

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Miscellaneous Application No.S-28 of 2025

Applicant: Faiz Muhammad s/o Muhammad Hussain
Through Mr. Rao Faisal Ali advocate.

Respondents: 1. S.S.P, Mirpurkhas.
2. SHO P.S Satellite Town Mirpurkhas.
3. I.O Crime No. 169/ 2024 PS Satellite Town
Mirpurkhas.
4. Muhammad Taha s/o Jan-ur-Rehman @ Jani.
5. Jan-ur-Rehman @ Jani s/o Saeed-ur-Rehman.
6. Zaryab s/o Jan-ur-Rehman @ Jani.
Respondents No.4 to 6 through Mr. Asif Choudhry
advocate
7. The State.
Official respondents through Mr. Shahzado Saleem
Nahiyoan, Additional P.G.

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Date of hearing: 10.06.2025.

Date of Order: 10.06.2025.

ORDER

Jan Ali Junejo, J.— Through the instant Criminal Miscellaneous Application filed under Section 561-A Cr.P.C., the applicant/complainant Faiz Muhammad seeks setting aside of the Order dated 09.01.2025 (hereinafter referred to as the “Impugned Order”) passed by the learned Civil Judge & Judicial Magistrate-II, Mirpurkhas in Criminal Case No. 08 of 2025 (arising out of Crime No.169/2024, registered at Police Station Satellite Town, Mirpurkhas). Vide the said order, the learned Magistrate concurred with the police report, wherein Section 324 P.P.C. was deleted from the charge sheet in accordance with the recommendation of the Investigating Officer.

2. As per the F.I.R. lodged on 30.10.2024 by the complainant, Faiz Muhammad, a dispute arose with his neighbour, Jan-ur-Rehman alias Jani, and his sons, Muhammad Taha and Zaryab, regarding alleged encroachment upon a public street adjoining his house and shops. On 25.10.2024, when the complainant and his friends attempted to prevent the accused from raising an illegal structure, Muhammad Taha allegedly struck the complainant with an iron rod, aiming at his head; however, the blow landed on his hand. Zaryab

allegedly fired aerial shots. After receiving medical treatment, the complainant approached the police and lodged the F.I.R.

3. Learned counsel for the applicant argued that the impugned order is contrary to law and facts and liable to be set aside. He contended that the F.I.R. specifically attributes a serious role to respondent No. 4, Muhammad Taha, who allegedly attempted to commit murder by striking the complainant with an iron rod. He asserted that the deletion of Section 324 P.P.C. by the Investigating Officer was unjustified and that the learned Magistrate erred in accepting such deletion without conducting a proper judicial inquiry. He further submitted that the police investigation was biased and aimed at extending undue favour to the accused, thereby prejudicing the complainant's case. It was argued that sufficient evidence exists to invoke Section 324 P.P.C., and thus the learned Magistrate's order warrants interference.

4. Learned Additional Prosecutor General opposed the application and supported the impugned order. He submitted that the Investigating Officer, upon completion of a thorough investigation, found no material to support the allegation of attempted murder under Section 324 P.P.C. The learned Magistrate, being fully competent under the law, rightly exercised discretion in accepting the final police report. He further contended that the material collected during the investigation reveals that the applicant was struck with an iron rod on the hand only, with no repeated blows or life-threatening injuries. Therefore, the conclusion reached by the learned Magistrate is well-reasoned and not open to interference. Lastly, the learned APG prayed for dismissal of the Criminal Misc. Application.

5. Learned counsel for the private respondents contended that the impugned order passed by the learned Magistrate is well-reasoned and legally sound, having been made after due consideration of the police report and the material on record. He submitted that the Investigating Officer, upon

completion of a thorough inquiry, found no evidence to justify the application of Section 324 P.P.C., and accordingly recommended its deletion, which was rightly accepted by the Magistrate. It was further argued that the role attributed to respondent No.4 (Muhammad Taha) is limited to a single iron rod blow which landed on the complainant's hand, and there is no allegation of repeated assault or injury to a vital part. The subsequent suspension of the Medico-Legal Certificate by the Special Medical Board, due to non-production of the injured, further undermines the claim of a grievous or life-threatening injury. Therefore, the application under Section 561-A Cr.P.C. is misconceived and does not warrant interference with the impugned judicial order. Lastly, the learned counsel prayed for dismissal of the Criminal Misc. Application.

6. I have heard the arguments advanced by both sides and examined the record, including the F.I.R., medical documents, police report, and the impugned order. The core issue raised pertains to the deletion of Section 324 P.P.C. from the charge sheet and the learned Magistrate's acceptance of the same. It is well-settled that a Magistrate, under Section 173 Cr.P.C., is fully empowered to assess the police report and independently determine whether the material justifies proceeding under a particular penal provision. The scope of this Court's jurisdiction under Section 561-A Cr.P.C. is supervisory in nature and does not extend to substituting judicial discretion in the absence of patent illegality, arbitrariness, or perversity.

7. In the present case, the role attributed to respondent Muhammad Taha is limited to a single blow with an iron rod, which struck the complainant on the wrist. There is no allegation that the blow was aimed at a vital part of the body or that multiple or forceful blows were inflicted. These facts are insufficient to satisfy the legal requirements of Section 324 P.P.C., which demands clear evidence of intent or knowledge to commit *qatl-i-amd*. The complainant's own version, as recorded in the F.I.R., does not support such intent.

8. The Investigating Officer, on conclusion of his investigation, found no material justifying the application of Section 324 P.P.C., and accordingly recommended its deletion. The learned Magistrate accepted this recommendation after applying judicial mind and evaluating the available evidence. This exercise of discretion is consistent with legal principles, and no procedural irregularity or misapplication of law is apparent. It is a well-established legal principle, beyond any doubt, that a Magistrate, while concurring with a report submitted under Section 173 of the Code of Criminal Procedure (Cr.P.C.), does not act in the capacity of a Criminal Court. In light of the settled position of law, any such order passed by the Magistrate is not subject to revisional jurisdiction under Sections 435 to 439 of the Cr.P.C. However, where an order passed by a Judicial Magistrate amounts to an abuse of the process of the Court, it becomes amenable to the inherent jurisdiction of the High Court under Section 561-A of the Cr.P.C. In this regard, reference may be made to the authoritative judgment of the Honourable Supreme Court of Pakistan in ***Muhammad Sharif and 8 others v. The State and another (1997 SCMR 304)***, wherein this legal proposition was clearly enunciated.

9. It is further relevant that the alleged injury was initially declared under Section 337-F(vi) P.P.C. However, a Special Medical Board was constituted for re-evaluation vide Order dated 09.01.2025, and the injured was not produced on three scheduled dates, 11.12.2024, 08.01.2025, and 22.01.2025. Consequently, the Medico-Legal Certificate was suspended by the Board on 25.01.2025. In light of this, the actual nature and severity of the injury remains medically unverified, thereby undermining any inference of grave or life-threatening harm necessary to invoke a more serious charge.

10. The mere mention of a penal provision in an F.I.R. does not bind the Investigating Officer or the Court to pursue that charge if the investigation does not produce the required legal and factual foundation. In the absence of verified medical evidence and a clear demonstration of *mens rea* to commit *qatl-i-*

amd, the decision to omit Section 324 P.P.C. from the final challan was legally justified.

11. In view of the foregoing, no error or illegality has been committed by the learned Magistrate in accepting the police report and taking cognizance of the remaining offences. The Criminal Miscellaneous Application, being devoid of merit, is accordingly dismissed. The impugned order dated 09-01-2025 passed by the learned Civil Judge & Judicial Magistrate-II, Mirpurkhas is upheld. It is clarified that the observations made herein are tentative in nature and shall not prejudice the proceedings or the conclusive findings of the trial Court on merits.

JUDGE

Saleem

