

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

Cr. Misc. Application No.S-43 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

1. For orders on office objections.
2. For orders on M.A. No.298/2023.
3. For hearing of main case.

16.10.2023

Mr. Ghulam Mustafa Hingorjo, Advocate for the applicant.

Mr. Francis Lucas Khokhar, Advocate for the respondents
No.1 to 8.

Mr. Shahzado Saleem, Additional Prosecutor General for the
State.

ORDER

Shamsuddin Abbasi, J.: Applicant is complainant in F.I.R. No. 07/2023 and has impugned order dated 20.09.2023 passed by learned Civil Judge & Judicial Magistrate Diplo on final report u/s 173 Cr.P.C. submitted by I.O. for cancellation of FIR/case in "B" class, whereby the learned Civil Judge & Judicial Magistrate Diplo has approved summary/ final report in cancel "C"-class.

Heard learned council for applicant, learned council for respondents/ accused, learned APG and perused the material available on the record. It is case of applicant that accused party kidnaped and kept him in wrongful confinement and they also caused burnt over right thigh and arm with cigrate and removed his nail of right toe. Learned magistrate has approved summary on the basis of statements of defense witnesses recorded by IO u/s 162 Cr.P.C , CDR of accused and recorded enmity between parties. It is well settled law that enmity is always treated as double edged

weapon which cuts both sides and in presence of ocular version of complainant corroborated by medical evidence cannot be discarded his version on the basis of statements of D.Ws and CDR. It is admitted position that CDR is not a conclusive piece of evidence to ascertain the guilt or otherwise of an accused (2023 SCMR 383). From perusal of record, it appears that learned magistrate has not discussed medical certificate which shows that apart from other injuries his nail of right toe was removed and respondents/accused have not challenged his medical certificate. Learned council has pointed out that one of the nominated accused Habib is police constable and posted at the same P.S and I/O has conducted unfair investigation due to his influence. It appears that learned Magistrate has not properly considered the material available on the record and propriety of safe administration of justice demands adjudication on merits, therefore, impugned order dated 20.09.2023 passed by learned Civil Judge & Judicial Magistrate Diplo in F.I.R. No.35/2023 of police station Kaloi is set aside. Learned Sessions Judge, Tharparkar, is directed to assign this case to any other Magistrate, who shall go through the all material available on record as well as medical certificate of injured and passed an appropriate order after hearing of both sides, in accordance with law.

JUDGE

Bilal