

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Misc. Application No.S-594 of 2022
Crl. Misc. Application No.S-595 of 2022
Crl. Misc. Application No.S-599 of 2022

Applicants : Abdul Hafeez (*Crl.M.A.No.S-594 of 2022*) and
and Muhammad Ibrahim (*Crl.M.A.No.S-595
of 2022*) through M/s Mehfooz Ahmed Awan
and Farhan Ali Shaikh, Advocates

Applicants : Deedar Hussain & another
(Crl.M.A.No.S-599 of 2022) Nemo

Private respondent(s) : Mst. Rukhsana through M/s Bilal Ahmed
(in all matters). Soomro & Hamayoun alias Soorat Ali Khan,
Advocates a/w said respondent.

**The State &
Official respondent(s)** : Through Mr. Muhammad Raza Katohar,
Deputy P.G.

Date of Hearing : 21-08-2026
Date of Order : 04-09-2026

ORDER

TASNEEM SULTANA, J.- Through these three connected applications under Section 561-A, Cr.P.C., the applicants have called in question the order dated 21.09.2022 passed by the learned Civil Judge & Judicial Magistrate-II, Sukkur, in Final Report No.03-A/2022 arising out of Crime No.171 of 2021, registered at Police Station “C” Section, Sukkur, under Sections 324, 353, 399 and 401, PPC, whereby the learned Magistrate declined to concur with the recommendation of the investigating agency for disposal of the case under “A” Class, took cognizance of offences under Sections 302, 342, 119, 201 and 34, PPC and issued process against the persons named therein. As all three applications arise out of the same crime and involve a common controversy, these are disposed of through this common order.

2. Brief facts of the prosecution case, as set out in the FIR, are that during the night intervening 25/26.10.2021, Inspector/SHO Muhammad Ibrahim Soomro, along with a police party, was on patrol when information was received regarding the presence of armed persons near Thermal Power, adjacent to Jind Pir. The police party proceeded to the pointed place and allegedly found three-armed persons, two carrying Kalashnikovs and one a T.T. pistol. On

being called upon to surrender, they allegedly opened fire upon the police, which was returned in self-defence. During the exchange of fire, one of them fell down after allegedly stating that he had been hit by the fire of his companions, while the remaining two escaped. A T.T. pistol, live rounds and empties were allegedly secured from and around the deceased, who was subsequently identified as Saindad son of Punhal Jatoi.

3. After usual investigation, SIP Ghulam Nabi Shaikh submitted a report under Section 173, Cr.P.C., recommending disposal of the case under “A” Class. The learned Magistrate, however, did not approve such report and, vide order dated 14.03.2022, directed the DIGP Sukkur that further investigation of the case be conducted by an officer not below the rank of SSP.

4. Pursuant to the order dated 14.03.2022, the DIGP Sukkur entrusted further investigation of the case to SSP Ghotki. During the further investigation, the version put forward by Mst. Rukhsana was also examined. She had earlier approached the learned Ex-Officio Justice of Peace under Sections 22-A and 22-B, Cr.P.C., alleging that Saindad had been intercepted and taken away by certain police officials and private persons, including Deedar Hussain Abro, Aijaz Ahmed Chachar, Bashir Jagirani, Yousif, Abdul Hafeez and Mehmood, and was subsequently killed in a staged police encounter. Her application seeking registration of a separate FIR had been dismissed on 24.12.2021, with the observation that no second FIR was required in respect of the same occurrence and that her version could be investigated in the case already registered. During the further investigation, statements of Mst. Rukhsana, Mst. Allah Jawai and Punhal were recorded. Upon completion thereof, a report dated 29.07.2022 was submitted, again recommending disposal of the case under “A” Class. The learned Magistrate, however, did not accept the said recommendation and, vide impugned order dated 21.09.2022, took cognizance of offences under Sections 302, 342, 119, 201 and 34, PPC and issued process against Irfan Ali Samo, the then SSP Sukkur; Deedar Hussain Abro, SHO Police Station Sanghi; Aijaz Ahmed Chachar, WHC Police Station Sanghi; Bashir Jagirani, SHO Police Station Patni; Muhammad Ibrahim Soomro, SHO Police Station “C” Section, Sukkur; HC Haibat Khan; PC Muhammad Nawaz; PC Abdul Razzaque; HC Rustam Ali; and the private persons, namely, Yousif, Abdul Hafeez and Mehmood.

5. The applicants before this Court stand on different factual footings. Deedar Hussain Abro and Aijaz Ahmed Chachar, applicants in Crl. Misc. Application No.S-599 of 2022, are police officials named in the version put forward by Mst. Rukhsana. Abdul Hafeez, applicant in Crl. Misc. Application No. S-594 of 2022, is a private person named in the same version. His son, Nazim Hussain, had earlier lost his life in the occurrence forming the subject matter of Crime No.170 of 2021 of Police Station “A” Section, Sukkur, in which Saindad had been nominated as an accused. Muhammad Ibrahim Soomro, applicant in Crl. Misc. Application No. S-595 of 2022, was the SHO of Police Station “C” Section, Sukkur, complainant of Crime No.171 of 2021 and the officer heading the police party involved in the occurrence.

6. None appeared on behalf of Deedar Hussain Abro and Aijaz Ahmed Chachar when the matter was taken up for hearing. Their application, the grounds raised therein and the material available on record have, however, been considered.

7. Learned counsel appearing for the applicants in Crl. Misc. Applications Nos.S-594 and S-595 of 2022 contended that Abdul Hafeez is a private person having no connection with the alleged police encounter; that his implication is the result of previous hostility arising from Crime No.170 of 2021 of Police Station “A” Section, Sukkur, in which his son Nazim Hussain had lost his life and Saindad had been nominated as an accused; and that no recovery, forensic material or other independent evidence directly connects him with the death of Saindad. Regarding Muhammad Ibrahim Soomro, learned counsel submitted that the police version was examined during both investigations; that the recoveries and other material collected from the place of occurrence supported the FIR version; and that on both occasions disposal under “A” Class was recommended. He further argued that the learned Magistrate travelled beyond the permissible scope of consideration of the police report by undertaking an elaborate medico-forensic exercise and drawing conclusions regarding the manner, range and direction of firing.

8. Learned counsel for the private respondent, Mst. Rukhsana, sister of deceased Saindad, supported the impugned order and submitted that the report under Section 173, Cr.P.C. was not binding upon the learned Magistrate; that the version put forward by her had also been examined during further

investigation and the statements recorded in that regard formed part of the record; and that the truth or otherwise of the competing versions could only be determined after recording of evidence.

9. Learned Deputy Prosecutor General also supported the impugned order and submitted that the learned Magistrate was competent to independently examine the material and, where a prima facie case was disclosed, take cognizance under Section 190, Cr.P.C. He further submitted that the genuineness or otherwise of the encounter and the evidentiary worth of the statements, medical material and recoveries were matters for trial.

10. Heard. Record perused.

11. The principal question arising for consideration is whether the learned Magistrate was bound to accept the recommendation of the investigating agency for disposal of the case under “A” Class.

12. The legal position was examined by the Honourable Supreme Court in *Falak Sher and another v. The State* (PLD 1967 SC 425), wherein it was observed:

“In our opinion, the action of the Magistrate in issuing summons to these appellants despite the fact that the investigating officer in his report under section 173, Cr. P. C. placed their names in column 2, was clearly correct. Section 173, Cr. P. C.¹ is in these terms: -

“173.-(1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall-

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Provincial Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the

Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4)

Under subsection (1), when the investigation is completed the police officer is required to forward to the Magistrate a report in the prescribed form. Under subsection (3) when it ‘appears from the report forwarded under section 1, that the accused has been released on his bond “the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit”. It is clear that under section 3^a a Magistrate may agree or may^c not agree with the police report. It, however, does not say what step the Magistrate should take if he disagrees with the police report. If the Magistrate wants to start a proceeding against the accused, he must act under section 190 of the Code of Criminal Procedure.”

13. The same principle was reiterated in the case of Muhammad Akbar v. The State (1972 SCMR 335), wherein the Honourable Supreme Court observed:

“Even on the first report alleged to have been submitted under section 173, Cr.P.C., the Magistrate could, irrespective of the opinion of the Investigating Officer to the contrary, take cognizance, if upon the materials before him he found that a prima facie case was made out against the accused persons. After all the police is not the final arbiter of a complaint lodged with it. It is the Court that finally determine upon the police report whether it should take cognizance or not in accordance with the provisions of section 190(1)(b) of the Code of Criminal Procedure.”

Thus, while the Magistrate is not bound by the recommendation of the investigating agency, his decision to proceed must rest upon material disclosing a prima facie case.

14. In the case of Sher Muhammad Unar and others v. The State (PLD 2012 SC 179), the Honourable Supreme Court, while dealing with persons who had been found innocent during investigation, observed:

“The Court is not bound by such a finding of innocence reflected in the final report submitted under section 173, Cr.P.C. and it can still summon the accused.”

The Court also described the assessment made at that stage as a “*prima facie assessment of the evidence (which is preliminary in nature)*.” Although that case arose at a later stage when evidence had already been recorded, the principle regarding the preliminary nature of such assessment is relevant here.

15. The dismissal of Mst. Rukhsana's earlier application for registration of a separate FIR did not exclude her version from consideration in the case already registered. In the case of Mst. Sughran Bibi v. The State (PLD 2018 SC 595), the Honourable Supreme Court observed:

“All subsequent or divergent versions of the same occurrence or the persons involved therein are to be received, recorded and investigated by the investigating officer in the same ‘case’ which is based upon the one and only FIR registered in respect of the relevant ‘offence’ in the prescribed book kept at the local police station.”

In the present case, her version was subsequently examined during further investigation and the statements recorded in that regard formed part of the material available before the learned Magistrate when the second report under Section 173, Cr.P.C. was considered.

16. In the present case, the material before the learned Magistrate was not confined to the police version. A divergent version regarding the circumstances leading to the death of Saindad was also available on record. The post-mortem report reflects twenty-one firearm entry wounds and twenty-one corresponding exit wounds. The medical officer found the injuries to be ante-mortem and caused by firearm discharge and opined that death resulted from haemorrhage and shock due to injuries to vital organs. The nature and extent of the firearm injuries were relevant to the learned Magistrate's consideration of whether the recommendation for disposal under “A” Class ought to be accepted; however, the medical evidence, by itself, could not establish whether the encounter was genuine or staged. The detailed observations made by the learned Magistrate regarding the manner, range and direction of firing were, therefore, unnecessary at the stage of cognizance; those questions are to be determined upon evidence at trial.

17. The material available before the learned Magistrate also contained allegations concerning the present applicants. Mst. Rukhsana named Deedar Hussain Abro, Aijaz Ahmed Chachar and Abdul Hafeez in connection with the alleged interception and taking away of Saindad, while her version also contained allegations regarding the subsequent events leading to his death. As regards Muhammad Ibrahim Soomro, his presence at the occurrence as the officer heading the police party forms part of the FIR version itself. The plea of previous hostility raised by Abdul Hafeez and the objection regarding lack of independent corroboration concern the evidentiary worth of the material and

cannot be finally determined at the stage of cognizance. The precise role and liability of each applicant are matters to be determined at trial.

18. In view of the above facts and circumstances, the impugned order does not call for interference under Section 561-A, Cr.P.C. Consequently, Crl. Misc. Applications Nos.S-594, S-595 and S-599 of 2022 are **dismissed**. The interim orders whereby operation of the impugned order dated 21.09.2022 was suspended stand recalled. The observations made by the learned Magistrate regarding the manner of firing and the genuineness or otherwise of the encounter shall remain tentative.

J U D G E

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