

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.  
Cr. Misc. Appln. No.S- 18 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case

13.01.2021.

Mr. Mumtaz Sachal Awan, advocate for applicant.  
Mr. Shahzado Saleem Nahiyoan, D.P.G for State.  
None for the private respondent.

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It is stated by learned counsel for the applicant that the case against the applicant on successive investigation was found by the police to be false and recommended to be cancelled under “C-class”, but learned trial Magistrate has taken the cognizance whereof without lawful justification vide his order dated 23.12.2019, which is illegal and is liable to be set-aside by this Court by way of instant Criminal Misc. Application u/s 561-A Cr.P.C.

2. Learned D.P.G for the State by supporting the impugned order has sought for dismissal of the instant Criminal Misc. Application by contending that the order impugned is well reasoned.

3. I have considered the above arguments and perused the record.

4. Admittedly, the opinion of the police has got no binding effect on the Courts. The learned trial Magistrate on the basis of material available on record well within his wisdom has taken the cognizance of the case by way of impugned order, which could not be said to be illegal only for the reason that it has been passed against the applicant. If the applicant is having a feeling that he is innocent then he may prove his innocence by joining the trial.

5. In case of Muhammad Akber vs The State (1972 SCMR 335), it has been held by Hon'ble apex Court that;

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

6. In view of above, it could be concluded safely that no case for making interference with the impugned order is made out. Consequently, the instant Criminal Misc. Application is dismissed.

JUDGE