

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Criminal Misc. Application No. S-90 of 2023
(Bashir Ahmed Kandhro V/s S.H.O P.S. Mehar & others)

Applicant: Bashir Ahmed s/o Guhram Kandhro,
through Mr. Mazhar Ali Mangan,
Advocate.

Respondents: S.H.O Police Station Mehar and others,
Through Mr. Nazir Ahmed Bangwar,
Deputy Prosecutor General, Sindh.

Respondents No. Muneer s/o Haji Bashir & others
3,4 & 5 Through Mr. Sher Ali Chandio,
Advocate.

Constitutional Petition No. S-424 of 2025
(Bashir Ahmed Kandhro V/s P.O Sindh & others)

Petitioner: Bashir Ahmed s/o Guhram Kandhro,
through Mr. Mazhar Ali Mangan,
Advocate.

Respondents: Province of Sindh and others, Through
Mr. Abdul Waris Bhutto, Assistant
Advocate General.

Respondents No. Muneer Brohi and another
5 & 6: Through Mr. Sher Ali Chandio,
Advocate

Date of hearing: 21-09-2026
Date of Order: 21-09-2026.

ORDER

Ali Haider 'Ada', J:-, Through the instant Criminal Miscellaneous Application, the applicant, being the complainant, has assailed the order dated 27.02.2023 passed by the learned Judicial Magistrate-II, Mehar, in Summary Case No.17 of 2023, whereby the learned Magistrate, being satisfied with the report submitted by the Investigating Officer, disposed of FIR No.110 of 2022, registered at Police Station Mehar, for an offence punishable under Section

365-B, P.P.C. The FIR was lodged on 04.05.2022, with the date of occurrence mentioned as 01.05.2022.

2. The prosecution case, as set out in the FIR, is that the complainant/applicant reported that his daughter-in-law had been kidnapped by the nominated accused and, despite passage of time, she had not been recovered. The FIR was investigated under the Anti-Rape (Investigation and Trial) Act, 2021. Pursuant to the orders of the SSP, Dadu, a Joint Investigation Team (JIT) was constituted under the said Act. Upon completion of the investigation, the JIT recommended disposal of the case under “C” Class, which recommendation was subsequently endorsed by the learned Magistrate.

3. Learned counsel for the applicant submits that the learned Magistrate had no jurisdiction to entertain matters relating to Gender-Based Violence (GBV), as a special mechanism is provided under the law for dealing with such matters. He further submits that, while passing the impugned order, the learned Magistrate entered into a deeper appreciation of the material and recorded findings touching upon the merits and fate of the case, which was not warranted at the stage of judicial scrutiny. According to him, the matter was required to be dealt with through the mechanism prescribed under the relevant law. He, therefore, submits that the impugned order is *coram non judice* and liable to be set aside.

4. So far as the constitutional petition is concerned, learned counsel submits that the alleged kidnapped lady has still not been recovered, whereas the police have taken the position that she had contracted marriage. He contends that once the police came to know of such fact, the alleged kidnapped lady ought to have been produced before the competent forum for recording her statement, but such course was not adopted by the JIT. According to learned

counsel, such omission reflects mala fide in the investigation and renders the investigation questionable.

5. On the other hand, learned counsel for the accused submits that it is a general practice for Magistrates to pass orders in matters relating to GBV and that the learned Magistrate has passed a detailed and speaking order, wherein it was also observed that the present complainant/applicant had previously lodged similar FIRs. He submits that, on merits, the accused has a good case. However, so far as the mechanism relating to GBV cases is concerned, he submits that it is the duty of the competent Magistrate to examine the matter at the first instance.

6. Learned Deputy Prosecutor General as well as learned Assistant Advocate General submit that where a specific mechanism is provided under the law for dealing with a particular category of cases, the same is required to be followed strictly.

7. Heard and perused.

8. Firstly, the Honourable Supreme Court, in the case of **Ghulam Sarwar Zardari v. Piyar Ali alias Piyaro and another, reported as 2010 SCMR 624**, observed that where mala fide on the part of the investigating agency is brought on record, this Court may examine the legality of such investigation and, where warranted, declare an investigation to have been conducted on the basis of mala fide. The parameters governing the exercise of such jurisdiction were elucidated in paragraph No.14 of the said judgment, which is reproduced hereunder:

In view of the above position, the investigation can be corrected and necessary orders can be passed if the aggrieved party alleges and proves one or other of the following conditions:-

(i) investigation initiated beyond the jurisdiction of Investigating Agencies;

(2) investigation initiated with mala fide intention;

(i) in bad faith out of personal motives either to hurt the person against whom the action is taken or to benefit oneself.

(ii) in colourable exercise of powers;

(iii) not authorized by the law under which the action is taken;

9. Now, so far as the conduct of the investigation is concerned, it is apparent from the record that the JIT itself has recorded that the alleged kidnapped lady had contracted marriage. In such circumstances, for proper conclusion of the matter, it was incumbent upon the investigating agency to secure her presence and have her statement recorded before the competent Court. Moreover, under the **Anti-Rape (Investigation and Trial) Act, 2021**, it is a statutory obligation of the JIT to ensure that the statement of the victim is recorded under Section 164, Cr.P.C. **Section 14** of the said Act specifically deals with the recording of statement under Section 164, Cr.P.C. and constitutes one of the mandatory safeguards in cases falling within the scope of the Act. However, the said course was admittedly not adopted by the JIT.

10. It is pertinent to note that, from the very scheme and preamble of the Anti-Rape (Investigation and Trial) Act, 2021, the legislative intent is to provide a special mechanism for dealing with offences falling within its ambit. Upon perusal of the Schedule appended to the said Act, it becomes evident that an offence punishable under Section 365-B, P.P.C. is a scheduled offence. Consequently, the Courts established

under the said Act are vested with jurisdiction to take cognizance of such scheduled offences in accordance with the mechanism prescribed therein.

11. Now, coming to the question whether the learned Magistrate had jurisdiction to take cognizance of the matter, it would first be appropriate to examine the relevant provisions of the Anti-Rape (Investigation and Trial) Act, 2021. **Section 2(j)** of the said Act defines “**Special Court**”. For ready reference, Section 2(j) is reproduced hereunder:-

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(j) "Special Court" means the Court established under section 3 of this Act;

12. In addition, **Section 9(6)** of the Anti-Rape (Investigation and Trial) Act, 2021, provides that, upon completion of the investigation by the JIT, the Prosecutor General or Special Prosecutor shall submit the report under Section 173, Cr.P.C. before the Special Court, which is competent to take cognizance of the offence in accordance with law. For ready reference, Section 9(6) is reproduced hereunder:-

9.....

(6) Upon completion of investigation, the SSOIU shall, through the prosecutor general or special prosecutors, submit the final report under section 173 of the Code before the Special Court.

13. It is a well-settled principle of law, as also enunciated by the Honourable Supreme Court in **Jeeand v. The State (2025 SCMR 923)**, that where the law prescribes a particular manner for doing a thing, the same must be done in that manner.

14. In the present case, the law has prescribed a specific mechanism for investigation, submission of the report and taking cognizance in respect of scheduled offences under the

Anti-Rape (Investigation and Trial) Act, 2021. The learned Magistrate, while passing the impugned order, not only overlooked the said statutory mechanism but also assumed jurisdiction which, under the law, vests in the Special Court. Such exercise of jurisdiction is not permissible in law. The impugned order, therefore, having been passed without lawful jurisdiction, is *coram non judice* and cannot be sustained.

15. In view of the foregoing, this Criminal Miscellaneous Application is allowed. The impugned order passed by the learned Magistrate is hereby set aside. The Investigation Officer/JIT is directed to conduct the investigation fairly, properly and in accordance with law and thereafter submit the report before the competent Court established under the Anti-Rape (Investigation and Trial) Act, 2021, in accordance with the prescribed procedure.

16. So far as the Constitutional Petition is concerned, the same is also disposed of in the above terms and conditions, with a direction to the Investigation Team/JIT to make all possible efforts for the recovery of the alleged kidnapped lady and, upon recovery, to produce her before the competent Court of law for recording her statement in accordance with law.

JUDGE