

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Misc. Appln. No. S-817 of 2025

Applicant : Zulfiqar Ali Shar Son of
Muhammad Yaqoob, by caste Shar,
Through Mr. Sufizada Zaheer Muhammad
Babar, Advocate

Date of hearing : 02.02.2026

Date of order : 02.02.2026

ORDER

KHALID HUSSAIN SHAHANI, J.— The applicant, being the complainant of FIR No.314 of 2025 registered at Police Station Pirwassan @ Mirwah under Sections 506/2, 504, 34 PPC, has invoked the revisional jurisdiction of this Court, calling into question the legality and propriety of order dated 20.12.2025 passed by the learned Civil Judge & Judicial Magistrate-II, Thari Mirwah in Summary Case No.18 of 2025, whereby the final report under Section 173, Cr.P.C. was declined approval, the FIR was cancelled in “C” class and the accused Muhammad Nawaz Shar was discharged.

2. Concisely stated, the prosecution case is that the accused allegedly purchased ten bags of cement on credit from the shop of the complainant's father, and upon demand of payment, on 03.11.2025 at about 1930 hours near Chak Ali Murad Malukani, while the complainant and his cousin Abdullah were returning from their agricultural land, the accused accompanied by two unidentified armed associates intercepted them, subjected the complainant to beating with fists and kicks, issued threats to his life and resorted to aerial firing before decamping. The investigation was conducted by SIP Khan Muhammad Dasti, PP/IO Pirwassan, who recorded statements under Section 161, Cr.P.C., prepared site plan and eventually submitted a report under Section 173, Cr.P.C. recommending that cognizance be taken; such view was endorsed by the learned ADPP.

3. The learned Magistrate, upon hearing the learned counsel for the complainant as well as the learned ADPP and upon appraisal of the material collected during investigation, declined to accede to the police recommendation, *inter alia*, on the premises that: (i) in the presence of admitted prior enmity evidenced by FIR No.121 of 2024, it was inherently implausible that the accused would enter into a credit transaction with the complainant's father; (ii) no documentary material was produced to substantiate the alleged supply of cement on credit; (iii) despite the assertion of physical assault by kicks and fists, there was a complete dearth of medical evidence; (iv) it was intrinsically improbable that an accused allegedly armed with a pistol and accompanied by two armed persons would content himself with mere fisticuffs without inflicting any serious injury; (v) the earlier FIR No.121 of 2024, registered under Sections 506/2, 337-A(i) and 337-F(i), PPC and disposed of on compromise, *prima facie* reflected a pattern of inimical litigation; and (vi) the defence plea that the real bone of contention was the accused's intention to contract marriage with a widow, Mst. Khushboo Malik, to which the complainant was allegedly opposed, supplied an alternative and plausible motive for false implication.

4. While adverting to the dicta laid down in *Gul Muhammad v. The State* (2015 P.Cr.L.J 1329) and *Syeda Afshan v. Syed Farukh Ali* (PLD 2013 Sindh 423), the learned Magistrate rightly observed that he was not a mere conduit for the transmission of the police opinion, and that the *ipse dixit* of the investigating agency does not eclipse the obligation of the Court to exercise an independent judicial mind while dealing with a report under Section 173, Cr.P.C. Having held the FIR to be false, fabricated and actuated by malafides and ulterior motives, he consequently ordered cancellation of the FIR in "C" class and discharge of the accused.

5. The legal position regarding the status of a police report under Section 173, Cr.P.C. is no longer *res integra*. It stands firmly recognized that the Magistrate is not bound to acquiesce in the conclusions of the

investigating officer and is at liberty either to concur or to differ therefrom, provided that reasons of a judicially acceptable character are recorded for the course adopted. The Magistrate is thus under a positive duty to apply his independent mind to the totality of material placed before him and cannot abdicate his jurisdiction in favour of the investigating agency.

6. Tested on the touchstone of the above principles, the impugned order manifests a conscious and structured application of judicial mind to multiple aspects of the case: the antecedent hostility between the parties rendering the alleged credit transaction suspect; the absence of any corroborative documentary proof of sale; the complete lack of medical evidence consistent with the asserted assault; the inherent improbability of the conduct attributed to an armed party; the existence of prior litigation in the shape of FIR No.121 of 2024 ending in compromise; and the alternative motive founded upon an intended marriage resisted by the complainant. Each of these constitutes a cogent circumstance; in their cumulative effect, they legitimately led the trial Court to the conclusion that the story set up in the FIR was unreliable and motivated.

7. The principal thrust of the present application is that the learned Magistrate erred in discarding a police report duly supported by the ADPP and that his disagreement with the investigating officer and the prosecution was, *per se*, illegal and of no legal consequence. This stance is misconceived. The opinion of the prosecuting agency, including that of the ADPP, is no more than a recommendatory view which, though entitled to respectful consideration, does not fetter the judicial discretion of the Magistrate. The settled jurisprudence is that the Magistrate is not subordinate to the prosecution in the exercise of his judicial functions and is not obliged to accept its opinion in a routine or mechanical manner.

8. In revisional jurisdiction, this Court is not to re-appreciate the material as a Court of appeal or to substitute its own view merely because another conclusion is also possible on the same material. Interference is warranted only where the impugned order is shown to be infected with

illegality, material irregularity, jurisdictional defect, patent perversity or a manifest failure of justice. The order under challenge, far from suffering any such infirmity, is firmly anchored in the material produced during investigation and in the governing precedents on the subject of cancellation in “A”, “B” or “C” class and the scope of Section 173, Cr.P.C.

9. The learned Magistrate, in the present matter, exercised jurisdiction that indubitably vested in him, marshalled the material in a structured manner, drew inferences which are rational and legally sustainable, and furnished detailed reasons for declining to accept the police recommendation. The mere fact that the complainant finds such conclusions unpalatable affords no ground for this Court to invoke its revisional powers to undo a well-reasoned order.

10. In the circumstances, the Criminal Miscellaneous Application is devoid of merit and is accordingly dismissed. The impugned order dated 20.12.2025 passed by the learned Civil Judge & Judicial Magistrate-II, Thari Mirwah in Summary Case No.18 of 2025 is maintained. It is, however, clarified that nothing contained herein shall preclude the complainant, should he so be advised and possessed of admissible material, from resorting to such other lawful remedy as may be available to him under the law, including recourse to a private complaint under Chapter XVI of the Code of Criminal Procedure.

J U D G E