

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.587 of 2021

Applicant : M/s. K-Electric Limited
Through its Authorized Officer,
Through Mr. Shaikh Jawaid Mir,
Advocate

Respondents : Learned Judicial Magistrate-XXX,
Karachi East & Others

The State : Through Sharafuddin Kanhar, A.P.G.
Sindh

Date of hearing : 30.04.2026.

Date of Order : 30.04.2026.

ORDER

Jan Ali Junejo, J:-- Through this Criminal Miscellaneous Application, the Applicant has sought setting aside of the Order dated 25.09.2021 (hereinafter referred to as the "Impugned Order") passed by the learned Civil Judge & Judicial Magistrate-XXX, Karachi East, whereby the learned Magistrate take cognizance under Section 190(C) Cr.PC against applicant through its General Manager, K-Electric and Head of New Connection, K-Electric on the report submitted under Section 173 Cr.P.C. by the Investigating Officer.

2. Briefly stated, the facts as set out in the FIR lodged by SIP/SHO Muhammad Tariq Arain on 27.08.2021 are that, on the eventful day, he along with his subordinate staff was on patrol when he received a cellphone call from the duty officer informing him that a fire had erupted at Plot No. 40, Sector F/6, Mehran Town, B.M. Luggage Briefcase Factory. Upon receipt of such information, he reached the place of occurrence, informed the EDHI and CHIPPA Ambulance Services as well as the Fire Brigade, and came to know that sixteen workers were trapped on the first floor of the factory. After the Fire Brigade brought the fire under control, excavators and private vehicles were arranged to create access into the factory, wherefrom sixteen dead bodies were recovered from the first floor and shifted to Jinnah Hospital through ambulances for autopsy,

while proceedings under Section 174 Cr.P.C. were initiated. Upon inspection of the factory, it transpired that there was no emergency exit except a single staircase leading to the first floor. It was further revealed by the residents of the locality that they had requested the guard to unlock the door leading to the rooftop from the first floor; however, due to the unsafe structure of the building, there was no proper escape route in case of emergency. It also transpired that no emergency alarm system had been installed in the factory. The names of the deceased were disclosed as Usman, Farhan, Hassan, Ali, Muneer Omer, Irfan, Farhan, Zahid, Farman, Muhammad Usman, Rashid, Syed Jawwad Ali Zaidi, Shoaib, Muhammad Sabir, Muhammad Kashif, Adnan, and Muhammad Faraz, who allegedly died due to burn injuries and suffocation. Consequently, the subject case was registered, inter alia, against the building owner Faisal, factory owner Ali Mehta, Manager Imran Zaidi, Supervisors Zafar and Rehan, and Chowkidar Syed Zarren.

3. Learned counsel for the applicant contended that the impugned order is perverse, illegal and without lawful authority, having been passed in haste and without proper application of judicial mind. He argued that the learned Magistrate failed to appreciate the settled principle that cognizance is taken of an offence and not of an offender; therefore, taking cognizance against certain persons/designations was wholly illegal and void ab initio. It was further submitted that the applicant and its officials were condemned unheard in violation of the principle of audi alteram partem, while non-bailable warrants were unlawfully issued against officials by designation, including a post which allegedly does not exist in the applicant company. Learned counsel further contended that the material available on record, including the admission of accused Hassan Mehta in his bail application, reflected that the incident occurred due to a short circuit within the factory premises caused by internal electrical installations and substandard material, for which the owner/occupier alone was responsible. He maintained that K-Electric bears no responsibility beyond the

delivery point/meter installed by it, which admittedly remained intact, and relied upon Clause 14.3.1 of the NEPRA Consumer Service Manual in support thereof. It was further argued that the area in question had long been used for industrial purposes under trade licences issued by the concerned municipal authorities and that the responsibility to regulate land use, building safety and industrial operations rested with the relevant civic agencies and not with the applicant company. Learned counsel also submitted that electricity connections are provided strictly in accordance with the applicable laws and NEPRA regulations, and K-Electric is neither mandated nor authorized to demand documents beyond those prescribed under law. He further argued that although cognizance was purportedly taken under Section 190(c) Cr.P.C. on the basis of the Magistrate's own knowledge or suspicion, no reasons or source thereof were disclosed in the impugned order, rendering the same arbitrary, whimsical and unsustainable in law. He also submits that all the nominated accused in the supra FIR have acquitted under Section 345(6) Cr.PC after payment of diyat amount to the legal heirs of deceased. Lastly, it was contended that the impugned order amounts to abuse of the process of Court and unnecessary harassment of the applicant's officials. Hence, it was prayed that the Impugned Order be set aside. He placed reliance on the case law reported in PLD 2007 SC 31, 2008 YLR 1462 and 1983 SCMR 370.

4. Learned APG, Sindh supported the impugned order and opposed the instant application, contending that the same is not maintainable in its present form as the applicant has an adequate alternate remedy available under the law. He further argued that while dealing with a report submitted under Section 173 Cr.P.C., the Magistrate is vested with wide powers, including the authority to disagree with the conclusion arrived at by the Investigating Officer and to take cognizance under Section 190 Cr.P.C. where sufficient material is available on record. Learned APG submitted that the learned Magistrate, upon examining the material collected during investigation, had rightly taken cognizance under Section 190(c) Cr.P.C. against the left-over persons, including K-Electric and its

concerned officials, as the material prima facie disclosed their nexus with the commission of the offence and their alleged negligence in discharge of statutory obligations. He contended that the impugned order is a well-reasoned and speaking order, passed strictly in accordance with law, and does not suffer from any illegality or jurisdictional defect warranting interference by this Court.

5. I have heard learned counsel for the applicant and learned APG, Sindh at considerable length and have also perused the available record with their able assistance. There is no cavil with the settled proposition of law that while dealing with a report submitted under Section 173 Cr.P.C., a Magistrate is not bound by the opinion of the Investigating Officer and is competent to disagree with the conclusion arrived at during investigation and take cognizance under Section 190 Cr.P.C., provided sufficient material is available on record connecting the person sought to be proceeded against with the commission of the alleged offence. However, such power is required to be exercised judiciously, cautiously and on the basis of some tangible material reflecting prima facie involvement of the accused person.

6. Perusal of the record reflects that the present applicant was neither nominated in the FIR nor placed in column No.II of the report submitted under Section 173 Cr.P.C. by the Investigating Officer. The impugned order further reveals that while taking cognizance against the applicant company through its officials, the learned Magistrate has not referred to any specific piece of evidence or material demonstrating direct negligence, omission or commission attributable to the applicant in relation to the unfortunate incident. The allegations available on record primarily relate to the unsafe condition of the factory premises, absence of emergency exits, lack of safety measures and the alleged short circuit caused by internal electrical installations and substandard wiring within the premises, which admittedly remained under the control and supervision of the owner/occupier of the factory. Even

otherwise, no material has been pointed out showing that the external electricity supply system, meter or installation of the applicant company was defective or directly contributed towards the occurrence.

7. It is also an admitted position that the learned Magistrate issued process against the applicant through its officials by designation, including the designation of "Head of New Connection", which according to the applicant does not exist in its organizational structure. It is a settled principle of criminal jurisprudence that criminal liability cannot be fastened mechanically or on the basis of vague assumptions, particularly where no specific role has been assigned to the person sought to be prosecuted. Furthermore, though the learned Magistrate purportedly exercised powers under Section 190(c) Cr.P.C. on the basis of his own knowledge or suspicion, yet the impugned order is conspicuously silent regarding the source, basis or material from which such knowledge or suspicion was derived. In absence of any tentative reasoning or material connecting the applicant with the alleged offence, the impugned order, to the extent of the applicant, appears to have been passed without proper application of judicial mind.

8. It is also noteworthy that the principal accused persons nominated in the subject FIR have already been acquitted under Section 345(6) Cr.P.C. after compromise with the legal heirs of the deceased persons through payment of Diyat amount. Although such acquittal by itself may not automatically absolve the present applicant, yet the same is a relevant circumstance while examining continuation of criminal proceedings against a party whose role does not prima facie emerge from the investigation record.

9. In view of the foregoing discussion, I am of the considered opinion that the impugned order dated 25.09.2021, to the extent of taking cognizance under Section 190(c) Cr.P.C. against the present applicant and issuance of process against its officials, suffers from

material illegality, non-application of judicial mind and absence of sufficient incriminating material, therefore, the same cannot be sustained in the eye of law. Consequently, this Criminal Miscellaneous Application is allowed and the impugned order dated 25.09.2021 is hereby set aside to the aforesaid extent alone.

10. Needless to observe that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party in any other proceedings.

JUDGE