

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Miscellaneous Application No.S-540 of 2024

Applicant: Veerji s/o Jagno
Through Mr. Ghulamullah Chang advocate.

Respondents: 1. Kastooro s/o Khengho Kolhi.
Through Mr. Muhammad Ayoub Shaikh advocate.

2. SHO P.S Nangarparkar, District Tharparkar.

3. I.O of Crime No. 37/ 2024 of PS Nangarparkar,
District Tharparkar.

4. DSP/Taswar Hussain Jat
SDPO Umerkot (2nd I.O of Crime No. 37/2024 of
PS Nangarparkar, District Tharparkar).

5. The State.

Official respondents through Mr. Ghulam Abbas
Dalwani, DPG.

Date of hearing: 20.06.2025.

Date of Order: 20.06.2025.

ORDER

Jan Ali Junejo, J. – This Criminal Miscellaneous Application has been filed by the Applicant under Section 561-A of the Criminal Procedure Code, 1898, seeking to set aside the order dated 14.09.2024 (hereinafter referred to as the “*Impugned Order*”) passed by the learned Civil Judge & Judicial Magistrate, Nangarparkar, District Tharparkar, whereby cognizance was taken against the Applicant and other co-accused persons in Crime No. 37/2024 under Sections 147, 148, 149, 114, 447, 337A(i), 337F(i), 337L(ii), 337A(ii), 504 PPC, of P.S. Nangarparkar.

2. The brief facts, as emerging from the record, are that on 06.06.2024, FIR No. 37/2024 was registered at Police Station Nangarparkar under the aforementioned sections of Pakistan Penal Code on the complaint of Respondent No. 1. The allegation in the FIR was that on 16.05.2024 at approximately 04:30 PM, while the complainants were cutting trees on their

land bearing Survey No.1205, the accused persons, including the present Applicant, armed with hatchets and lathis, formed an unlawful assembly, criminally trespassed onto the complainant's land and engaged in rioting with deadly weapons, causing injuries to the complainant party.

3. After investigation, the first Investigation Officer (ASI Nihal Bheel) submitted a charge sheet, placing the present Applicant's name in Column-2, effectively letting him off due to lack of incriminating material. However, the learned Magistrate, vide order dated 17.08.2024, directed re-investigation through an honest police officer not below the rank of DSP from outside District Tharparkar. Pursuant to the said order, DSP Tasawur Hussain Jut, SDPO Umerkot, was deputed as the second Investigation Officer who, after conducting investigation, submitted his final report under Section 173 Cr.P.C., again placing the Applicant's name in Column-2. However, the learned Civil Judge & Judicial Magistrate, Nangarparkar, vide the impugned order dated 14.09.2024, disagreed with both Investigation Officers' conclusions and took cognizance against all accused persons, including the present Applicant.

4. The learned counsel for the Applicant vehemently argued that the Applicant is a respectable practicing lawyer at the Sindh High Court, Hyderabad, and a former Special Assistant to the Chief Minister of Sindh for Human Rights Department from 2019 to 2023, having no connection whatsoever with the alleged crime; that both the first Investigation Officer (ASI Nihal Bheel) and the second Investigation Officer (DSP Tasawur Hussain Jut, SDPO Umerkot) after conducting fair and impartial investigation placed the Applicant's name in Column-2 of their respective charge sheets, effectively letting him off due to lack of incriminating material against him; that the Applicant was not present at the scene of incident as he was abroad in Bangalore, India for his minor son's heart surgery from 02.06.2024 to 20.07.2024, which is corroborated by his passport entries and Call Detail Records (CDRs) showing his non-availability at the alleged place and time of

incident; that the learned Magistrate committed grave illegality by taking cognizance against the Applicant despite clear recommendations of both Investigation Officers for his release; that the impugned order suffers from non-application of judicial mind and is passed in a slipshod manner without considering the material collected during investigation; that the present FIR is a counter-blast to Crime No. 31/2024 registered by the accused party against the complainant party; and that the Applicant has no other efficacious remedy except the present application under Section 561-A Cr.P.C.

5. The learned Deputy Prosecutor General strenuously opposed the application and submitted that the learned Magistrate has rightly exercised his jurisdiction under Section 190 Cr.P.C. in taking cognizance of the offence; that a Magistrate is not bound by the opinion or recommendation of the Investigation Officer and has independent power to examine the record and take cognizance if sufficient material exists on record; that the complainant and prosecution witnesses in their statements under Section 161 Cr.P.C. have specifically named and implicated the Applicant in the commission of the offence along with other co-accused; that the medical evidence in the form of medico-legal certificates fully corroborates the version of the complainant regarding the nature and extent of injuries caused to the injured persons; that the plea of alibi raised by the Applicant based on his alleged presence abroad is a question of fact to be determined during trial after recording evidence and cannot be decided at the preliminary stage of taking cognizance; that the Applicant being a learned advocate of the High Court cannot claim ignorance of law that cognizance once taken by a competent court cannot be interfered with in revisional jurisdiction unless there is perversity or illegality; and that the application is liable to be dismissed being devoid of merit.

6. The learned counsel for the Complainant, on instructions, submitted that in view of the no-objection affidavit filed by the Complainant, he does not oppose the instant application. It was contended that both Investigating

Officers, after separate and impartial investigations, placed the Applicant's name in Column No.2, and the learned Magistrate erred in disregarding their conclusions. He further contended that the Complainant, being fully conversant with the facts, affirms the correctness of the investigation and has no objection to the Applicant's exclusion from prosecution. Lastly, the learned counsel contended that the Complainant supports the prayer for setting aside the impugned order to the extent of the present Applicant.

7. This Court has given due consideration to the elaborate arguments advanced by the learned counsel for the Applicant, the learned counsel for the Complainant, and the learned Deputy Prosecutor General representing the State. A meticulous examination of the entire material available on record has been undertaken to arrive at a reasoned conclusion. It is a well-settled principle of law that the opinion of the Investigating Officer, while possessing persuasive value, is not binding upon the Court and cannot supplant the Court's independent assessment of the evidence on record. The judiciary is under a solemn duty to independently scrutinize and assess the entirety of the evidence collected during the course of investigation and arrive at its own reasoned conclusion uninfluenced by the subjective opinion of the police authorities.

8. While acknowledging the non-binding nature of investigative opinions, the present case presents a unique and compelling set of circumstances that warrant a departure from the learned Magistrate's decision to take cognizance against the Applicant. The following factors, when considered collectively, lead this Court to conclude that the Impugned Order, to the extent of the Applicant, is unsustainable. A critical aspect of this case is the consistent conclusion reached by two separate investigating officers. The first Investigating Officer (ASI Nihal Bheel) and subsequently the second Investigating Officer (DSP Tasawur Hussain Jut, SDPO Umerkot), both after conducting their respective investigations, independently found insufficient incriminating material against the Applicant and accordingly placed his name in Column No. 2 of the Challan.

This unanimity across two distinct investigative efforts, especially after a re-investigation was specifically ordered to ensure impartiality, lends significant weight to the finding that the Applicant was not connected to the alleged offense. It is not merely the opinion of one officer, but a corroborated finding by two independent investigations, which cannot be lightly disregarded without substantial counter-evidence. Despite the complainant's assertions and the statements of the witnesses recorded under Section 161 Cr.P.C., both investigations failed to unearth any concrete, admissible evidence directly linking the Applicant to the commission of the alleged offense. The phrase "nothing has come on record connecting the Applicant with the commission of alleged offence" is not a mere procedural formality but a substantive finding based on the thorough examination of all collected evidence. This absence of material evidence, rather than a mere difference in opinion, forms the bedrock of the Investigating Officers' conclusions. A significant development during the course of these proceedings is the filing of an affidavit by the complainant before this Court. In this affidavit, the complainant unequivocally acknowledges that the Investigating Officers have rightly placed the name of the Applicant in Column No. 2. This is a crucial piece of evidence, as it represents a concession from the very party that initiated the criminal proceedings. When the complainant himself, who is the primary aggrieved party, attests to the correctness of the investigative findings regarding the Applicant's non-involvement, it significantly weakens the prosecution's case against the Applicant and reinforces the conclusions of the Investigating Officers. It is pertinent to note that while the investigations found no material against the Applicant, there appears to be sufficient prima facie material linking the remaining accused persons. This distinction is vital. This Court is not setting aside the cognizance against all accused persons but specifically against the Applicant, based on the clear differentiation in the evidence. This indicates a judicious application of mind by the Investigating Officers, who meticulously separated the Applicant from others against whom evidence existed. The

consistent placement of the Applicant's name in Column No. 2 by both Investigating Officers is not an arbitrary act but a reflection of their professional assessment that the evidence did not warrant his prosecution. The fact that both investigations, including the re-investigation ordered by the Magistrate, arrived at the same conclusion regarding the Applicant's non-involvement underscores the strength of this finding. The Magistrate's disagreement, in the present instance, appears to constitute an overreach, especially in the face of consistent investigative reports duly supported by sufficient material warranting placement of the Applicant's name in Column No. 2. The complainant has also filed an affidavit stating that he has no objection if the present Criminal Miscellaneous Application is allowed as prayed. It is a well-settled principle of law that the mere *ipse dixit* of the police is not binding upon the Courts of law. However, the opinion of a police officer, when duly supported by cogent and credible material, may carry persuasive value.

9. In light of the foregoing detailed analysis, this Court is of the considered view that although the learned Magistrate possesses the inherent power to take cognizance independently of the police report, such discretion was erroneously exercised in the present case with respect to the Applicant. The findings of two independent investigations, both unequivocally concluding that no incriminating material was available against the Applicant, along with the pivotal affidavit submitted by the complainant himself endorsing the correctness of the Investigating Officers' conclusions, collectively form a strong basis to establish the Applicant's non-involvement. The absence of any substantive evidence linking the Applicant to the commission of the alleged offense—duly confirmed by both investigative authorities—cannot be disregarded. Therefore, upon meticulous examination of the record, the arguments advanced by the respective parties, and in view of the applicable legal principles, this Court holds as follows:

- *However, no sufficient prima facie material exists to justify the taking of cognizance against the present Applicant. Both police investigations consistently exonerated the Applicant, and no evidence has emerged on record to implicate him in the alleged crime.*
- *The affidavit filed by the complainant before this Court further corroborates the findings of the Investigating Officers and supports the Applicant's plea of innocence, thereby lending additional weight to his non-involvement.*

10. In view of the above, this Criminal Miscellaneous Application is allowed as prayed. The Impugned Order dated 14.09.2024, passed by the learned Civil Judge and Judicial Magistrate, Nangarparkar, is hereby set aside to the extent it pertains to taking cognizance against the present Applicant. The Applicant's name shall remain in Column No. 2 unless any fresh and credible evidence surfaces during the trial directly connecting him to the alleged offense.

JUDGE