

*Order Sheet*IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA.**Cr. Misc. Application No. S- 03 of 2019**

Date	Order with signature of Hon'ble Judge
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- 1.For orders on office objections as flag A.
- 2.For hearing of main case.

26.9.2019.

Mr. Gayoor Abbas Shahani, advocate for the applicant.
Mr. Raja Imtiaz Ali Solangi, A.P.G.

ORDER.

ARSHAD HUSSAIN KHAN,J. This Criminal Miscellaneous Application has been preferred on behalf of the applicant/complainant against the order dated 03.12.2018, passed by learned IInd Judicial Magistrate, Dokri, passed on final report submitted by I.O/SDPO City Shikarpur for cancellation of FIR under B Class in Crime No.04 of 2019 registered with Police Station Veehar for offences under Section 506/2, 337-H(ii), 120-B, 147, 148, 149, 427 PPC, whereby cancellation of FIR has been approved under 'C' class.

2. Facts of the prosecution case as per FIR lodged by complainant-Imdad Ali Junejo on 19.4.2018 are that on 08.3.2018 he along with his cousin Qutubuddin Junejo and son Azhar Ali were available at his lands when at about 10.00 a.m. all 31 accused persons (named in the FIR) duly armed with different weapons came there and while abusing warned them to leave away from the lands and extended threats of murder and accused armed with the weapons made aerial firing and within their sight dismantled the Govt. Water Course 4-R on which the complainant party being empty handed kept mum and returned back to village and forthwith approached the Police Station concerned for registration of FIR, which was refused, therefore, they filed such an application under Section 22-A and B, Cr.P.C bearing Cr.Misc.A. No.355 of 2018 seeking directions to the SHO concerned for registration of FIR, which was assigned to learned IIIrd Additional Sessions Judge, Kamber, for disposal in accordance with law, who after calling reports from the concerned quarters, disposed of the said

application, vide order dated 18.4.2018 directing the SHO concerned to register FIR against the proposed accused including the irrigation officials concerned for committing negligence and inaction in discharge of their official obligations and thereafter, the FIR was lodged as per statement of the complainant to the above effect.

3. After registration of FIR, the investigation followed in which initially the I.O/DSP Naudero submitted a summary report dated 27.8.2018 for disposal of the FIR under 'B' Class and the parties were heard when the complainant and P.Ws shown their mistrust upon said I.O on which vide order dated 08.10.2018 further investigation through impartial and God fearing officer, not below the rank of ASP, was ordered and the SDPO City Shikarpur was assigned investigation who conducted spot inquiry, examined the complainant and his witnesses again who recorded contradictory statements and he also recorded statements of independent witnesses from the locality who stated that no such incident had taken place on the particular date and time and there is dispute between the parties on the forest land. Besides, the I.O also obtained CDR location of accused of the particular date and time of the alleged occurrence in which it appeared that they were 20 to 30 Kilometers away from the place of incident on the particular date and time of incident, therefore, he submitted his report dated 17.11.2018 recommending disposal of case under B Class on which the learned Magistrate concerned passed the order dated 03.12.2018 whereby he approved the summary while cancelling FIR under 'C' Class giving rise to the filing of instant application.

4. I have heard learned counsel for the parties and perused the material brought on the record.

5. Learned counsel for the applicant/complainant, inter alia, contended that the learned Judicial Magistrate-II, Dokri, while passing the impugned order has failed to take into account the reports of SHO Veehar and Assistant Executive Engineer Irrigation Sub-Division Dokri, in true perspective as the said report clearly mentioned that Water Course No.4-R Lashari Minor of Irrigation was found demolished condition in which fact alone reflects that the incident as mentioned in the FIR has taken place. It is also contended that the

learned JM-II, Dokri, has also failed to take into account that due to the negligence of irrigation department, government property was destroyed. It is further contended that learned JM-II, Dokri also failed to consider the material fact that the accused persons damaged the cultivation of the applicant and illegally occupied the applicant's land with the collusion of the political leaders of the locality and in this regard direct complaint under section 3 and 4 of illegal Dispossession Act 2005 bearing No. 08/2018 before the District and Sessions Judge Larkana is pending adjudication. Learned counsel has also contended that during both rounds of investigation, the I.Os did not conduct impartial investigation and favoured the accused party. It is also argued that reinvestigation was also partial, which is apparent from the conduct of I.O/SDPO, City Shikarpur, who furnished report in which there is no mention of demolition of Water Course 4-R. It is further argued that learned IInd Additional Sessions Judge, Kamber, during his enquiry had also called upon irrigation authorities concerned who furnished report wherein it was confirmed that the Government property viz. Water Course 4-R was demolished as stated in the FIR but no action was taken by them in this regard, therefore, learned Judge passed strict orders for registering FIR against the proposed accused as well as delinquent officials of Irrigation Department; despite that the investigation was not conducted impartially twice. It is also urged that learned JM-II, Dokri while passing the impugned order has given undue weightage to the reports of I.Os as well as statements of independent witnesses and as such totally brushed aside the statements of complainant and his witnesses. Learned counsel further urged that it is settled principle of law that on the report of I.O, learned Magistrate is required only to pass an administrative order and it must be speaking order with well reasons, which are lacking in the present case. Learned counsel further argued that learned JM-II, Dokri was not bound by the reports submitted by the I.Os and he had to apply his own judicious mind but the learned Judge passed the impugned order cancelling the FIR under 'C' Class which is not sustainable in law and the facts.

6. Learned Additional Prosecutor General while supporting the impugned order has contended that in both the rounds of investigation, the statements recorded by the complainant and the witnesses were

found contradictory and the independent witnesses from the locality concerned recorded the statements in which they stated that no such incident had been taken place and there is standing dispute between the parties on the forest land, therefore, impugned order does not call for any interference by this Court.

7. Before going into further discussion, it would be appropriate to discuss the role of *investigating officer* and learned *Magistrate* in relation to investigation and outcome thereof. Every investigation is to be conducted with reference to Chapter-XIV of the Criminal Procedure Code and the Police Rules. The vitality of role of investigating officer cannot be denied because it is the very first person, who per law, is authorized to dig out the truth which, too, without any limitation including that of version of informant/complainant. In this regard reliance can be placed on the case of *Mst. Sughran Bibi Vs. The State* (PLD 2018 SC 595), wherein the Honourable Supreme Court of Pakistan, inter alia, has held as under:-

- “(iv) During the investigation conducted after the registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161 Cr.PC in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case;
- (v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules 1934 “It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.”
- (vi)
- “(vii) Upon conclusion of the investigation the report to be submitted under section 173 Cr.PC is to be based upon the actual facts discovered during the investigation irrespective of the version of the incident , advanced by the first informant or any other version brought to the notice of the investigating officer by any other person.”

From the above, it is quite clear that an investigating officer is not bound to base his conclusion on version of informant or defence but on actual facts, discovered during course of investigation. Such conclusion shall be submitted in the shape of prescribed form, as required by Section 173 of the Criminal Procedure Code. At this juncture, it would be advantageous to refer the provision of Section 173 of the Criminal Procedure Code, which reads as under;

"173. **Report of Police Officer.** (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the Officer Incharge of the police station shall [through the public prosecutor].

(a) forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the, persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given."

"(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Provincial Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the Officer In-charge of the police station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit."

A bare perusal of the above provisions would show that on conclusion of every investigation, a *police report* shall be forwarded to the Magistrate having jurisdiction, so empowered to take cognizance thereon which must include all details. It nowhere describes as to how the *Magistrate* shall deal with such report. It however empowers the Magistrate to agree or disagree with the opinion/act of the Investigating Officer in releasing an accused during investigation u/s 497 Cr.P.C., which, too, to extent of discharge of bonds. Since, this Chapter nowhere provides duties/powers of the *Magistrate* to deal with such

forwarded report, therefore, Section 190 of Cr.P.C. dealing with power of Magistrate, come into play which reads as under;

“190. **Cognizance of offences by Magistrates.** All Magistrates of the first class, or any other Magistrate specially empowered by the Provincial Government on the recommendation of the High Court may take cognizance of any offence;

- (a) upon receiving a complaint of facts which constitute such offence.
- (b) upon a report in writing of such facts made by any Police officer,
- (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion.”

In above section, the word ‘may’ has been used which always vests competence to *agree* or *disagree* with the police report u/s 173 Cr.P.C.

8. Reverting to the case in hand, from perusal of FIR lodged by the complainant on the directives of learned IInd Additional Sessions Judge, Kamber, reflects that he has nominated all 31 persons with their names, parentage as well as respective weapon they were carrying which does not appeal to a prudent mind that one could recognize such a huge number of persons with details so furnished. It appears that the first I.O finding the case false furnished his report for disposal of the case under ‘B’ class on which the complainant party shown mistrust and claiming a partial investigation by the I.O. requesting the Magistrate concerned for re-investigation through some honest and God fearing Police Officer not below the rank of ASP, which was accorded and the reinvestigation was assigned to SDPO City Shikarpur who conducted fair investigation through spot inquiry by recording statements of the complainant and his witnesses who again stated contradictory version to each other. Moreover, independent witnesses stated in their statements that no such incident had occurred and there is standing dispute between the parties on the forest land. Besides, SDPO City Shikarpur also obtained CDR-location of Azhar Ali Junejo, so called eye witnesses of alleged occurrence as well as accused Manzoor who on the particular date and time of alleged occurrence, were reportedly available in some area at the distance of 20

to 30 kilometers away from the occurrence, thus finding the FIR false, he furnished his report recommending disposal of case under 'B' class on which the impugned order was passed. Relevant portion of the said report for the sake of ready reference is reproduced as under:

“5. It appears that there is dispute between the parties over land in question which is bone of contention between the parties and parties already locked up in such civil matter and such lis is already pending before competent Court on the same land referred in the FIR in this regard parties have basically civil dispute over ownership of land in question. At this stage I am clear in my mind that it is a settled principle of law that while dealing with report U/S 173-Cr.P.C. Magistrate is under legal obligation to satisfy himself with regard to material placed before him and there is cavil to the proposition of law that when a report U/S 173-Cr.P.C. is submitted before the magistrate he is required either to agree or disagree and he is bound to apply his judicial mind to assess that whether material collected through investigation officer is sufficient for trial or not in the instant matter, I find material insufficient for trial.

For above reasons, it reflects that there is no any substance in this case for trial, I approve the cancellation of FIR in 'C' Class instead of 'B' Class, so that further litigation may not create more differences between the parties. Let the copy of this order along with original police papers be sent to SHO concerned for information.”

9. In my opinion, keeping in view the above discussed legal position, learned Judicial Magistrate-II, Dokri, was well within the powers to either agree or disagree with the report of Investigating Officer while considering the material placed before him. Furthermore, learned counsel for the applicant has failed to point out any illegality, irregularity and/or any procedural defect in the impugned order, which could warrant interference by this Court in the present proceedings. Hence, instant application does not merit any consideration, which is accordingly dismissed.

JUDGE