

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Miscellaneous Application No.910 of 2023

Date	Order with signature of Judge
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1. For order on MA No.14082/2023 (Urgency)
2. For order on office objection at flag 'A'
3. For order on MA No.14083/2023 (Exemption)
4. For hearing of main case

22.11.2023

Mr. Zakir Hussain Bughio advocate for the applicant

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant Mst. Shahista has assailed the legality of the order dated 28.10.2023 passed by the learned Ist Civil Judge & Judicial Magistrate (West) Karachi in Crime No. 231/2023 (*State v Ameer Hassan*) whereby, the learned Presiding Officer approved the report submitted by the Investigating Officer under 'C' Class, arising out of FIR No. 231 of 2023, registered for offenses under Sections 420 PPC at P.S Mauripur Karachi. Inter alia on the ground that the respondent accused has cheated the applicant by inducing her to deliver the property viz vehicle of the petitioner and committed to delivering the subject land to her, however, he failed and neglected to deliver the property and rather cheated her, thus cognizable offense under Section 420 PPC was made out however the Investigating Officer without any material disposed of her case under C Class which was erroneously approved by the learned Magistrate. She prayed for set aside the order dated 28.10.2023.

2. Brief facts of the case are that the applicant Mst. Shahista had lodged an FIR bearing No. 231 of 2023 against respondent No.4 at P.S Mauripur Karachi with the narration that respondent No.4 visited her land at Ramzan Goth and on 09.04.2023, he sold her the said land through an agreement in Rs. 1,25,00,000/- (Rupees One crore Twenty-five lac) and about the said transaction the applicant handed over her vehicle No. KV-316, Make Toyota Hilux, Model 2016, Engine No. 2KDU-905882, chassis No. KUN-25RG9611835 for the sum of Rs. 75 Lac; it was further settled that the balance amount of Rs. 50 lac will be paid after handing over the documents of the said land, thereafter the applicant asked for the return of her vehicle but respondent No.4 neither returned her vehicle nor handed over the documents of the said land, such report of the incident was given to P.S Mauripur Karachi, who registered the subject F.I.R. against him under Section 420 PPC.

3. Mr. Zakir Hussain Bughio, learned counsel for the applicant argued that the impugned order does suffer from many illegalities as well as infirmities and, hence, is liable to be set aside. He has contended that the applicant has very much clearly stated in FIR statement under Section 154 Cr. P.C that respondent No.4 cheated the applicant and obtained the property viz, the vehicle of the applicant by dishonestly inducing delivery of the property vehicle and so also produce the evidence in her favor that at the first instance, respondent No.4 introduced himself to be owner of the land and entered into an agreement of sale in respect of the land which does not belong to him and in respect of sale transaction/account he received possession of the vehicle in lieu of Rs. 75,000/-. He next contended that after lodging the FIR, the vehicle bearing No. KV3168 Toyota Hilux was impounded by the police and about the restoration of possession of the said vehicle the applicant as well as respondent No.4 applied Section 516-A Cr. P.C for handing over the said vehicle, wherein the learned Judicial Magistrate called the verification report in respect of ownership of the vehicle, which was found in the name of the applicant but despite that the learned 1st Civil Judge & Judicial Magistrate No.1 Karachi West dismissed that application and passed the order for the restoration of the above-said vehicle in favor of the respondent No.4 without any surety in the like amount but on furnishing P.R bond of Rs. 75,00,000/- vide order dated 10.10.2023. He has next contended that after passing that order the applicant filed the Revision Application under Section 439-A Cr. P.C before the learned District & Sessions Judge Karachi West which was allowed and the order of the learned Magistrate was set aside dated 31.10.2023 with direction to the concerned police station to cease the vehicle and hand it over to its registered owner/applicant, subject to furnishing indemnity Bond in the sum of Rs. 50,00,000/- in the like amount to the satisfaction of the Court. He lastly contended that the applicant is the lawful owner of the above-mentioned vehicle she is doing business with her husband and she has been belatedly cheated by respondent No.4 but despite the taking cognizance by the learned Magistrate on the charge sheet against the accused has discharged by accepting the charge sheet under C Class. He submits that by granting this application, the impugned order may be set aside and the case may be remanded with directions to the Magistrate concerned to take cognizance of the crime and submits that the sections, as applied in this case, are exclusively triable by the Court of Sessions.

4. I have heard learned counsel for the applicant and have perused the material available on record.

5. The applicant/complainant Mst. Shaista has raised her voice of concern that the Investigating officer has destroyed the present case and

with malafide intention recommended the case for cancel Class which was approved by the learned Magistrate without referring the matter to the learned Sessions Court for appropriate order as the offense of Section 420 PPC was/is triable by Sessions Judge.

6. 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.

7. 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.

8. Going ahead on the subject issue, primarily, every investigation is conducted with reference to 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 "C" Class submitted by the Investigation Officer, has been approved by the learned Magistrate vide order dated 28.10.2023.

14. 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 offense under Section 420 PPC was/is 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.

15. Since the parties have leveled allegations and counter-allegations against each other on the issue of the alleged delivery of vehicle and sale and purchase of the subject land before the trial Court, which matter seems to be of civil nature, therefore, judicial propriety demands that the aggrieved party may take resort of appropriate remedy under the law where she would be at liberty to bring the material to prove her case; as in the present case investigation officer recommended the case under C 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 and to take cognizance of the offense. 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 applicant to file a Direct Complaint and if filed the same shall be decided on its own merits.

16. In view of the above the order dated 28.10.2023 passed by the learned Judicial Magistrate Karachi West in a Criminal Case (State v Ameer Hassan) 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