

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Miscellaneous Application No.550 of 2023

Date	Order with signature of Judge
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1. For hearing of main case
2. For order on MA No.9275/2023

22.11.2023

Mr. Ayaz Ali Chandio advocate for the applicant
Mr. Muhammad Daud Narejo advocate alongwith Mr. Muhammad Yousif Narejo advocate and Ms. Anjli Talreja advocate for respondent No.7
Ms. Rahat Ahsan, Additional PG alongwith SI Muhammad Bachal PS
Gulshan-e-Maymar Karachi

The Applicant Javeed Ahmed being aggrieved by and dissatisfied with the impugned order dated 04.08.2023 passed by the learned Vith Judicial Magistrate West Karachi, whereby he approved the recommendation of the FIR No. 174 of 2023 registered for offenses under Section 395, 109, and 34 PPC of P.S Gulshan-e-Maymar under B Class on the premise that material collected by the Investigating Officer explicitly shows malice on the part of the complainant regarding furnishing false information.

2. The main contention of the learned counsel for the applicant is that the applicant has been condemned unheard by the trial Court and erroneously approved the recommendation of the Investigating Officer for disposal of the case under B Class. Learned counsel emphasized that the applicant submitted an application to the Additional IGP Karachi for transfer of the investigation to another Investigating Officer and the Investigating Officer was stopped from investigating further, however the Investigating Officer failed and neglected to consider the legal position of the case under Article 18 (4) of Sindh (Repeal of Police Act 1861 and revival of Police Order 2002) Amendment Act 2019, and with mala fide intention submitted report to the learned trial Court under B Class which was not called for. He further submitted that there is sufficient evidence available with the prosecution to issue a chargesheet against the private respondents but due to misrepresentation of facts and law, the subject crime was recommended under B Class. He lastly submitted that the impugned order is liable to be set aside and that respondent No.1 should follow the decision of the Board as constituted under Article 18 (4) of Sindh (Repeal of Police Act 1861 and revival of Police Order 2002) Amendment Act 2019. He prayed for allowing the instant Criminal Revision Application.

3. Mr. Muhammad Daud Narejo advocate for Respondent No.7 has contended that the material collected by the Investigating Officer clearly shows malice on the part of the applicant regarding furnishing of false information. He lastly prayed for the dismissal of the Criminal Miscellaneous Application.

4. Ms. Rahat Ahsan, Additional PG has supported the impugned order dated 04.08.2023.

5. I have learned counsel for the parties and have perused the material available on record.

6. On perusal of the record it appears that the Investigation Officer submitted a report under B Class with the narration that the CDR report does not support the version of the complainant as mentioned in the FIR and the Investigation Officer stated that there is malice on the part of the complainant, however, the investigation was challenged and JIT was formed, who reported that the case needs to be disposed of under B Class.

7. Before attending to the merits of the case it is deemed appropriate to first discuss the difference between the role of the Investigating Officer and that of the Magistrate in investigation and the outcome thereof, which is germane to the case.

8. Foremost, there are three classes provided for disposal of a State Case namely (i) A-Class, (ii) B-Class and (iii) C-Class and the report of investigation under Section 173 of Cr.P.C. has to be filed either in the form of a charge-sheet if the accused is sent for trial or in the form of a Final Report, in other cases. As per practice/usage, the Class "A", "B" and "C" are defined as:- CLASS 'A': FIR is true, but the accused is untraceable, therefore, Magistrate can dispose of the case till the appearance/arrest of the accused; CLASS 'B': FIR is maliciously false and after passing summary orders by directing the SHO to initiate proceedings for an offense punishable under Section 182, P.P.C. against the complainant/ person, who gives information, which he knows or believes to be false; and CLASS 'C': FIR can be disposed of being a non-cognizable offense.

9. Going ahead on the subject issue, primarily, every investigation is conducted concerning Chapter XIV of the Criminal Procedure Code as well as the relevant Police Rules. The vitality of the role of Investigating Officer cannot be denied because it is the very first person, who as per law, is authorized to dig out the truth too, without any limitations including that of the version of the informant/complainant. However, after registration of the FIR, the

Investigation Officer has the authority to determine the truthfulness or falsehood of the allegations leveled against the accused but the same is subject to affirmation of the competent Court. If the Investigation Officer concludes that the allegations contained in the FIR are incorrect, he may refer the matter under section 63, Cr.P.C. to the Magistrate for discharge of the accused. The Police Officer has also the authority to release the accused in terms of section 169, Cr.P.C. if he concludes that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to the Magistrate. Such Officer shall, if such person is in custody, release him on executing a bond with or without sureties and direct him to appear, if and when required before the Magistrate empowered to take cognizance of the offense. It is then the Magistrate to pass such order as deemed appropriate under section 173, Cr.P.C. for discharge of such bond or otherwise as he deems fit. On the subject issue the authoritative view of the Supreme Court, given in the case of *Mst. Sughran Bibi v. The State (PLD 2018 SC 595)*, is clear in its terms and needs no further deliberation on my part.

10. In principle upon conclusion of the investigation the report to be submitted under section 173, Cr.P.C. is to be based upon the 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.

11. From above, it is quite clear that an Investigating Officer is not bound to base his conclusion on the version of the informant or defense but on facts, discovered during the investigation. Such conclusion shall be submitted in the shape of a prescribed form, as required by section 173 of the Criminal Procedure Code.

12. A bare perusal of the above provision explicitly makes it clear that after every investigation, a police report shall be forwarded to the Magistrate so empowered to take cognizance thereon which must include all details, as directed in the above provision. However, it is nowhere described as to how the Magistrate shall deal with such report, it empowers the Magistrate to agree or disagree with the act of Investigating Officer in releasing an accused during investigation under section 173, Cr.P.C.

13. The Supreme Court in the case of *Bahadur v. State PLD 1985 SC 62* wherein it has authoritatively been laid down that a Magistrate in canceling a registered criminal case is required to act judicially in that he has to act fairly, justly and honestly, a duty common to the exercise of all state powers, there is no lis before him, there is no duty

to hear the parties, there is no decision given, no finality or irrevocability attaching to the order. It was ruled that the party is left free to institute a complaint on the same facts and the same Magistrate does not even after passing such an order render himself functus officio. On the contrary, he is quite competent to entertain and deal with such a complaint on material presented to him. After such assessment, the Supreme Court concluded that these peculiarities establish beyond doubt that in so concurring with a report submitted under section 173, Cr.P.C. he does not function as a criminal court. The Supreme Court has expressed the view that some of the powers of the Magistrate are administrative, executive, or ministerial and he discharges these duties not as a court but as a 'personal designate'. This view was further followed in the case of Arif Ali Khan v. State **1993 SCMR 187**, Muhammad Sharif v. State **1997 SCMR 304**, and Hussain Ahmed v. Irshad Bibi **1997 SCMR 1503**.

14. Ratio decidendi in all the above cases appears to be that since the Magistrate while concurring with a police report submitted under section 173, Cr.P.C. does not act as a Criminal Court inferior to the Court of Session and the High Court, his order cannot be revised and modified under the provisions of sections 435, 439, Cr.P.C. but in that case it is amenable to the inherent jurisdiction of the High Court under section 561-A, Cr.P.C. provided the order amounts to abuse of process of Court. However, it is made clear that the discharge of an accused by a Magistrate is not legally possible after taking cognizance of the case. It may also be added here that after taking cognizance by the trial court only three results are possible in a criminal case, firstly conviction of the accused either upon admission of guilt by him or based on the evidence led by the prosecution; secondly, the acquittal of the accused either under sections 249-A/265-K, Cr.P.C. or based on the failure of the prosecution to prove its case on merits beyond a reasonable doubt; and thirdly, withdrawal from prosecution by a Public Prosecutor under section 494, Cr.P.C. However in the present case, the final report under "B" Class submitted by the Investigation Officer, has been approved by the learned Magistrate vide order dated 04.08..2023.

15. I have also gone through the impugned Order passed by the learned Judicial Magistrate. Though the learned Judicial Magistrate has attempted to dilate upon the substance submitted by the Investigation Officer and passed the order on the analogy put forth by the Investigation Officer, at the same time he applied his judicial mind to the ingredients of the offenses and rightly opined that no offenses under 395,109 and 34 PPC were/are made out from the evidence so collected

by the Police during the investigation as the law confers upon the Court powers to secure the ends of justice.

16. Since the parties have leveled allegations and counter-allegations against each other on the issue of the alleged dacoity, and conspiracy, therefore, judicial propriety demands that the aggrieved party may take resort of appropriate remedy under the law where he would be at liberty to bring the material to prove his case as in the present case investigation officer recommended the case under B Class and the learned Magistrate has concurred with him, however, the complainant is still insisting for remand of the case to the Magistrate to hear the complainant. Once the Magistrate has formed his point of view based on the evidence collected by the Investigation officer, this Court cannot substitute its view as no material has been shown to this Court to take a contrary view. However, it is open for the complainant to file a Direct Complaint and if filed the same shall be decided on its own merits.

17. In view of the above the order dated 04.08.2023 passed by the learned VIth Judicial Magistrate Karachi West in Criminal Case No. Nil of 2023 (*State v Aijaz Hussain & others*) is sustained; resultantly, the Criminal Miscellaneous Application is dismissed, leaving the applicant at liberty to avail the remedy, if any, before the competent forum. However, it is made clear that the same, if availed shall be decided strictly in accordance with law.

JUDGE