IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Misc. Application No.S-273 of 2023

Applicants:	1. Liaquat Ali 2. Sajjad Ali 3. Nizakat Ali, all sons of Ali Asghar Soomro Through Mr. Safdar Ali Ghouri, Advocate.
The State:	Through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.
Respondents:	Through Mr. Zafar Ali Malghani, Advocate
Date of hearing:	**23.11.2026**
Date of Order:	**23.11.2026**

O R D E R

ARBAB ALI HAKRO, J.- Through this Criminal Miscellaneous Application under Section 561-A Cr.P.C., the applicants have called in question the order dated 19.08.2023 (**the impugned order**) passed by the learned Judicial Magistrate-I, Jacobabad (hereinafter referred to as "**the Magistrate**"), whereby cognizance was taken against them for offences under Sections 337-A(i), 337-L(ii), 504 and 34, P.P.C. on the report of the SHO Police Station Airport and summons were issued.

2. Briefly, on 26.03.2022, a quarrel occurred between respondent No.5, Mst. Bibi Zainab, and her stepson, Muhammad Aqib, who is not an applicant, over an old family dispute relating to property. Each side had a non-cognisable report entered in the daily diary. Proceedings under Sections 107/150, Cr.P.C., in respect of the same incident, concluded on 03.08.2022, with the parties giving undertakings to keep the peace. An application under Sections 22-A & 22-B, Cr.P.C., was dismissed on 21.04.2022 as the offences were non-cognizable, and Cr. Misc. Application No. S-112 of 2022, filed before this Court, was dismissed on 29.12.2022 with liberty to the parties to pursue their remedy as advised.[1]

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[1] N.C. Nos.23 and 24 of 2022, P.S. Airport; order dated 03.08.2022 in the proceedings under Sections 107/150, Cr.P.C.; order dated 21.04.2022 in Cr. Misc. No.307 of 2022; order dated 29.12.2022 in Cr. Misc. Application No.S-112 of 2022.

3. Thereafter, respondent No. 5 moved an application under Section 155(2), Cr.P.C. on 01.04.2023. After hearing counsel and calling for a report from the SHO, the Magistrate, on 20.05.2023, granted permission and directed the SHO to investigate. The application was then disposed of as not pressed. On completion of the investigation, the SHO submitted his report on 12.06.2023 against Muhammad Aqib and the three applicants, upon which the impugned order was passed.[2] This Court suspended the impugned order on 25.08.2023, and the suspension has continued.

4. Learned counsel for the applicants contended that the impugned order was passed in haste, without application of mind; that, having ended, the proceedings under Sections 107/150, Cr.P.C. precluded the applicants from being proceeded against again for the same incident; that, once the application under Section 155(2), Cr.P.C. was dismissed as not pressed, the SHO had no authority to investigate; that no report under Section 173, Cr.P.C. was submitted and that the place of occurrence was shown differently; that the Investigating Officer himself found the witnesses exaggerating and that the case was the outcome of enmity between the parties.

5. Conversely, learned counsel for the private respondents contended that the application is not maintainable, as the applicants have remedies under Section 249-A, Cr.P.C., before the Magistrate and by way of revision; that the investigation was carried out with the permission of the Magistrate, granted on 20.05.2023; that the version of respondent No.5 is supported by the medical certificate and the witnesses; that the proceedings under Sections 107/150, Cr.P.C., were preventive and do not bar the present case; and that the pleas raised by the applicants are factual and require evidence.

6. Learned D.P.G. has opposed the impugned order and adopted these submissions, adding that the applicants approached this Court without first appearing before the Magistrate.

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[2] Order sheet dated 20.05.2023 of the Magistrate; report of the SHO dated 12.06.2023.

7. I have heard learned counsel for the parties and learned D.P.G., and have perused the record. As the application is directed against an order of a Magistrate taking cognizance, counsel was put on notice on 17.02.2025 to satisfy the Court as to its maintainability under Section 561-A Cr.P.C., which is the first question.

8. An order taking cognizance and issuing process is a judicial order. Against it, the accused can seek acquittal before the trial court under Section 249-A Cr.P.C. at any stage, and revision lies under Sections 435 and 439 Cr.P.C. In ***Muhammad Farooq***[3], the Supreme Court held that Section 561-A Cr.P.C. is not an alternative or substitute for these remedies, that its exercise, being akin to that under Article 199 of the Constitution, is warranted only where no alternative efficacious remedy exists or some extraordinary circumstance justifies bypassing it, and that propriety requires the court of the lower grade to be approached first. The same view was taken in ***Ali Gohar***[4], where the inherent jurisdiction was held to be curative and available only if no other remedy under the Code is attracted, and a challenge to an order of a trial court was held not maintainable under Section 561-A Cr.P.C. when revision under Section 435, Cr.P.C. was available.

9. That does not mean the grounds can be brushed aside merely because cognizance has been taken. In ***Aurangzaib Alamgir***[5], while reiterating that the jurisdiction is curative and cannot be used to bypass Sections 249-A and 265-K Cr.P.C., the Supreme Court also held that such a petition cannot be dismissed summarily on that ground alone and that the grounds must be examined. I have, therefore, examined the grounds to determine whether any of them shows an extraordinary circumstance.

10. The first ground is that the SHO could not investigate. Section 155(2), Cr.P.C., requires the order of a competent Magistrate to investigate a non-cognizable offence. As recorded in the diary sheet, such an order was passed on 20.05.2023, when the SHO was before the Magistrate with his report and

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[3] *Muhammad Farooq v. Ahmed Nawaz Jagirani* PLD 2016 SC 55 (paras 10 and 11).
[4] *Ali Gohar v. Pervaiz Ahmed* PLD 2020 SC 427 (paras 12, 14, 17 and 24).
[5] *Aurangzaib Alamgir v. Muhammad Sajid* PLD 2025 SC 53 (paras 9 and 10).

was directed to investigate. The application was disposed of as not pressed only afterwards, and that could not undo an order already made. Even otherwise, in ***Altaf Hussain***[6], the Supreme Court held that an investigation of a non-cognizable offence without the Magistrate's permission, followed by cognizance under Section 190(1)(b) Cr.P.C., does not vitiate the proceedings where no serious prejudice is caused to the accused, the defect being curable under Section 537 Cr.P.C. No such prejudice has been shown.

11. As to the plea that no report under Section 173 Cr.P.C. was filed, the report dated 12.06.2023, whatever its caption, was submitted upon completion of the investigation ordered by the Magistrate and named the accused, the offences and the witnesses. That was sufficient to take cognizance under Section 190(1)(b) Cr.P.C. The impugned order is brief, but it records that the Magistrate perused the police file and was satisfied that prima facie sufficient material was available. Whether it should have said more, or whether the wording of the summons is inaccurate, are matters for the Magistrate and, if need be, the revisional court. They do not go to jurisdiction.

12. The proceedings under Sections 107/150 Cr.P.C. were preventive, intended to secure peace. They concluded on undertakings, with no finding of guilt and no trial or punishment for any offence. They cannot operate as a bar under Article 13(a) of the Constitution or Section 403 Cr.P.C. to the cognizance of the offences on a police report.

13. The remaining grounds, namely the place of occurrence, exaggeration by the witnesses, the contradictions pointed out, the cross-cases and the plea of enmity, are questions of fact that can be resolved only after evidence is recorded. In proceedings under Section 561-A, Cr.P.C., this Court cannot appraise evidence or halt the trial before it begins, nor can the section be used to divert the ordinary course of procedure.[7] The applicants can raise these pleas before the Magistrate, including under Section 249-A, Cr.P.C.

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[6] *Altaf Hussain v. Abdul Samad* 2000 SCMR 1945.
[7] *Muhammad Farooq* (n.3 above) para 16; *Altaf Hussain* (n.6 above).

14. In view of the above, no extraordinary circumstances are made out to invoke Section 561-A Cr.P.C. in the face of the remedies under Sections 249-A, 435 and 439 Cr.P.C. This Criminal Miscellaneous Application is accordingly **dismissed**.

J U D G E

Manzoor