

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Miscellaneous Application No.325 of 2023

Date	Order with signature of Judge
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1. For hearing of main case
2. For order on MA No.6021/2023

**22.11.2023**

Mr. Muhammad Baqar Mehdi advocate for the applicant  
Ms. Rubina Qadir, Deputy PG  
Mr. Aziz Lakhani advocate for respondent No.5  
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The applicant Abdul Aziz being aggrieved by and dissatisfied with the impugned Order dated 17-04-2023 passed by the MTMC/VIIth Civil Judge & Judicial Magistrate, Central at Karachi in Crime No. 695/2022 Under Section 380/452/506/34 PPC P.S Bilal Colony, Karachi, has filed this Criminal Miscellaneous Application inter-alia on the ground that the case required to be challaned; that the private respondents committed offense of theft of valuable articles and threatened to kill the complainant which was/is a cognizable offense. However, the Investigating Officer erroneously opined the case to be disposed of under C Class without hearing the parties, and the learned Magistrate without lawful justification concurred with the view of the Investigating Officer.

2. It appears from the record that the Investigation Officer has submitted the report under section 173 Cr. P.C. with the recommendations for disposal under the "C" class. And the same was approved by the learned Judicial Magistrate vide order dated 17-04-2023. The main thrust of the argument of the learned counsel for the applicant is that the applicant was condemned unheard before passing of impugned orders as there was sufficient evidence against the private respondents.

3. I have heard the learned counsel for the parties available in Court and perused the material available on record.

4. The Investigating Officer recorded the statement of the PWs, inspected the place of the incident, and collected information about the alleged occurrence of the offense but could not find the stolen property. He also recorded the statement of the respondent accused who disclosed that the complainant and his father were occupants of the subject house and he lodged the FIR against them and both were arrested after their release on bail, he agreed with the respondents in the presence of the witnesses that they would vacate this house and after that, they voluntarily left their house with all their belonging in the meantime when respondents

also provided a copy of the agreement to the Investigating Officer and also produced two witnesses in their support whose statements were recorded which corroborated the version of the respondents with the narration that the complainant had left the house and had taken all his belongings. It further appears that the respondents also produced documents regarding the ownership of the subject house, which were verified to be genuine by the office of the Sub-Registrar New Karachi, on the contrary the applicant failed to produce the person who rented out the subject house to him and also failed to produce any eye witness of the said incident, even he did not produce anything to prove ownership of the stolen property and failed to produce the agreement. In such a scenario the Investigation Officer submitted his report to the Magistrate under C Class, however, the complainant insisted that he was a tenant of the house and was heard, but he failed to substantiate his claim.

5. From the above it is clear that this was the case of no evidence as the ingredients of the offense as alleged were not attracted as no evidence was brought on record to bring the respondents to book.

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 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.

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 19.05.2021.

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 offenses under 380/452/506 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.

15. Since the parties have leveled allegations and counter-allegations against each other on the issue of the alleged theft of Articles, 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 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 request for case to be challaned. 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.

16. In view of the above the order dated 17.04.2023 passed by the learned VII-Judicial Magistrate Karachi Central in Criminal Case No. Nil of 2022 (*State v M. Tahir*) 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