THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

BEFORE:
Justice Arbab Ali Hakro
Justice Muhammad Osman Ali Hadi

Const. Petition No. D-933 of 2026

[Abdul Majeed Mazari Vs. Province of Sindh & others]

Petitioner	**:**	Through Mr. Ayaz Ahmed Faras, Advocates
Respondents	**:**	Through Mr. Saeed Akbar Siyal, Assistant Advocate General, Sindh Khadim Ali, District Food Controller, Kashmore @ Kandhkot Safdar Ali Kalwar, Mukhtiarkar, Kashmore
Date of Hearing	**:**	**18-11-2026**
Date of Order	**:**	**18-11-2026**

O R D E R

ARBAB ALI HAKRO, J.- Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks the quashment of FIR No. 98 of 2026 registered at Police Station Guddu, District Kashmore, at Kandhkot, under Sections 380 and 188 of the Pakistan Penal Code, 1860 (hereinafter referred to as **'PPC'**) (**the impugned FIR**). He further prays that the respondents be directed not to create hindrance to his business, to act against respondent No. 11 for lodging the impugned FIR, and to restore 2500 bags of wheat taken into custody by the Food Department to him.

2. The petitioner claims to be a commodities trader. He contends that the Food Department, Government of Sindh, in its letter dated 31.08.2026, clarified that there were no restrictions on the movement of wheat within the Province. He says that he thereafter purchased wheat and was transporting it on tractor-trolleys to a flour mill at Mureed Shakh, when, on 30.10.2026, the consignment was intercepted and transferred to the Provincial Reserve Centre, Kashmore (hereinafter referred to as **'PRC'**). On the same night, respondent No.11, the Food Inspector posted there, lodged the impugned

FIR against the petitioner and nine others, alleging that about 2500 bags of wheat, each of 100 kilograms, had been stolen from unknown places and were being shifted.

3. The District Food Controller, in his comments, states that the letter dated 31.08.2026 concerns the lawful movement of wheat within the Province and provides no cover for pilferage or illegal shifting of stock; that the petitioner is involved in shifting wheat out of the Province and faces other cases on similar allegations; and that of the ten trolleys intercepted, eight belong to the petitioner and two to other traders. The Deputy Commissioner and the Assistant Commissioner have taken the same line. The Investigating Officer reports that all the accused are on bail, that the investigation is pending because the complainant has not yet produced documentary proof regarding the stock, and that about 2500 bags of wheat are lying at PRC in the custody of the Food Department.

4. Learned counsel for the petitioner contends that the impugned FIR discloses no offence, as it names no owner from whose possession the wheat was taken and no order that was disobeyed; that the movement was lawful in terms of the letter dated 31.08.2026; and that the complainant has himself given his no objection before the learned Magistrate to the return of the wheat.

5. Learned Assistant Advocate General, assisted by the District Food Controller, opposes the petition on the ground that the investigation is still in progress, the facts are disputed, and the petitioner has adequate remedies under ordinary law.

6. We have heard learned counsel for the petitioner and the learned Assistant Advocate General and have reviewed the record.

7. The law on quashment of an FIR in constitutional jurisdiction is settled. In ***Chaudhry Mohammad Khan***[1], the Supreme Court held that such jurisdiction is to be exercised only in exceptional cases, where the facts on record unequivocally show that no offence can be established, or where the registration reflects misuse of legal authority or is in clear violation of

[1] *The State through Prosecutor General Punjab, Lahore v. Chaudhry Mohammad Khan and others* (PLD 2025 Supreme Court 254)

law; that the High Court cannot assume the role of an investigating agency or of a trial court to settle factual controversies and that quashment during investigation amounts to throttling the investigation. To the same effect is ***Col. Shah Sadiq***[2], where it was held that the High Court cannot quash an FIR by appreciating documents produced by the parties, and that the ordinary course of criminal procedure is not to be deflected by resort to Article 199 of the Constitution of Pakistan, 1973.

8. The present case does not cross that threshold. Whether the wheat is the petitioner's own lawfully purchased stock, where it was loaded, where it was bound, and whether the whole consignment or only part of it belongs to him are all questions of fact on which the parties are at variance. The letter dated 31.08.2026 and the statement attributed to the complainant, on which the petitioner mainly relies, are material which the Investigating Officer, and thereafter the learned Magistrate, are competent to examine. We cannot weigh that material here and return a finding that no offence was committed. Even on the petitioner's own showing, the investigation is incomplete, and the Investigating Officer has stated before us that evidence is still being collected.

9. Two further aspects stand in the petitioner's way. As regards section 188 PPC, the bar contained in section 195(1)(a) of the Code of Criminal Procedure, 1898 (hereinafter referred to as '**Cr.P.C.**') applies to the taking of cognizance by a Court, not to the registration of an FIR. In ***Mian Asim Fareed***[3], the Supreme Court held that registration of an FIR and taking of cognizance are two distinct concepts, and that a condition placed only on cognizance cannot be read as a prohibition on registration. The objection is thus one to be taken before the learned Magistrate at the appropriate stage. Secondly, the petitioner is one of ten accused nominated in the impugned FIR, and the others are not before us; partial quashment of an FIR to the extent of some of the accused is not permissible, as held in ***Muhammad Akram Khan***[4].

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[2] *Col. Shah Sadiq v. Muhammad Ashiq and others* (2006 SCMR 276)
[3] *Industrial Development Bank of Pakistan and others v. Mian Asim Fareed and others* (2006 SCMR 483)
[4] *Director-General, Anti-Corruption Establishment, Lahore and others v. Muhammad Akram Khan and others* (PLD 2013 Supreme Court 401)

10. The petitioner is not without remedy. As noted in ***Col. Shah Sadiq*** (n.2 above), he may place his material before the Investigating Officer and his superiors. Upon submission of the report under Section 173 Cr.P.C., the learned Magistrate is competent to pass an appropriate order, including cancellation of the case or discharge, if the material so warrants. We leave all such questions open.

11. The grievance regarding the wheat stands on a different footing but leads to the same forum. The stock is case property of the impugned FIR, and its interim custody is a matter for the Criminal Court under Sections 516-A and 523 Cr.P.C. In ***Ahsan Ali Dawach***[5], the Supreme Court held that such an application must be decided expeditiously and on cogent reasons, on the touchstone of the best right to possess, supported by proof of ownership, keeping in view Articles 23 and 24 of the Constitution, and that interim custody neither prejudices the trial nor absolves the recipient of the pending proceedings. Wheat is a perishable commodity, and the matter cannot be left to linger. The petitioner's claim, including the effect of the complainant's stated no objection and the claim of any other person to part of the stock, shall therefore be decided by the learned Magistrate within a fixed time.

12. As to the remaining prayer, a general restraint against the respondents cannot be issued, as it would fetter the lawful exercise of regulatory powers in respect of an essential commodity. The petitioner is, however, entitled to be dealt with in accordance with law, and the Food Department's own letter dated 31.08.2026 forbids unauthorised interference with the movement of wheat within the province. If the petitioner seeks action against any official, he may approach the competent authority, which shall attend to his complaint in accordance with law.

13. For these reasons, the prayer for quashment of the impugned FIR is **declined** and the petition, along with the pending application, is disposed of in the following terms:

(i) The Investigating Officer shall complete the investigation fairly and, within fifteen days of receipt of this order, submit his report under section 173 of the Cr.P.C. to the learned Magistrate having

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[5] *Ahsan Ali Dawach v. The State through Chairman NAB and others* (2025 SCMR 1041)

jurisdiction. The petitioner shall be at liberty to produce before him the purchase record and all other material in his defence, which shall be duly considered.

(ii) The application of the petitioner for interim custody of the wheat, whether pending or filed within fifteen days, shall be decided by the learned Magistrate by a speaking order within ten days of receipt of this order or of the filing of the application, as the case may be, after notice to the complainant, the District Food Controller and the Investigating Officer.

(iii) Until such decision, the District Food Controller, Kashmore, at Kandhkot, shall ensure that the stock at PRC and its records are kept intact and that the wheat is properly preserved.

(iv) The official respondents shall not interfere with the lawful business of the petitioner or with the movement of his wheat within the Province, except as authorized by law.

14. The observations made above are tentative and confined to the disposal of this petition; they shall not influence the Investigating Officer or the learned Magistrate, who shall proceed on the material before them. The Office shall send a copy of this order to the learned Magistrate concerned, the Senior Superintendent of Police, Kashmore, at Kandhkot, and the District Food Controller for compliance.

JUDGE

JUDGE

Zulfiqar