commission of criminal offenses arising from an incident connected to that dispute. The alleged acts of assault and criminal intimidation, if proven, constitute distinct criminal offenses that require adjudication by a criminal court. The existence of a counter-FIR (No. 366/2021) and related proceedings against the complainant (Waqar Ismail) also needs to be examined at trial, where both versions can be assessed concurrently to arrive at a just conclusion. Mere lodging of a cross-case does not automatically exonerate from criminal liability, as held in *2014 PCrLJ 1550*. The applicants had the option to move an application for discharge or acquittal before the trial court after cognizance was taken, providing an alternative remedy. This Court's inherent jurisdiction under Section 561-A Cr.P.C. is generally not invoked when such remedies are available and have not been exhausted. Interfering with a Magistrate's well-reasoned order of taking cognizance, especially when the Magistrate has applied their mind to the material and cited relevant legal precedents, would amount to trespassing into the domain of the trial court and pre-empting the trial proceedings. The stage of cognizance is tentative, and the detailed appreciation of evidence is reserved for the trial. There is no "crystal clear evidence" on record to conclusively prove that no such incident occurred, as rightly noted by the Magistrate.

9. Considering the entirety of the facts and circumstances, it appears that the learned Magistrate exercised his discretion judicially and in accordance with established legal principles. His order reflects a tentative assessment of the material available, sufficient to proceed with the trial, where all factual disputes and contradictions can be properly thrashed out. No perversity, arbitrariness, or abuse of the process of the court is found that would warrant the exercise of inherent powers of this court under Section 561-A Cr.P.C.

10. For the foregoing reasons, this Criminal Miscellaneous Application No. 74 of 2022 is hereby dismissed. The impugned order dated January 25, 2022, passed by the learned XIth Judicial Magistrate South-Karachi, in Case No. Nil/2021, is upheld. The learned trial court is directed to proceed with the trial expeditiously in accordance with law.

**J U D G E**