

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Miscellaneous Application No.S-656 of 2022

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**DATE**

**ORDER WITH SIGNATURE OF JUDGE**

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**Date of hearing & Order**

**17.10.2022**

Mr. Ali Akbar Lakho, advocate for applicant

Mr. Hasnain Nizamani, advocate for private respondents

Mr. Shahid Ahmed Shaikh Additional P.G Sindh a/w ASI  
Ghanhwar Khan of PS Shahpur Chakar

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## **ORDER**

**ADNAN-UL-KARIM MEMON, J:** Applicant had called in question the order dated 31.08.2022, whereby the learned Magistrate while approving the report submitted by the Investigation Officer under Section 173 Cr. P.C canceled the FIR under 'B-Class'.

2. Brief facts of the matter are that the applicant / complainant lodged an FIR bearing Crime No.16 of 2020 at PS Mangli under Sections 436, 337-H(ii) & 149 PPC against private respondents with the allegation that on 24.02.2020 private respondents set his hut on fire due to dispute over landed property. After registration of FIR, investigation was carried out and finally, the I.O submitted report under Section 173 Cr. P.C before the Magistrate concerned for cancellation of FIR under 'B-class', which was approved and the FIR was canceled under 'B-class' vide impugned order dated 31.08.2022, hence this application.

3. Learned counsel for applicant/complainant argued that the impugned order is against all cannons of justice, equity, without findings and substance; that there is sufficient material against the private respondents which connect them with the commission of offense; however, it was not considered by the learned Magistrate and hurriedly passed the impugned order; that I.O neither obtained CDR of private respondents/accused persons nor recorded the statements of persons of locality and malafide submitted the summary for cancellation of FIR under 'B-Class' which has been approved by learned Magistrate without taking into consideration the above facts of the case; that learned Magistrate is not bound by the report submitted by the I.O; however, learned Magistrate has to see the material

and evidence of complainant. He prayed for setting aside the impugned order and directions to I.O to submit challan of the case.

4. Learned counsel for private respondents; however, submits that learned Magistrate has rightly passed the order, as Investigation Officer submitted the report after conducting thorough inquiry in the matter; that admittedly there is a dispute between the parties, as such applicant/complainant concocted the story and lodged the FIR against private respondent just to harass them to bow before him; that applicant/complainant has abused the process of law by giving false statement before the police, as such he is liable to be prosecuted under the law. He supports the impugned order and prayed for dismissal of the captioned application.

5. Learned APG also supported the version of learned counsel for private respondents.

6. I have heard learned counsel for the parties and perused the record with their assistance.

7. The Honorable Supreme Court of Pakistan vide order dated 04.08.2022 passed in Criminal Petition No.161-K of 2020 set aside the order of this Court, as well as the order passed by learned trial court and the matter, was remanded to the trial court for passing appropriate order strictly under the law within 15 days.

8. In compliance with the orders of Honorable Supreme Court of Pakistan, learned trial court passed the following order:-

“7. Perusal of the record reveals that statement of PW Muhammad Banal is contradictory to the contents of the FIR and he is not supporting the version of the complainant. PW Muhammad Banal stated in his 161 Cr.P.C statement that they are in dispute with Pathan Khan Shar and sometimes ago uncle Din Muhammad and his sons set the Government primary school on fire situated in the land of Zulfiqar Ali due to which Zulfiqar Ali lodged the FIR against his Uncle Din Muhammad and his sons at PS Mangli and in said case bail of Uncle Din Muhammad and his sons were cancelled. On 24.02.2020 about evening time he along with Uncle Dost Muhammad (complainant) and Cousin Saeed Ali s/o Dost Muhammad went to the village of Uncle Din Muhammad. Uncle Din Muhammad was not present therefore after taking dinner consulted with each other that Pathan Khan got cancelled the FIR of their men therefore in revenge would set the Chabar (hut) on fire and register the FIR against Pathan Khan. Hence, they set the Chabar (hut) on fire of uncle Din Muhammad and thereafter uncle Dost Muhammad raised hue & cry among the Nekkards and registered false FIR

against Zulfiqar Ali s/o Pathan Khan Shar, Pathan Khan s/o Samano Shar, Zahid Hussain s/o Zulfiqar Ali, Asif s/o Chanesar Shar and one unknown person at PS Mangli for setting fire. It may further be noted that I.O also recorded statements of independent witnesses namely Muhammad Bachal Mallah, Abbas Shar, and Ghulam Abbas Shar, they all in their statements did not support the version of the complainant and stated that on the date of incident i.e. 24.02.2020 accused person Pathan Khan Shar, Zulfiqar Ali Shar, and Asif Shar were present at the Otaque of Ghulam Abbas Shar till 2400 hours.

8. Record shows that during Investigation I.O recorded statements of witnesses and found that they did not support the story narrated by Complainant in F.I.R. I.O found that Complainant and accused party had dispute and Complainant lodged false F.I.R against present accused persons in order to pressurize accused party. The statement of Complainant is falsified by the statement of witnesses. Witnesses did not support the allegations of Complainant. No any incriminating evidence against accused persons came on record during investigation. Therefore, it appears that Complainant has abused the process of law by registration of false F.I.R against the innocent persons. The report of I.O is supported by material available on record. The allegations of Complainant are false. Hence, the report of U.S 173 Cr.P.C is approved. F.I.R is cancelled under "B Class", as prayed by the SHO."

9. The question involved in the present proceedings is whether the summary for cancellation of FIR under 'C-Class' could be again approved under 'B-Class'

10. I have heard the arguments and have gone through the impugned order. Proceeding summaries under A, B, and C classes is a practice in vogue, which is being followed by police. The purpose of filing the report as a summary in any of the three classes before the Magistrate for disposal of the case either as untraceable / insufficient evidence, false or cancel. If a summary recommends the case under 'B' or 'C' class, it means that the F.I.R. is required to be nullified but in case the report is in 'A-Class, the F.I.R. shall remain alive and the learned Magistrate has to call periodical reports from the investigator regarding the progress in the case, till the culprit is traced which never end if not traced out.

11. There are two types of reports submitted under Section 173 Cr.P.C after completing the investigation. One report is placed in the prescribed format in which the investigation officer opined that some cognizable offense has taken place and recommends taking cognizance of the offense. In such a report, every detail of the offense and offenders, investigation collected and detail of witnesses privy to offense in any manner and recoveries are mentioned precisely. Such report may be treated as positive report. Considering the facts described by the complainant in the F.I.R. and

the materials placed before the Magistrate at the time of filing such report, Magistrate may accept such report or pass any further order as deemed fit. The basic ingredient for a cognizable offense is a sine qua non for recording F.I.R. that there must be information and that information must disclose a cognizable offense and the author of the offense is also either nominated or traced out during the investigation. However, if a cognizable offense is taken place but the offenders are not known and they are untraceable or the evidence so far collected is not sufficient for forwarding the accused for taking cognizance then a report is submitted, which is referred to as a report in 'A-Class. In such a situation, the police will be allowed to carry on the investigation and locate the culprits or collect further material. But in such a case, the Magistrate must remain vigilant and not allow the investigation to be at rest and direct the investigators to furnish a report regarding their efforts for tracing the author of the offense. A purely negative report is when the police opined that the offense is not taken place and the complainant has falsely reported a case ('B' Class) or the offense is reported by the complainant due to some misconception etc. ('C' Class). In both situations, he recommends for cancellation of F.I.R. All these reports are technically known as negative reports, and on such report, Magistrate may pass any appropriate order and even he can take cognizance of the offense.

12. Nevertheless, when a final report is placed before the Magistrate with a positive opinion with recommendation for taking cognizance, there are only two options with the learned Magistrate, either he has to take cognizance or discharge the offenders if he considers that such final report is not worthy to take cognizance. There is no any room left for learned Magistrate to pass any other direction when a report is submitted with a recommendation for taking cognizance of the offense. The learned Magistrate has no power to convert a positive final report submitted for taking cognizance into a report under 'B' Class i.e. a false F.I.R. As far as the pleas of nominated accused regarding falsification of F.I.R. are concerned, he is not remediless if cognizance is taken by the Magistrate. On the aforesaid proposition I am guided by the dictum laid down by Hon'ble Supreme Court in the case of Director General ACE, Lahore and others v. Muhammad Akram Khan and others (PLD 2013 Supreme Court 401).

13. Coming to the instant matter, the record shows that learned Magistrate has indirectly given direction to the concerned SHO for

initiating proceedings under Section 182 PPC against the complainant after treating the final report as a report under 'B' Class though his earlier view was different as 'C' class, perhaps he has changed his mind. I am of the candid view that this practice is not appreciable but rather unjustified and contrary to law. No doubt, a person who has given false information to a civil servant may expose himself for taking action under Section 182 PPC but initiating such proceedings is solely under the discretion of civil servant concerned in which no one can interfere and even a judicial direction for the same cannot be issued just because of the bar imposed by Section 195 Cr.P.C.; therefore judicial propriety demands that the case which is finalized by police as 'B' class could be treated as 'C' class as, prima facie, the offence though took place however, no material was found for taking cognizance by the Magistrate in terms of FIR No.16 of 2020 under Sections 436, 337-H(ii) & 149 PPC of PS Mangli.

14. According to Section 195 Cr.P.C, in all offenses punishable under Sections 172 to 188 PPC, no Court can take cognizance except on a written complaint of the concerned public servant or some other public servant to whom he is subordinate in this regard I am of the considered view that giving a direction for initiating proceeding under Section 182 PPC is amounting to taking cognizance, which is unwarranted under the law as discussed in the preceding paragraph.

15. In view of the above reasons, the impugned order passed by the learned Judicial Magistrate is modified to the extent that the FIR is disposed of under 'C' class instead of 'B' class.

This Cr. Misc. Application stands disposed of in the above terms

JUDGE