

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Miscellaneous Application No. 712 of 2023

Date	Order with signature of Judge
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1. For orders on office objection at 'A'
2. For hearing of main case
3. For hearing of MA No. 11439/23

**05.12.2023**

Mr. Aqeel Aslam Rana advocate for the applicant  
Mr. Muhammad Hassan Malik advocate for respondent No.2  
Mr. Muntazir Mehdi, Addl. P.G alongwith Inspect Abdul Latif on behalf of SSP South Karachi

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Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant Mst. Sadaf Pervaiz Bhatti has assailed the legality of the order dated 30.08.2023 passed by the learned VII Civil Judge & Judicial Magistrate (South) Karachi in Cr. Case No. Nil / 2023. whereby, the learned Magistrate approved the report submitted by the Investigating Officer under 'C' Class, arising out of FIR No. 380 of 2023, registered for offenses under Sections 337-A/504/506/427/337-F (vi) PPC at P.S Boat Basin Karachi, inter-alia on the ground that Investigating officer has not conducted fair and impartial investigation into the matter and erroneously submitted a report under section 173 CrPC in A-Class (Lack of evidence) with malafide intention and prayed for remanding back the matter for reinvestigation and submission of the fresh report under section 173 Cr.PC., an excerpt of the order dated is reproduced as under:-

**“Perusal of report under section 173 Cr.P.C. and other material available on record depicts that witnesses namely Mst. Nasreen and Umair Ali produced by the complainant during the course of the investigation were not even present at the place of the incident as per CDR data obtained by the 10 Moreover, complainant Sadaf was in contact with the accused on mobile phone even on the day of the incident and on exact time of the happening of the alleged incident so mentioned in FIR. In addition, CDR data of the accused shows that he was at Bath Island at about 1806 hours (the alleged time of the incident) on a fateful day when the complainant talked with him on the phone I am further astounded to know the fact that the complainant after the happening of the alleged incident went to Ghaffar Restaurant, Tariq road along with the accused and had dinner there together. From the material available on record ie. FIR and statement of complainant and witnesses, the complainant failed to provide any corroborative evidence against the accused connecting him with the commission of the offence. Furthermore, statements under section 161 CrPC of the witnesses produced by the complainant are also colliding with the material facts and record of the case as their locations were not at the place of incident on a fateful day but both the witnesses were at different places at the time of the incident. Hence there is a lack of corroborative evidence connecting the accused with the commission of the present offence, hence I hereby disagree with the report of LO submitted by him, and hereby approve the report under section 173 Cr.P.C. in C-Class (Cancelled Class) Accused**

person as well as his surety, if any, discharged accordingly.”

2. Brief facts of the case are that the applicant Mst. Sadaf Pervaiz Bhatti lodged an FIR bearing No. 380 of 2023 against respondent No.2 at P.S Boat Basin Karachi with the narration that, on 24-06-2023, she was assaulted by Anus Khan and she received severe injuries and the incident was reported to P.S Boat Basin Karachi who issued letter for Medical treatment and finally after obtaining Medico Legal Certificate FIR No. 380 of 2023, was registered against the assailants under Sections 337-A/504/506/427/337-F PPC.

3. During the investigation, the Investigating officer conducted a site inspection, prepared a relevant memo, took photographs of the place of incident obtained a map of the place of the incident via Google, and attempted to obtain CCTV footage from nearby places of incident but due to non-installment of CCTV cameras could not get the same. The investigating officer recorded a statement under section 161 Cr PC of the complainant in which she stated that when she returned to her home after getting medical treatment, she found that one wristwatch, a ladies bag amounting to rupees 400,000/- and cash amount of rupees 15000/- were missing. She further disclosed that she had nominated one unknown person along with accused Anus on suspicion that a person was accompanied by Anus at the time of the alleged incident however she did not confirm whether an unknown accused was accompanied by Anus or not.

4. The investigating officer also recorded statements under section 161 CrPC witness namely Mst Nasreen (maid of the complainant) and Umair Ali (resident of the same building in which the complainant resides), both the witnesses supported the version of the complainant, however, they also showed unawareness as to the unknown person about which complainant mentioned in FIR. Meanwhile, respondent Anas joined the investigation and was interrogated and his statement was recorded in which he revealed that on 20-06-2023, complainant Sadaf called him on her birthday but as he was not willing to keep a relationship with the complainant he did not go. Thereafter on 21-06- 2023, complainant Sadaf called him again and informed him that she had fallen in the bathroom and sustained injury on her arm hence asked him to come and bring her to the hospital after treatment, both went to Restaurant, Bahadurabad, Tariq road, Karachi where they had dinner together and thereafter they went to their home. Upon such disclosure, the Investigating officer obtained CDR record of the complainant and her witnesses, in which it revealed that the complainant's mobile number (0333-4444001) location was at her home

whereas she called respondent Anas' cell phone number (0333-3362023) at about 1806 hours on the day of the incident and talked about a minute with him, whereas the complainant in her FIR narrated that she called at helpline 15 to inform police about the incident however CDR data negates such contention of the complainant. More so, locations one phone numbers of witnesses were also not found at the place of the alleged incident. The investigating officer also obtained the CRO of the accused which revealed that the complainant called the accused on a fateful day at about 1806 hours and talked for about one minute whereas the location of the accused at the time of receiving the call was at Bath Island, and thereafter his location found in the areas of Bilawal chowarangi and Abdullah Shah Ghazi Mazar in between 1819 to 1937 hours. During the investigation, Investigating officer also recorded the statement of Maqbool Ali in which he contended that on 24-06-2023, accused Anas along with one lady came to him and told that she had fallen in the bathroom due to which she sustained an arm injury, hence Kumhar Maqbool Ali provided first aid. The investigating officer also obtained a CCTV record of the Ghaffar Restaurant in which it appeared that on 24-06-2023 at about 2100 hours, the complainant was having dinner with accused Anas. Hence, the Investigating officer submitted a report under section 173 Cr.P.C. in A-Class (Lack of evidence).

5. On submission of the final report, the complainant was called by the learned Magistrate, and her counsel appeared and showed his dissatisfaction with the investigation conducted by the Investigating officer with the narration that he did not conduct a fair and impartial investigation into the matter and wrongly submitted a present report under section 173 CrPC in A-Class (Lack of evidence) with malafide intention.

6. Mr. Adeel Aslam Rana advocate 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 while referring to the relevant short para of the impugned order, submits that the Judicial Magistrate has not assigned a single reason to accept the report submitted by the Investigating officer; he submits that by granting this application, the impugned order may be set aside on the premise that applicant received grievous injuries which have been declared as JGJ Munaqilah and case needs to be challaned. He lastly prayed for allowing the instant Criminal Miscellaneous Application.

7. Mr. Muhammad Hassan Malik advocate for the private respondent has contended that the incident occurred on 24.6.2023, whereas, the FIR was registered on 3.7.2023, after nine days, however, no plausible explanation has been furnished for such an inordinate delay. He added that

the investigating officer submitted the Final Report under section 173 Cr. PC with the findings that no case for alleged injury was made out as the applicant failed to prove such allegations. He lastly prayed for dismissal of the instant Criminal Miscellaneous Application.

8. Mr. Muntazir Mehdi, Addl. P.G. has supported the Impugned order and also opposed the Criminal Miscellaneous Application.

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

10. The question involved in the present proceedings is whether the Judicial Magistrate has appreciated the record and rightly agreed with the Investigating officer. In the case of *Sughra Bibi reported as PLD 2018 Supreme Court 595*, the Supreme Court has held that during the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person." Ordinarily, no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules, a suspect is not to be arrested straight away or as a matter of course, and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding the correctness of the allegations leveled against such suspect or regarding his involvement in the crime in issue. It was further held in the judgment (*supra*) that 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. In the case in hand, the investigation officer who investigated the present case and after the investigation recommended the case to be disposed of under the "A" class and the learned Magistrate issued notice to the parties, and after hearing the Investigating officer converted the case in 'C', which factum triggered the cause to the applicant call in question the order on the plea that applicant had received an injury as such the case needs to be challaned.

12. 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.

13. 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.

14. 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 the 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.

15. 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 as discussed supra*, is clear in its terms and needs no further deliberation on my part.

16. 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.

17. 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.

18. 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.

19. 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**.

20. 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 30.08.2023.

21. I have also gone through the impugned Order dated 30.08.2023 passed by the learned Judicial Magistrate. The learned Judicial Magistrate has dilated upon the substance submitted by the Investigation Officer and passed the speaking 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 Sections 337-A/504/506/427/337-F 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.

22. Since the parties have leveled allegations and counter-allegations against each other on the issue of the alleged incident and injury allegedly sustained by the applicant and threats, therefore, judicial propriety demands that the aggrieved party may take the 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 A-Class and the learned Magistrate has converted the case in C Class, however, the complainant is still insisting for the case to be challaned.

23. 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.

24. In principle the inherent jurisdiction of this Court under section 561-A of Cr.P.C. cannot be exercised to judicially correct an action or inaction of a police officer during the investigation of a criminal offense, however, at the same time, it is noted that the learned Magistrate, converted the A Class report into 'C' Class and was/is required to judicially examine the report submitted by Investigating Officer in A, B and C Class under section 173, Cr.P.C. in that he has to act fairly, justly and honestly, a duty common to the exercise of all state power, as there is no lis before him to decide, in such circumstances, there is no duty cast upon him to hear the parties but he has to judicially assess the investigation report calling investigating officer to appraise him about the fate of the investigation and after perusal of such report, he has to act under law however at the same time he is free to call the parties for his assistance though not required under the 173 Cr.P.C. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of *Bahadur and another v. The State and another* (PLD 1985 SC 62).

25. In view of the above the order dated 30.08.2023 passed by the learned Judicial Magistrate in Criminal Case No. Nil of 2023 is sustained; resultantly, the Criminal Miscellaneous Application is dismissed, leaving the applicant at liberty to avail the remedy, if any, before the competent Court under Section 200 Cr.P.C. However, it is made clear that the same, if availed shall be decided strictly under law. So far as the issue of alleged injury is concerned the same could be taken care of in the case if the applicant approached the learned Magistrate under Section 200 Cr. P.C.

JUDGE