

**HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS**  
**Criminal Misc. Application No.S-562 of 2024**

*Present*

*Mr. Justice Dr. Syed Fiaz ul Hasan Shah.*

Applicant: Muhammad Sharif s/o Faiz Muhammad  
Through Mr. Wishandas Kolhi,  
Advocate,

Respondent: The State through, Mr. Dhani Bakhsh Mari,  
Assistant P.G.  
Private Respondents through Mr. Francis Lucas  
Khokhar advocate

Date of hearing: 06.02.2025.

Date of Order: 06.02.2025.

## **ORDER**

**Dr. Syed Fiaz ul Hasan Shah, J:** The Applicant Muhammad Sharif has filed present Criminal Miscellaneous Application under section 561-A of Criminal Procedure Code, 1898, against Order dated 21-09-2024 passed by learned Judicial Magistrate/Consumer Protection Court, Mirpurkhas whereby it has approved the "C" Class report filed by the Investigation Officer in FIR No.77/2024 under sections 506(ii), 147, 148,149,337-A(i), 337-F(i), 504 PPC at PS Taluka Mirpurkhas.

2. Brief facts of the case are that applicant lodged F.I.R. bearing Crime No. 77/ 2024 under sections 506(ii),147,148,149,337-A(i),337-F(i),504 PPC at PS Taluka Mirpurkhas stating therein that on 18-04-2020 at 09:30 a.m he went to his land for visiting purpose and was available there, where he saw that Qadir s/o Qalander Bux having hatchet, Fazal Illahi s/o Noor Muhammad having lath, Ameer Bux s/o Qalander Bux having lath, Noor Ahmed s/o Dost Muhammad having lath, Fateh Muhammad s/o Abul Hassan having lath, Din Muhammad s/o Abul Hassan having lathi, Shah Muhammad s/o Abul Hassan, having lath, Sikander Ali s/o Wali Muhammad having lath and Muhammad Khan s/o Abul Hassan having

lath (sticks) came there and after abusing caused him lathies injuries, due to which he fell down on the ground and then accused took him to the Jamrao, where his nephew Muhammad Ismail and Lutuf Ali came and rescued him. Then accused persons fled away while issuing threats of dire consequences. After completing investigation, Investigating Officer submitted final report under section 173 Cr.P.C for disposal of the case/FIR under cancelled "C" class, which was approved by learned Magistrate vide order dated 21-09-2024; hence this Criminal Miscellaneous application.

3. The Counsel for the Applicant contended that impugned order is bad on law and fact. The Judicial Magistrate has failed to appreciate that applicant was injured and Final Medical Certificate was issued by the Medical Officer Civil Hospital, Mirpurkhas. He further contended that I.O has failed to incorporate final medical certificate issued by the Civil Hospital, Mirpurkhas confirming the alleged injuries in its final report under section 173 Cr.P.C submitted before the Judicial Magistrate, for his administrative approval as such great injustice has been done with the Applicant. He further submitted that besides Sections 337A, 337(-F(i) read with Sections 504, 506(ii), 147, 148 & 149 PPC have been added, however, the Investigation Officer has not incorporated the "Final MLC" issued by the Civil Hospital, Mirpur Khas and the learned Judicial Magistrate has ignored such aspect of the case while passing the impugned Order. He prayed that by granting this application, impugned order may be set aside and the case may be remanded with directions to Magistrate concerned to take cognizance of the crime and submits that the sections, as applied in this case, are exclusively triable by the Court of Sessions. In support of his contention, he placed reliance upon cases of Yousuf Ali Khan Ghouri versus The State through IX J.M. and 2 others (2018 YLR 1976), Saeen Bux Versus Civil Judge and Judicial Magistrate Matiari and 9 others (2010 PCL 1060) and Pakistan Institute of Labour Education and Research and another Versus Province of Sindh through Chief Secretary, Karachi and 4 others (2017 YLR Note 343).

4. On the other hand Mr. Francis Locus Khokhar Counsel representing Respondents No. 1 to 9 states that impugned order is passed in accordance with law and the Applicant is habitual in moving false applications leveling frivolous allegations. He further contended that the application filed by the Applicant under section 22-A&B of the Code before the Sessions Judge, Mirpurkhas and in the said application, the Applicant has mentioned that he was injured due to attack with hatchet while when the Applicant recorded his statement under section 154 Cr.P.C he has alleged injury due to lathi and due to such falsehood no interference is required by this Court.

5. I have heard the counsels for parties as well as learned Assistant Prosecutor General and examined the record. First of all, I would deal with the basic concept and statutory principles regulating criminal jurisdiction by High Court and then its scope and applicability of inherent jurisdiction of this Court under section 561-A of the Code in general and its application with the present case in particularity.

6. **Statutory Principles of Criminal jurisdictions** – A crime or offence is an illegal act, omission or event, whether or not it is also a violation of right, a tort, a breach of contract or a breach of trust, the principal consequence of which is that the offender, if he is detected and it is decided to prosecute, is prosecuted by or in the name of State <sup>1</sup> and if he is found guilty, he is liable to be punished whether or not he is also ordered to compensate his victim.<sup>2</sup> All criminal proceedings are in theory instituted before the Judicial Magistrate<sup>3</sup> and conducted before the Magistrate or Court of Sessions with the exception of Courts <sup>4</sup> of criminal jurisdiction operating under sphere of Special laws and enactments. In the contextualize framework, the High Court has multi-folded contour

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<sup>1</sup> See Article 7 of the Constitution of the Islamic Republic of Pakistan, 1973

<sup>2</sup> See Sections 544 & 544-A, Criminal Procedure Code, 1898

<sup>3</sup> See Sections 6, 172 and 190 of the Criminal Procedure Code, 1898

<sup>4</sup> Reference; "Courts" constituted under various special laws, interalia, the National Accountability Ordinance, 1999, the Anti-Terrorism Act, 1997, the Control of Narcotics Substance Act, 1997, the Offences in Respect of Banks (Special Courts) Ordinance, 1984, the Anti-Corruption Act, 1991 or Criminal Amendment Act, 1958 etc

jurisdiction in dealing with criminal case such as *constitutional—Revision—inherent*. In its Constitutional jurisdiction, the High Court exercise powers under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, an extra-ordinary jurisdiction that may quash the FIR or investigation or stay criminal trial etc in extra-ordinary circumstances. Further, under Articles 202 & 203 of the Constitution, a High Court is empowered to frame High Court Rules and Orders enabling subordinate courts to regulate their proceedings as ordained by this Court. In addition to the Constitutional jurisdiction, a High Court exercise and regulate Revision jurisdiction<sup>5</sup> to pass any order, which is essential for the “just decision of the case”. Furthermore, a High Court exercise inherent jurisdiction in terms of Section 561-A, Cr. P.C. to prevent the abuse of process of law, interalia, quash the criminal proceedings and other ancillary issues. The said jurisdiction confers to this Court cannot be taken away in ordinary circumstances. Reliance in this regard is placed upon the dictums of august Supreme Court of Pakistan <sup>6</sup> wherein it has been held:

*“Jurisdiction of the superior Courts could not be abolished or ousted unless same was done by express, clear and unambiguous words or clear intendment”.*

**7. Differentiation between Criminal Revision and Criminal inherent Jurisdiction**—Both the provisions have different scope and function relevant to the juridical affect, legal treatment and consideration. For convenience, the provisions are re-produced as under:

Section 439 Cr.P.C., 1898	Section 561-A Cr.P.C., 1898
(1) In the case of any proceeding the record of which has been called for by itself <sup>5</sup> [* * *] or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections <sup>6</sup> [], 423, 426, 427 and 428 or on a Court by	Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such order as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.]

<sup>5</sup> See Section 435 & 439 of the Criminal Procedure Code, 1898

<sup>6</sup> “The State vs. Syed Qaim Ali Shah” (1992 SCMR 2192)

<p>section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.</p> <p>(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.</p> <p>(3) Where the sentence dealt with under this section has been passed by a Magistrate <sup>1</sup>[* * * * *], the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by <sup>7</sup>[* * *] a Magistrate of the first class.</p> <p><sup>1</sup>[(4) Nothing in this section shall be deemed to authorise a High Court—</p> <p>(a) to convert a finding of acquittal into one of conviction; or</p> <p>(b) to entertain any proceedings in revision with respect to an order made by the Sessions Judge under section 439A.]</p> <p>(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.</p> <p><sup>2</sup>[(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.]</p>	
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Now looking to the impugned Order in the light of above jurisprudence, it would appropriate to examine as to an application against an Order of Magistrate may lie in “*Revisional Jurisdiction*” or a High Court may entertain it in its “*inherent jurisdiction*”. Obviously, if alternate remedy is available under the law, an inherent jurisdiction is not entertainable as discussed above. A great deal of uncertainty emerges on account of reading the jurisdiction, function and powers defined in the Code which embodied a Magistrate as “Court”.<sup>7</sup>

8. **Nature and extendibility of Order of Magistrate**—No doubt a Magistrate is a Court as defined under section 6 of the Code and an Order of Court is liable to be challenged in Revision jurisdiction. In contrast, the Shahnaz’s Begum,<sup>8</sup> a rule-making decision of Honorable Supreme Court, is the foundational structure of judicial interpretation with regard to the nature and value of the orders pass by a Magistrate while dealing with a Police Report/Charge Sheet/Challan under section 173 of the Code and held that inherent jurisdiction of a High Court under section 561-A of the Code, spanned over the judicial orders and not orders passed or steps taken *during an investigation* of a case. Later, the Hon’ble Supreme Court of Pakistan<sup>9</sup> endorsed the Shahnaz’s Begum case and drew distinction between *administrative and judicial functions* of the magistrate under the ibid Code and held that while passing an order of cancellation of a criminal case, the magistrate exercises administrative powers, thus not functioning as a court. Therefore, such an order was not amenable to Revisional jurisdiction. In consequence, I would discuss the instances<sup>10</sup> about the “Revision” and “inherent power” while undertake the analysis of the functions and powers of Magistrate which has now been developed through judicial interpretation. When a Magistrate has to deal with the charge sheet/ Challan under section 173 of the Code or to dispose of any

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<sup>7</sup> See Section 6 of the Criminal Procedure Code, 1898

<sup>8</sup> “Shahnaz Begum v. the Hon’ble Judges of the High Court of Sind and Balochistan and others (PLD 1971 SC 677)

<sup>9</sup> “Bahadur and another v. The State and another” (PLD 1985 SC 62)

<sup>10</sup> If it is a Court, obviously one has extensive remedy of invoking Revisional Jurisdiction.

Police Report under any of the outlined<sup>11</sup> situations based on unique facts of each case, it has been ruled by the Hon'ble Supreme Court that nature, scope and powers of the Magistrate are administrative, executive, or ministerial and he discharges these duties not as a *Court* but as a *personal designate*.<sup>12</sup> Therefore, the Order pass by a Magistrate is not revisable being executive in nature.

**9. Scope and Applicability of inherent jurisdiction** – The applicability and scope of the inherent jurisdiction is *curative* in nature. The inherent jurisdiction can be attracted if no other remedy is available in other words where any other remedy is available, normally the inherent jurisdiction cannot be invoked and an application is outright to be dismissed.<sup>13</sup> The Peshawar High Court<sup>14</sup> while placing reliance on the dictum in Bashir Ahmed's<sup>15</sup> case held that:

“The power under section 561-A, Cr.P.C. is extraordinary in its nature which could be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specially laid down by section itself, as its application in frequent and light manner would tend to circumvent the due process of law. The principles for invoking the inherent provision of section 561-A, Cr. P.C. have been enunciated by the honourable Supreme Court of Pakistan in case titled Bashir Ahmad v. Zafrul-Islam (PLD 2004 SC 298) which are binding in nature. Such power ought not to be exercised capriciously or arbitrarily, but should be exercised (ex debito justitiae) to do real and substantial justice for the administration of which alone Courts exist. The jurisdiction under section 561-A, Cr.P.C. is neither alternative nor additional in its nature and is to be rarely invoked only to secure the ends of justice so as to seek redress of grievance for which no other procedure is

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<sup>11</sup> Bombay Presidency Rules, the report for disposal of a case by the police under A-class could only be made, when case is true but accused is untraceable; for disposal of the case under B-class the matter should be found to be false, and the disposal of a case under 'C' class is when there is insufficient evidence or matter is non cognizable.

<sup>12</sup> “Arif Ali Khan v. State” (1993 SCMR 187), “Muhammad Sharif v. State” (1997 SCMR 304), and “Hussain Ahmed v. Irshad Bibi” (1997 SCMR 1503); “Soofi Abdul Qadir v. The State” (2000 P.Cr.L.J 520); PLD 1985 SC 62

<sup>13</sup> “Ali Gohar & another vs. Pervez & others” (2020 SCMR 2068); “A. Habib Ahmed v. M.K.G. Scott Christian and 5 others” (PLD 1992 Supreme Court 353); Mehboob Alam and 3 others v. The State (PLD 1996 Karachi 144)

<sup>14</sup> “Lutufullah Khan vs. The State” (PLD 2015 Pesh. 115)

<sup>15</sup> Bashir Ahmad v. Zafrul-Islam (PLD 2004 SC 298)

available but should not be used to obstruct or direct the ordinary course of Criminal Procedure. Such jurisdiction is designed to do substantial justice and the same is neither akin to appellate jurisdiction nor to the revisional jurisdiction. Such powers do not extend to uncalled for and unwarranted interference which the procedure prescribed by law, which must always be followed.”

**10. Inherent jurisdiction – conclusive remedy:** In view of discussions, one or more findings whatsoever given by Magistrate in case suffers from perversity or dissatisfaction from such order, an aggrieved person should have invoked the jurisdiction of this Court under Section 561-A of the Code and it does not amenable to the Revisional jurisdiction<sup>16</sup> being lacking the qualification of judicial order which may draw attention of a High Court to look into in exercise of Revisional Jurisdiction. To sum up the point under consideration, I held that the judicial interpretation makes it clear that the inherent jurisdiction can be invoked subject to a conditionality about no alternate remedy is available under the code against an administrative Order of Magistrate. The Applicant has filed present Criminal Miscellaneous Application by invoking jurisdiction of this Court under section 561-A Criminal Procedure Code, 1898 against an Order passed by Magistrate affirming the Police Report filed by the Investigation Officer under “C” Class. Looking to the above discussion and judgments of Apex Court, I therefore, hold that the Criminal Miscellaneous Application filed against the impugned Order passed by a Magistrate for cancellation of criminal case is maintainable before this Court in its inherent jurisdiction under section 561-A of the Code. It has been observed that initially the Respondent No.10/SHO has refused to register FIR against which the Applicant had filed Criminal Misc. Application No.400/2020 under Section 22-A of the Code, before the learned Additional Sessions Judge-I, Mirpurkhas with prayer to direct the SHO, PS Taluka, District Mirpur Khas to record his Statement and to register FIR against the Respondents No.1 to 8. After hearing the parties, the learned Sessions Judge disposed of Criminal Miscellaneous Application

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<sup>16</sup> “Muhammad Sharif and 8 others v. The State and another” (1997 SCMR 304) and “Sakhawat Ali v. The State and another” (2003 YLR 245); “Hakim Ali v. The State” (PLD 2006 Karachi 302)



No.400/2020 vide Order dated 14.05.2020 with direction to the SHO. PS Taluka, District Mirpur Khas to record the statement of the Applicant. The said Order dated 14.05.2020 was impugned by the Respondents No.1 to 9 before this Court in Criminal Miscellaneous Application No.S-193/2020 (New No.S-69/ 2024) and the Respondents have obtained ad interim Order on 20-05-2020. Since then matter was lingered on for considerable four years until the matter was finally came up for hearing on 21-07-2024 when my learned predecessor Judge has passed direction to the SHO concerned to record the statement of Applicant. Eventually, an FIR No.77/ 2024 was registered with PS Taluka, District Mirpur Khas.

**11. Investigation – duties and veracity** – After crossing the aforementioned abstruse barrier, the Applicant interacted with the Investigation Officer. Section 4(l) of the Code defines the term investigation: *“Investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.*” The Investigating Officer is head start of investigation to unequivocally determine the truthfulness or falsehood of the occurrence – accessory after the facts and that too without inspiring version of *informant* or *defence* but his conclusion must be based on ‘on actual outcome of reality – not merely possibility which he discovers or ascertain during determinative investigation. This determinative investigation is not an administrative process but it is requirement of law to do the justice by way of fair investigation based on truth and nothing else as held by the superior Courts <sup>17</sup> and the relevant para is re-produced as under:

According to para. 3 of rule 25.2 of Police Rules, 1934, it is the duty of an Investigating Officer to find out the truth and his object shall be to discover the actual facts and for the achievement of such object he shall not commit himself prematurely to any view of the facts for or against any person.

**12. Legitimacy of investigation** – the study and reason made note of authoritative judicial interpretations, its propriety demand truth,

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<sup>17</sup> “Nazeer Ahmed vs. The State” (PLD 2009 Karachi 191); “Choudhry Muhammad Adnan v. Mst. Erum and others” (2011 S C M R 508) and “Dr. Abdul Aziz v. IInd C & FJ/JM South and another” (2013 Y L R 676).

transparency and fairness.<sup>18</sup> The Hon'ble Supreme Court of Pakistan held that the provisions of section 173 Cr.P.C. are mandatory as their non-compliance constitutes violation of Articles 4 and 9 of the Constitution of Pakistan, 1973.<sup>19</sup> A further guidance can be taken from the dictum of Hon'ble Supreme Court,<sup>20</sup> the relevant parts are reproduced hereunder:

- (v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."
- (vi) .....
- (vii) Upon conclusion of the investigation the report to be submitted under section 173 Cr.PC is to be based upon the actual facts discovered during the investigation irrespective of the version of the incident, advanced by the first informant or any other version brought to the notice of the investigating officer by any other person.

13. **Case property** – I have noticed that the *criminal investigation* is dependent upon two fold fora to find out truthfulness – actual facts alongwith its recovery, seizure, if any, and handling case property together with the legal scrutiny and endorsement by the prosecution in criminal cases. Unfortunately, the standard of criminal investigation is deteriorating despite the gracious budgeting by the State. This imminent

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<sup>18</sup> See Articles 4 & 155 of the Police Order 2002, the duty of every police officer is to protect life, property and liberty of citizens; preserve and promote public peace; ensure that the rights and privileges, under the law, of a person taken in custody, are protected; prevent the commission of offences and public nuisance; detect and bring offenders to justice; apprehend all persons whom he is legally authorized to apprehend and for whose apprehension, sufficient grounds exist; prevent harassment of women and children in public places; afford relief to people in distress situations, particularly in respect of women and children, etc

<sup>19</sup> "Hakim Mumtaz Ahmed and another v. The State" (PLD 2002 SC 590)

<sup>20</sup> "Mst. Sughran Bibi Vs. The State" (PLD 2018 SC 595)

dangerous violation is regularly being examined, monitored and reminded by the superior Courts in pursuit to adhere administration of criminal justice system and dispensation of justice. Conversely, absence of “*case property*” may not only fatal for prosecution in order to prove the case but ultimately it can form basis of acquittal from the charge.

**14. Case Property – Stages** – It is mandatory for the Prosecution to undergo two tests for “case property”. Firstly to recover, seize, present in charge sheet or challan and to establish *safe custody* by preparation of documents flawless in description, accuracy and status and secondly, *safe transmission* of it under proper documents and production before the Court as an admissible evidence.<sup>21</sup>

**15. Recovery, Seizure of Case Property – legal significance and importance** – in our adversarial framework of criminal justice system, the pivotal role of “case property” and its essential un-solving crisis in many criminal cases are *indiscernible* under investigation and Police file(s) exclusively compile by the Investigation Officer. Any anomaly or defect in investigation may usually led to draw a negative inference reckon definite reason of either unskillfulness – capacity building – or malafides. The Police Rules, 1934 impose comprehensive duty and burden to the Investigation Officer for seizure, recovery of case property and its safe handling and production before the Court whilst linchpin supervisor<sup>22</sup> of investigation with further responsibility of legal scrutiny by the prosecutor. The guidance can be taken from the dictum laid down by Hon’ble Supreme Court of Pakistan<sup>23</sup>, the relevant portion is re-produced:

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<sup>21</sup> See “Qaiser and another v. The State” (2022 SCMR 1641); “Ikramulah v. The State” (2015 SCMR 1002), “The State v. Imam Bakhsh” (2018 S'CMR 2039), “Abdul Ghani v. The State” (2019 SCMR 608), “Kamran Shah v. The State” (2019 7 SCMR 1217), “Mst. Razia Sultana v. The State” (2019 SCMR 1300), “Faizan Ali v. The State” (2019 SCMR 1649), “Zahir Shah alias Shat v. State through AG KPK” (2019 SCMR 2004), “Haji Nawaz v. The State” (2020 SCMR 687), “Qaiser Khan v. The State” (2021 SCMR 363), “Mst. Sakina Ramzan v. The State” (2021 SCMR 451), “Zubair Khan v. The State” (2021 SCMR 492), “Gulzar v. The State” (2021 SCMR 380).”

<sup>22</sup> See Section 168 Criminal Procedure Code, 1898, a District Superintendent of Police accord approval of Charge sheet.

<sup>23</sup> “Ahmed Ali & another vs. The State” (Supreme Court Criminal Appeal No.48/2021)

### **The Rule 22.16 of the Police Rules, 1934**

("the Police Rules") deals with the "case property".

Sub-rule (1) thereof provides, inter alia, that in certain circumstances, police shall seize weapons, articles and property in connection with criminal cases, and take charge of property which is unclaimed. Sub-rule (2) thereof provides, inter alia, that each weapon, article or property (not being cattle) seized under the above sub-rule shall be marked or labelled with the name of the person from whom, or the place where, it was seized, and reference to the case diary or other report submitted from the police station. If articles are made up into a parcel, the parcel shall be secured with sealing wax, bearing the seal impression of the responsible officer, and shall similarly be marked or labelled. Such articles or parcels shall be placed in safe custody, pending disposal as provided by law or rule. Sub-rule (3) thereof provides, inter alia, that the police shall send to headquarters or to magisterial outposts all weapons, articles and property connected with cases sent for trial, as well as suspicious, unclaimed and other property, when ordered to do so by a competent Magistrate. Sub-rule (4) thereof provides, inter alia, that motor vehicles detained or seized by the police in connection with cases or accidents shall be produced before a Magistrate after rapid investigation or by means of in-complete challan.

### **Rule 22.18 of the Police Rules deals with "custody of property".**

Thus, under the Police Rules and the High Court Rules, mentioned above, in all cases, especially in the cases of articles sent to the chemical examiner, it is necessary that there be no doubt as to what person or persons have had charge of such articles throughout various stages of the inquiry. Besides, the person who packed, sealed, and dispatched such articles should invariably be examined. Further, the clothes, weapons, money, ornaments, food and every other article that forms a part of the circumstantial evidence has to be produced in court, and their connection with the case and identity should be proved by witnesses.

**16. Description of Case property** – The prescribed Performa is enforced in the light of Rule 25.56 of the Police Rule, 1934. The description of “case property” is required under the Police Rules, 1934 and it ought to be mentioned at Column No.6 of the Charge Sheet/Challan/Police Report. The guidance can conveniently be taken from the Hon’ble Supreme Court<sup>24</sup> case; the relevant portion is re-produced:

Thus, the Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when is produced before the court, remains in safe custody and is not tampered with until that time. A complete mechanism is provided in Police Rules qua safe custody and safe transmission of case property to concerned laboratory and then to trial Court.

**17. Case property – handling and presentation** – The filing of Charge sheet or Police report alongwith details of case property before the Magistrate is a mandate of law. The Scheme of law forced the Investigation Officer to regard investigation as determinative of the principles from which deductions could be made out about “case property” to ruminate over the implications at a point of handing down decision. The method and manners of Investigation Officer dealing with the “case property” in a criminal case illustrate definitive conditions of each criminal case according to its peculiar facts and circumstances. There are countless examples to look at that a criminal investigation with strategic compliance of law – recovery and handling of case property as per Police Rules and presentation as per requirement of section 173 of the Code which is backed by law and recognized by Supreme Court of Pakistan through judicial doctrine “*safe custody and safe transmission of case property*”. Both terms are a collective text and undergo to achieve the course of *prove* of the case based on rational truthfulness. The realistic decision-making mechanism

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<sup>24</sup> “Ahmed Ali & another vs. The State” (Criminal Appeal No.48 of 2021)

between the two stakeholders of criminal justice system (Police-cum-investigation and Prosecution) is essential for improvising the confidence over criminal justice system, economic success and prevention of human rights across the country.

**18. Safe custody and safe transmission of case property** – In addition to the imposition of duty and responsibility for *recovery of case property* and *safe custody of such case property* during investigation, the final stage is its production before the Court during evidence to prove the case of prosecution.

**19. Right of victim – case property.** One's failure to obey and follow requirement of law may result in acquittal of case(s) due to any act or omission—fault or defect—or willful negligence of Investigator or Prosecutor by Court of law. This fundamentally opposite to the experience(s) suffers from some adverse circumstance(s)<sup>25</sup> by a victim and an unfortunate person or even sometime State itself. Although it does not a case of miscarriage of justice under the operative jurisdiction regulate by Court of laws but strenuously it is dilemma of defective investigation and prosecution. The law recognizes few rights of victim such as the right of fairness, dignity and respect <sup>26</sup> in the course of criminal justice proceedings and legal right to be heard <sup>27</sup>, informed and to be presented in various stages within criminal justice system and finally the right to compensate.<sup>28</sup> Additionally, a right to protection from intimidation and harassment a recent enactment(s) at federal and provincial levels in Pakistan.<sup>29</sup>

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<sup>25</sup> For instance: mental or physical injury, emotional sufferings economic loss, financial fraud or theft or deprive of valuable securities or assets or substantial impairment of fundamental right etc

<sup>26</sup> See Articles 4 and 14 of the Constitution of Islamic Republic of Pakistan, 1973

<sup>27</sup> See Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973

<sup>28</sup> See Section 544 & 544A of the Criminal Procedure Code, 1898

<sup>29</sup> The Witness Protection & Benefit Act, 2017, The Witness Protection Act, 2015, The Witness Protection Act, 2013 (Sindh Statute), The Witness Protection Act, 2018 (Punjab Statute), The Witness Protection Act, 2021 (KPK Statute)

One may not ignore it assuming theoretical hypothesis but obligate as rationale—as in many cases the Hon’ble Supreme Court<sup>30</sup> acquitted the Accused by holding that:

“the gold articles said to be the belonging of the deceased were neither got identified in accordance with law nor exhibited in the trial, and as such, reliance on the same and awarding capital punishment would not at all be justified”.

In another case<sup>31</sup> held that:

“the prosecution miserably failed to produce and exhibit the case property though many opportunities were afforded by the trial Court; in such circumstances, it was rightly held by the High Court that there was no possibility of the accused being convicted and continuation of trial against them would be an abuse of the process of the Court”.

In another case<sup>32</sup> held that

“it would not be out of place to mention that the case property in that case has neither been exhibited nor produced at the trial, causing a dent in the prosecution's case.”

In another case<sup>33</sup>

“it was held that admittedly the case property, the stepony of the car was never produced during trial to verify as to whether it could contain such a huge quantity of the narcotics in question; the referred elements of doubt surrounding the prosecution case have led us to hold that the prosecution has failed to prove its case beyond reasonable doubt to sustain conviction.”

**20. Consequential legal ways of case property** – The reason of above mentioned analogy is the scheme of law which provides mechanism at every form of criminal case. For instance:

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<sup>30</sup> “Qamar Zaman v. Waseem Iqbal and 5 others” (2004 SCMR 1209)

<sup>31</sup> “State of Islamic Republic of Pakistan through Deputy Attorney: General for Pakistan v. Kenneth Marshal and 2 others” (2005 SCMR 594)

<sup>32</sup> Gul Dast Khan v. the State (2009 SCMR 431)

<sup>33</sup> Amjad Ali v. State (2012 SCMR 577)

- a. Case Property is existing<sup>34</sup>
- b. Case property is not existing<sup>35</sup>
- c. Case property was existed but removed<sup>36</sup> or converted<sup>37</sup> or destroyed<sup>38</sup>
- d. Case property is or was existing but avoidable circumstances <sup>39</sup> prevented the Investigation Officer. For instance; (i) Accused is Absconder (ii) Accused has obtained Bail (iii) Remand could not procured etc

It cannot be casually ignored while looking oppositely as law prescribed stern punishment for the defective investigation i.e. breach of duties,<sup>40</sup> false investigation or without diligence,<sup>41</sup> greediness or malafides or misconduct<sup>42</sup> of the Investigation Officer and even he shall be punished

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<sup>34</sup> The IO is required to mention in Column No.6 of Police Report/Charge Sheet under section 173 Cr.P.C. Any violation term it defective investigation. The action can be taken against the IO under section 166 or 186(3) PPC.

<sup>35</sup> The IO is required to mentioned in Column No.6 of Police Report/Charge with conclusive views that allegations are false or untenable. This action is backed by section 182 PPC.

<sup>36</sup> The IO is required to mentioned in Column No.6 of Police Report/Charge with addition of theft or stolen provision. This action is backed by sections 380, 381,411,412 or 414 Pakistan Panel Code, 1860 readwith its section 201.

<sup>37</sup> See Section 3(a) of the Money Laundering Act, 2010, Section 5(da) & (q) of National Accountability Ordinance, 1999,

<sup>38</sup> The IO is required to mention in Column No.6 of Police report/Charge Sheet. This action is backed by section 201 & 202 PPC.

<sup>39</sup> The IO is required to mentioned in Column No.6 of Police Report/Charge sheet and issue notice to the Accused or any relevant person for production of case property. This action is backed by Section 160 Cr.P.C. and its violation is again an offence under section 174 and 175 PPC. Additionally, a ground for invoking Section 497(5) Criminal Procedure Code, 1898.

<sup>40</sup> Section 27 of the Anti-Terrorism Act, 1997, provides that the investigating officer, or other concerned officers have failed to carry out investigation properly or diligently or have failed to pursue the case properly and in breach of their duties, it shall be lawful for such Court to punish the delinquent officers.

<sup>41</sup> Section 22 of the Anti-Rape (Investigation and Trial) Act, 2021, also provides penal actions against public servant entrusted to investigate scheduled offences if he fails to carry out the investigation properly or diligently or causes the conduct of false investigation.

<sup>42</sup> See Section 2 (v) of the Sindh Police (Efficiency & Discipline) Rules, 1988

Articles 4 & 155 of the Police Order 2002, also mandates that the duty of every police officer is to protect life, property and liberty of citizens; preserve and promote public peace; ensure that the rights and privileges, under the law, of a person taken in custody, are protected; prevent the commission of offences and public nuisance;



with imprisonment of either description for a term which may extend to three years or with fine or with both<sup>43</sup> and that too through a summary proceedings.<sup>44</sup> It is not the scheme of law that any Investigation Officer intentionally left empty the column of “case property”. The collective wisdom of various provisions of the Code as mentioned above, law demands that the Investigation Officer must give details of availability or plausible reason for non-availability during the course of his investigation. Therefore, a Magistrate has to look into the charge sheet/ police report carefully while dealing with the charges involving “case property” and should ask the explanation from the Investigation Officer according to the above-mentioned situations backed by procedural provisions of the Code.

21. The Investigation Officer has not placed Police Report as required under section 173 of Code and the relevant column of “case property” is BLANK. For the convenience of understanding, it would appropriate to produce the sample Performa of Charge sheet/Challan hereunder:

**FORM No. 25.56**  
**CHARGE SHEET**

District \_\_\_\_\_ Charge Sheet No. \_\_\_\_\_, dated \_\_\_\_\_19 \_\_\_\_\_,  
Police Station \_\_\_\_\_ in first information No. \_\_\_\_\_ dated \_\_\_\_\_

1	2	3	4	5	6	7
		Name and Addresses of Accused Persons sent For Trial				
Name, address and occupation of Complainant or informant	Name and addresses of accused persons not sent up for trial, whether arrested or not including absconders, (show absconders in red ink)	In custody	On bail or recognizance	<b>Property (including weapons) found, with particulars of where, when and by whom, found and whether forwarded to Magistrate</b>	Names and addresses of witnesses	Charge of information : Name and offence and circumstances connected with it, in concise detail, and under what section of the law charged
.....	.....	.....	.....		....	.....

Dispatched at A.M./P.M. on \_\_\_\_\_19 Signature of Investigation Officer

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**detect and bring offenders to justice; apprehend all persons whom he is legally authorized to apprehend; afford relief to people in distress situations, etc**

<sup>43</sup> See Section 166(3) of the Pakistan Panel Code, 1860.

<sup>44</sup> For instance, “Ikramuddin Rajput vs. Inspector General of Police & Others” (C.P. No.940-K of 2022)

The above lengthy discussion and analysis of the present case finds that the investigation has conducted in violation of law, Police Rules and settled principles of august Supreme Court of Pakistan. This is not permissible for the Investigation Officer under the existing scheme of law. The Investigation Officer has failed to recover the “case property” (lathi or hatchet) or alternatively failed to give plausible reason for non-recovery.

**22. Importance of Medico-Legal Certificate or report**— Furthermore, the Investigation Officer has deliberately thrown in garbage the Final Medico Legal Certificate issued by the Medical Officer, Civil Hospital, Mirpurkhas despite the factum that it has mentioned that the Applicant has sustained injury falling under Sections 337-A & 337F(i) Pakistan Penal Code, 1860. Surprisingly, the Police report which is the opinion of Investigation Officer about the case, has been filed without mentioning penal provisions of law reckoning in the FIR and without reference as to said penal provisions may or may not be established in the opinion of the Investigation Officer in his said Police Report under “C” Class. Similarly, the Office of the DPP, Mirpur Khas has flagrantly violated the **Pre-Indictment Review** process and has remotely forwarded the challan without completion of basic ingredients and legal requirements of the case. The Investigation Officer has even intentionally not considered that these penal provision of law are enumerated in the relevant column of FIR by the SHO concerned after due consideration on the Medico Legal Certificate and for this reasons the SIP Zubair Solangi has not recorded the Statement under section 161 of the Code of the Medical Officer, Civil Hospital, Mirpur Khas and he failed to unearth the truth so also he has not examined the Duty Officer who had lodged FIR invoking the penal provisions of injuries. Consequently, the Final Police report of “C” Class prepared by SIP Zubair Solangi does not show the Medical Officer or Duty Officer in the calendar of witnesses in violated the Police Rule. The relevant Rule is reproduced:

**Rule 25.19 25.19. Medico-legal opinion. –**

(1) When a medical opinion is required in police cases, the persons to be examined shall be produced before the highest medical authority available on the medical staff of the district. accessible, medico-legal cases shall be sent there and not to a rural dispensary.

### **Rule 25.20 25.20. Wounded complaints and witnesses.**

(1) When a complaint or a witness of importance in an important case is seriously ill or is wounded, but does not appear to be dying, the police officer making the investigation shall prepare a charge-sheet in accordance with Rule 25.56(1) if this has not already been done and shall either –

(a) with such persons' consent, send him or her, for medical treatment to the station of the magistrate having jurisdiction and invite such magistrate to take magistrate to take such person's deposition in the presence of the accused person or, Investigation Officer.

(b) if such complainant or witness cannot be moved, or refuses to be sent, such officer shall apply for an order of detention in respect of the accused person if he is in custody and such order is necessary, and invite the magistrate having jurisdiction to record the deposition of such complainant or witness in the presence of the accused person at the place where the former is lying.

**23. Nature of "A", "B" & "C" Class Rules** – It is the requirement of law that after completion of investigation, the Investigation Officer would have to place Police report before the area Magistrate about truthfulness or falsehood of the case and it does not permit the Investigation Officer to ignore or hide the truth and concealed the record. Now turning towards the nature and scope of "C" Class report, one should bear in its mind that the *Bombay Presidency Police Rules* were enforced when the Province of Sindh was the part of Bombay Presidency. The Rules provides alternative mechanism for the disposal of criminal cases when any criminal case, in the opinion of Investigation Officer cannot try on the basis of final Police report before the competent court of law for taking cognizance and trial. In this historical background, the said rules are still applicable and serve the purposes to regulate criminal case through three alternative ways for disposal of any criminal case which are distinct to each other in its nature and are prescribed as A class; B class; & C-class. <sup>45</sup>

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<sup>45</sup> Police Report under A-class depends when case is true but accused is untraceable or unknown; Police report under B-class when case is false and Police Report under 'C' class case is insufficient evidence or matter is non cognizable.

**24. Investigation Officer Mandatory response** – A retrogressive investigation – one that is devoid of a requirement of law or Police Rules or failure to proper legal endorsement by the prosecution – only tends to perpetuate the crises for the Criminal Justice System. For diverse reasons, which are obvious, depend on merits of each case, a complete mechanism is provided under the law regarding the relationship of the Investigation Officer with the case property which are interdependent on each other and escape or intentional departure cannot casually be ignored by a Magistrate while supervising Investigation or dealing with the Cancellation of FIR as has been eye-washed in the present case.

**25. Discretionary Power of Magistrate** – Simultaneously, a Magistrate is not bound by the Police Report for disposal of the case under any class or oppositely taking cognizance of the case. The law has interpreted the word '**may**' which has been used in Section 173 Criminal Procedure Code that Magistrate always vests competence to **agree** or **disagree** with the police report under Section 173 Criminal Procedure Code. This has been the reason for legally established principle of Administration of Justice that an opinion of the investigating officer is never *binding* upon the Magistrate dealing with Police report, forwarded under section 173 of Criminal Procedure Code.<sup>46</sup> On presentation of Police report, the Magistrate to deal with Police Report describes under Section 190 Cr.P.C., being relevant, which reads as under;

**“Section 190. Cognizance of offences by Magistrates.** All Magistrates of the first class, or any other Magistrate specially empowered by the Provincial Government on the recommendation of the High Court **may** take cognizance of any offence;

(a) upon receiving a complaint of facts which constitute such offence.

(b) upon a report in writing of such facts made by any Police officer,

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<sup>46</sup> “Anwar Shamim and another v. The State” (2010 SCMR 1791); “Muhammad Ahmed (Mehmood Ahmed) Vs. The State” (2010 SCMR 660), “Safdar Ali V. Zafar Iqbal” (2002 SCMR 63); “Muhammad Shahid Khattak Vs. The State” (PLD 2013 Sindh 220); “Muhammad Akbar v. State” (1972 SCMR 335); “Falak Sher v. State” (PLD 1967 SC 425)

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion”.

(1) that such offence has been committed which he may try or send to the Court of Session for trial and

(2) A Magistrate taking cognizance under sub-section (1) of an offence triable exclusively by a Court of Session shall, without recording any evidence, send the case to the Court of Session for trial.

**26. Treatment of police report by Magistrate** – There is no obligation on the Magistrate to accept the report if he does not agree with the opinion formed by the police. The power to take cognizance notwithstanding the formation of opinion by the police which is the final stage in the investigation has been provided in section 190(1)(c) Cr.P.C. When a report forwarded by the police to a Magistrate under Section 173(2)(i) is placed before him several situations arise. The Magistrate is required to apply his mind in order to ascertain as to whether the case is one which he is required to send for trial to the Court of Session or he can proceed to try himself. Section 337-f(1) of the Pakistan Penal Code (PPC) is triable by Court of sessions. This section deals with injuries that cause the skin to rupture and bleed, also known as "Ghayr-jai-fah". Therefore, the Magistrate should abstain deeper appreciation and only to give consideration to a *prima facie* assessment of the facts about the commission of **offence** or otherwise. In other words, if tentative assessment of available record *prima facie* constitute commission of a cognizable offence, it ought to take cognizance of criminal case and *normally or remotely* not to dispose of under ‘B’ or ‘C’ class on the basis of recommendation of the police. The law on the related issues is expanded to another avenue as held by the Hon’ble Supreme Court that re-investigation after the submission of Challan/Charge Sheet and during the trial of the offence, though disapproved, yet it is not legally barred.<sup>47</sup>

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<sup>47</sup> “Bahadur Khan vs. State” (2006 SCMR 373); “Ashfaq v. Amir Zaman and others” (2004 SCMR 1924)

27. The SIP Zubair Solangi being Investigation Officer has not incorporated the Medico-Legal Certificate and failed to place before the Judicial Magistrate, Mirpur Khas which is act of bypassing the mandatory requirements of investigation as discussed hereinabove. Consequently, a case cannot be treated to be one of insufficient evidence and the conduct of Investigation officer to disbelieve such evidence without legal justification is an act to assume the role of Court which is not permissible. Simultaneously, it is impermissible for Magistrate to analyze deeper examination of material record which ought to be done by the regular trial Court as embodied by law. Hence, the argument of the learned counsel for the Respondents does not force as he would have ample opportunity to place his point of controversy or defence before the Investigation Officer as well as have ample opportunities during the cross examination when Prosecution would step-in into the witness box. The reason is backed by the doctrine of innocence<sup>48</sup> which indiscriminately applies throughout criminal proceedings or criminal trial with the presumption of innocence that it must be balanced with the interest of efficient justice. It is settled law that an act of taking cognizance has nothing to do with the *guilt* or *innocence* of an accused but it only shows that Magistrate concerned has found legally and reasonably to try the case.<sup>49</sup>

28. In conclusion, I refer section 5(1) of the Code which provides all offences punishable under the Pakistan Penal Code, 1860: *"shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained"*. I hold that it an obligatory duty of investigation and prosecution which squarely lies upon the Investigation Officer, Supervisory Officer and Prosecutor General's Office to bring truth and not to conceal or hide record from the Magistrate and police report must be placed in transparent manner, which has not been done in the instant case. Therefore, the impugned Order dated 21-09-2024 passed by the Judicial Magistrate/Consumer Protection Court, Mirpur Khas accepting the Police Report as "C" Class is not sustainable and the said

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<sup>48</sup> Article 11 of the Universal Declaration of Human Rights

<sup>49</sup> Article 117 of the Qanoon-e-Shahadat Order, 1984

Order dated 21-09-2024 is set aside with directions to pass fresh order after considering material record in accordance with law.

29. The Criminal Miscellaneous Application stands disposed of alongwith listed applications.

30. Office to send the Order to the DIG, Mirpur Khas as well as to the Secretary Law & Criminal Prosecution Department, Government of Sindh and Prosecutor General Sindh with directions to draw a careful mechanism of pre-trial and post-trial scrutiny of criminal cases and such compliance report be placed within 10 days.

**JUDGE**

\*Saleem\*