

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Miscellaneous Application No.S-825 of 2022

1. For orders on office objection.
2. For hearing of MA No.10849/2022.
3. For hearing of main case.

09.05.2023.

Mr. Ghulam Shabbir Babar, advocate for applicant.

Through criminal miscellaneous application, the applicants have impugned the order dated 01.11.2022, passed by learned 1st Civil Judge & Judicial Magistrate, Johi wherein the Investigating Officer of the case, while relying upon statements of DWs and story set up in crime No.18/2021, u/s 365-B, 511, 324, 147, 148, 149, 337-H (ii) PPC lodged at PS Phulji Village, submitted the report in crime No.01/2022 registered at PS Phulji Village for the offence under sections 302, 506 (ii), 34 PPC under 'C' class.

2. Per learned counsel, the learned Magistrate did not agree with the report filed by the Investigating Officer and has taken cognizance against all the accused persons mentioned in the charge sheet. Learned counsel contends that previously crime No.18/2021, u/s 365-B, 511, 324, 147, 148, 149, 337-H (ii) PPC lodged at PS Phulji Village lodged by one Javed son of Mazar Khan Jamali and after investigation, report under section 173 Cr.P.C. was filed and in order to create pressure upon the complainant party the accused nominated in crime No.18 / 2021, lodged the instant FIR and during proceedings, the Investigating Officer of the case has submitted report under 'C' class. He further contends that no offence has been committed by the accused persons but they have been implicated in this case with *mala fide*. He further contends that there is violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 as the learned Magistrate has passed the order without hearing the applicants.

3. Heard and perused the record.

4. On perusal of record, it reflects that the FIR was lodged by complainant Ali Asghar and nominated the accused persons with their role. After registration of the FIR, the investigation was conducted by the Investigating Officer and recorded the statement of the defense witnesses. On the basis of statements of the defense witnesses, the I.O. of the case submitted report under 'C' class before the concerned Magistrate. But the learned Magistrate did not agree with the report filed by the Investigating Officer and taken the cognizance against all the accused persons. The procedure provided by the law is that when the investigation has been completed then the Investigating Officer is required to submit his report in terms of section 173 Cr.P.C. to the Magistrate concerned and if he finds that there is no evidence connecting the accused in the commission of offence then he has to release the accused as provided under section 169 Cr.P.C. If he finds sufficient material against the accused then he is required to submit report within the meaning of section 173 Cr.P.C. There is no scheme of law that after submitting report under section 173 Cr.P.C, the Magistrate should call the parties and after hearing the parties, passes an order. The power conferred upon the Magistrate has to be just and judicious and while passing the order and showing disagreement with the report submitted by the Investigating Officer entire material collected during the investigation should be considered. Justice should not only be done but it seems to have been done. In the instant case, it appears that the Magistrate after going through the entire material and while discussing all aspects of the case did not agree with the report filed by the Investigating Officer and taken the cognizance of the offence. The Magistrate has no obligation to act in accordance with the police report under section 173 Cr.P.C, which is not binding on the Court. Court can decline to cancel the case.

5. In view of the above, learned counsel for the applicants has failed to pin point any illegality or irregularity in the impugned order, which is speaking one passed after assessment of material brought on record. Consequently, instant criminal miscellaneous

application stands **dismissed** in *limine* along with listed application in above terms.

JUDGE

Abdullah Channa/PS