

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 654 of 2022

Date	Order with signature of Judge
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For hearing of Main Case.

11.12.2023

Applicant Naqibullah is present in person.
Ms. Seema Zaidi, Addl. Prosecutor General, Sindh.

The applicant Naqeebullah has challenged the order dated 15.08.2022 passed by the learned First Civil Judge and Judicial Magistrate Karachi East, (re-The State v Siraj and others) whereby the Presiding Officer concurred with the investigation report under 'C' cancel Class submitted by the Investigating Officer in Crime No. 265 of 2022 of PS Gulshan-e-Maymar for offenses under Section 302/34 PPC.

2. The applicant who is present in person has submitted that his ex-wife and maternal uncle murdered his minor baby Zarmina, however the Investigating Officer with malafide intention disposed of the case under Cancel Class, which was erroneously approved by the learned Magistrate. He prayed for setting aside the order of the learned Magistrate with direction to the Investigating officer to submit a challan in Crime No. 265 of 2022.

3. Learned Addl. P.G. has supported the Investigation Report and order passed by the learned Magistrate.

4. I have heard the applicant who is present in person and perused the material available on record.

5. The facts of the case are that on 24.05.2022 applicant lodged an FIR in year 2022 against Mst. Kareema Bibi and others for murdering her minor baby such a case was investigated by the Investigating Officer however he submitted a final report under C Class on the ground there is no ocular evidence was brought on record about the alleged murder. The learned Magistrate concurred with the opinion. And opined further that

the complainant has a previous criminal record, he also divorced his two wives and indulged in civil, criminal, and family cases.

6. It may be noted that the investigating agency is under obligation to complete every investigation without unnecessary delay as required under section 173(1) of Cr.P.C., and as soon as completed, the officer in-charge of the police station shall forward it to a magistrate empowered to take cognizance of the offence. On a police report, a report in the form prescribed by the Provincial Government setting forth the names of the parties, the nature of accusation information, and the names of the person who appear to be acquainted with the facts of the case and stating whether the accused, if arrested has been forwarded in custody or has been released on his own bond. This section contemplates that on conclusion of the investigation, the concerned SHO was required to submit a report of the result thereof in the prescribed manner to the Judicial Magistrate competent to take cognizance under section 190, Cr.P.C. or to submit a report to the Judicial Magistrate concerned for disposal of the case in accordance with law.

7. Perusal of section 190, Cr.P.C. reveals that the magistrate can take cognizance upon receiving a complaint of the facts, which constituted offense, upon request in writing of such facts made by any police officer, and upon information received from any person other than police officer upon his own knowledge or suspicion that such offense has been committed. Magistrate only after taking cognizance of a case is to determine whether the matter before him is exclusively triable by a court of Session, once he arrives at the conclusion that it is so triable, his own jurisdiction to try the same would cease, and in such event, he must send the case to the Court of Session for trial.

8. Now question for determination before this Court is that if the Magistrate agrees with the report of the police, can this Court take action under Clause (b) against those whose names have been recommended for discharge? There is no cavil to the position that a report submitted by the police officer under section 173, Cr.P.C., is not binding on the court. The court, therefore, notwithstanding the recommendation of the I.O. regarding cancellation of the case and discharge of the accused from the case, may decline to cancel the case and direct for further investigation or proceed to take cognizance of the matter as provided under section 190, Cr. P.C. is subject to the material available with the learned Judicial Magistrate to take action however in the absence of such incriminating material he may refuse to take

cognizance of the offense. On this behalf, reliance can be placed on the case of Federation of Pakistan v. Malik Mumtaz Hussain (1997 SCMR 299). In this context, reliance can also be placed on the case of Muhammad Ahmad v. The State (2010 SCMR 660).

9. In the present case, the learned Judicial Magistrate has applied his mind to the facts and circumstances of the case and has passed order giving reasons of agreement with the report of the investigating officer as there was no material available with the complainant to substantiate his case to be true for the reason that no such incident has taken place as portrayed by the complainant and he attempted to malign and drag the respondent No.2 and 3 in the proceedings without any rhyme and reason.

10. I have also gone through the impugned Order passed by the learned Judicial Magistrate. Though the learned Judicial Magistrate has properly discussed the substance of the instant matter and passed the speaking order with sound reasons from the conduct of the applicant which prima-facie suggests that the instant matter comes within the ambit of B-Class and not C-Class. Nevertheless, section 561-A, Cr.P.C. confers upon this Court inherent powers to make such orders as may be necessary to give effect to any order under Cr.P.C. or to prevent abuse of process of any Court or otherwise to secure the ends of justice. Reliance can be placed upon the cases of The State v. Asif Ali Zardari and another (1994 SCMR 798) and Maqbool Rehman v. The State and others (2002 SCMR 1076).

11. This Criminal Miscellaneous Application is disposed of with the modification to the extent of converting the case of C canceled Class report into a B Class report. The learned Magistrate is directed to take action against the applicant forthwith under Section 182 PPC and other enabling provisions, who in his abortive attempt projected to lodge a false case against the private respondents by using the government functionaries with ulterior motives.

JUDGE