

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No. 09 of 2025

For the Applicant : Abdul Qadeer
S/o. Abdul Fateh Mehar
Through Mr. Hussain Bux Saryo,
Advocate

For the Respondent-2 : Senior Superintendent of Police
District South, Karachi.

For the Respondent-3 : Investigation Officer
FIR No.587/2024.
PS Boat Basin.

For the Respondent-4 : Adnan Mukhtiar
S/o. Mukhtiar Ahmed
Through Nemo

For the Respondent-5 : Waqar Ali
S/o. Abdul Hameed
Through Nemo

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

Date of hearing : 03.08.2026.

Date of Order : 03.08.2026.

ORDER

Jan Ali Junejo, J:- The applicant has come up before this Court challenging the order dated 06.12.2024, passed by the Court of learned Civil Judge and Judicial Magistrate-IX, Karachi South in Charge Sheet No.545/2024 [Re-The State Vs. Adnan Mukhtiar & another] arising out of crime No. 587/2024, under Section 337-A(i)/504/506-B/34 PPC registered at PS Boat Basin, wherein he disagreed with a report furnished by the Investigation Officer under section 173 Cr.P.C for taking cognizance against the accused persons and disposed of the FIR under 'C' class.

2. Brief facts of the FIR are that accused persons are under allegations of misbehaving, fighting and issuing threats to the Complainant after having Pistol into his possession along with co accused person in furtherance of common intention on 05.06.2024 at

about 1330 hours at Registrar Office Saddar Town-II, Clifton Block-2 Karachi, which resulted into Registration of present FIR u/s 337 A-(I), 504, 506-B & 34 PPC.

3. After completing investigating, the I.O submitted report U/S 173 Cr.PC for taking cognizance against the accused persons but the Magistrate did not agree with the report of I.O. and disposed of the case under 'C' class, hence the applicant/complainant has filed instant Misc. Application.

4. After institution of instant Crl. Misc. Application notices were issued to the respondents. It is contended by learned counsel for the applicant/complainant that the learned Magistrate has passed the impugned order in slipshod manner; that that the learned Magistrate did not consider the material available on record and straightaway disposed of the case under cancelled class. He, therefore, prayed for setting-aside the impugned order and requested to issue directions for taking cognizance on the report U/s 173 Cr.P.C against the accused persons as they have committed the cognizable offence and ample evidence was collected by the investigation officer against the accused persons.

6. Learned A. P.G supported the contentions agitated by the learned counsel for the applicant/complainant and submits that order passed by the Magistrate is based on misreading and non-reading of the material facts, therefore the same is liable to be set-aside.

7. Heard learned counsel for the parties and have gone through the material available on record.

8. From the perusal of the impugned order, it appears that the learned Magistrate, while disagreeing with the report submitted by the Investigation Officer under Section 173 Cr.P.C., has proceeded to dispose of the FIR under 'C' class. However, the impugned order does not demonstrate any cogent, lawful or convincing reason for

discarding the conclusion reached by the Investigation Officer after completion of investigation. The Investigation Officer, after conducting investigation and collecting the relevant material, had formed an opinion that the allegations leveled against the accused persons were prima facie substantiated and, accordingly, submitted a positive report recommending that the accused persons be proceeded against in accordance with law. Once such report was placed before the learned Magistrate, the question before him was not to finally determine the truthfulness or otherwise of the allegations, nor was it permissible for him to undertake an assessment of the evidentiary value of the material collected during investigation as if he were conducting a trial. At the stage of taking cognizance, the Court is required to examine whether the material placed before it discloses a prima facie case warranting proceedings against the accused. The probative value, credibility and ultimate effect of such material are matters which ordinarily fall within the domain of the trial Court after recording evidence of the witnesses and providing the accused an opportunity of cross-examination.

It is also evident from the record that the allegations in the FIR relate to specific acts attributed to the accused persons, including misbehavior, fighting, causing hurt and extending threats while allegedly being armed with a pistol, coupled with the allegation of their having acted in furtherance of their common intention. These allegations were investigated by the police and, upon completion of investigation, the Investigating Officer arrived at a conclusion different from that reached by the learned Magistrate. In such circumstances, the learned Magistrate was required to exercise his judicial discretion strictly in accordance with the settled principles governing the consideration of a police report under Section 173 Cr.P.C. The impugned order, however, does not reflect a proper consideration of the material collected during investigation, nor does it disclose any legally sustainable basis upon which the positive report of the Investigation Officer could have been discarded and the case consigned under 'C' class. The order, therefore, appears to have been passed without adequately addressing the material

questions arising from the police report and without assigning sufficient reasons for taking a course which effectively brought the criminal proceedings to an end at the threshold.

9. That the Investigating Officer, on the basis of material collected during investigation, forms an opinion that an offence is made out for trial, the question whether the case is proved or a particular provision is attracted falls within the domain of the trial Court after recording evidence. The Magistrate may, however, disagree with a report recommending disposal of the case or deletion of a particular provision and, on the basis of the available material, take cognizance or restore the deleted provision. This principle has been consistently recognized in *Abdul Hafeez Junejo v. The State* (2010 YLR 470 [Karachi]) and *Amanat Ali v. 1st Civil Judge & J.M., Daharki and others* (2015 YLR 2312). The investigation of a criminal case falls within the domain of the police, and undue interference by the judiciary in the investigative process or vice versa undermines the principle of separation of powers. The Supreme Court has reiterated this principle in *Muhammad Hanif v. The State* (2019 SCMR 2029).

10. Thus based upon the above discussion I am of the view that the Magistrate has passed order by violating the law and against the facts of the case in hand by not applying his judicial mind. Therefore, the impugned order dated: 06.12.2024 passed on the report of under Section 173 Cr.PC filed by the Investigation Officer, is set-aside and the case is remanded back to learned Magistrate for passing a fresh order, in accordance with law.

11. Accordingly, this Crl. Misc. Application along with pending application is disposed of in the above terms.

JUDGE