

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Miscellaneous Application No.114 of 2024

Date	Order with signature of Judge
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1. For hearing of main case
2. For hearing of MA No.1251/2024 (Stay)

**Date of hearing and Order:- 09.7.2024**

Mr. Sajid advocate for the applicant along with applicant  
Mr. Zahoor Shah, Additional PG along with IO/PI Mehboob Elahi, SIU  
Gadap City Karachi

**ORDER**

**Adnan-ul-Karim Memon, J:-** The Applicant Muhammad Adeel Akhtar is aggrieved by and dissatisfied with the impugned order dated 13.01.2024 passed by the learned XXXII Judicial Magistrate East Karachi in FIR No. 122/2023 under Section 506/34 PPC of PS Shahara-e-Faisal Karachi has approached this court for setting aside the order.

2. The complainant namely Muhammad Adeel Akhtar registered an FIR at PS Shahrah-e-Faisal wherein reported that on 07-11-2022 at about 1400 hours accused Haseebullah Yousuf, with four unidentified accused came to his house bearing No. B-91, Block-12, Gulistan-e-Johar Karachi. The accused on the pointation of pistol extended threats of dire consequences and intimidated to sign a divorce deed and other documents. The accused left such house after intimidation. As the family of the complainant had gone to the United States of America (USA) so after their return complainant went to PS Shahrah-e-Faisal and lodged F.I.R 322 of 2023 under section 506-B PPC. The case was investigated and the investigating officer opined that no such incident had taken place and recommended the case be disposed of under B Class. The learned Magistrate approved such summary report vide order dated 13.1.2024 with the directions to the SHO to file a complaint against the applicant under Section 182 PPC. An excerpt of the same is reproduced as under:-

*“Under the above facts and circumstances, the IO has rightly submitted instant report for its approval under B-Class which is hereby accepted. Consequently, the accused is discharged. More so, concerned SHO to initiate proceedings against the complainant in accordance with law. The FIR is disposed of under B-Class. Order accordingly.*

*Since the accused is present on bail, his bail bond stands canceled and sureties discharged, and there is no adverse order against the surety.*

*Copy to SHO PS Shaharah-e-Faisal for information and compliance.”*

3. 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; that respondent Nos. 2 and 3 were named in the FIR and specific roles to all of them have been assigned but the learned Magistrate has failed to take notice of all such facts involved in the matter; that the impugned order suffers from legal infirmities is bad in law and has been passed utter violation of settled principle of law. He has further added that the learned Judicial Magistrate, vide order dated 13.01.2024 approved the said report of the I.O. and disposed of the same in “B” Class with the directions to the SHO to file a complaint against the applicant under Section 182 PPC. He next contended that the Investigating Officer with mala fide intention submitted the 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 charge sheet 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. He lastly prayed for allowing the instant Cr. Misc. Application.

4. Mr. Zahoor Shah, Additional PG assisted by IO/PI Mehboob Elahi, SIU Gadap City Karachi has contended that the material collected by the Investigating Officer clearly shows malice on the part of the applicant regarding furnishing of false information and supported the impugned order dated 13.01.2024. He lastly prayed for the dismissal of the Criminal Miscellaneous Application. Investigating Officer present in the Court submits that as per his investigation report no case of criminal intimidation based on the purported pistol was made out as he thoroughly investigated the matter and interrogated the accused in which the accused narrated his ordeal and informed that he had neither visited the alleged place nor pointed out pistol upon anyone as he does not possess the pistol or in the name of his father and all the allegations are false to pressurize his sister to bow before the illegal demands of the complainant/applicant. He further submitted that the accused did not intimidate the complainant for signature over divorce paper rather Mst. Hadia had already filed suit for Khula against the applicant therefore there was no need for any intimidation or

threat. He further submitted that the alleged offense stated to have been taken place on 07.11.2022 however the focus of the complainant was regarding the theft of golden ornaments in October 2022 which was not related to the present case and it was a managed story by the applicant thus to pressurize and blackmail the accused.

5. The learned trial Court discussed an issue in a paragraph 5 of the order and opined that the alleged offense took place on 07.11.2022 and the same was reported on 19.04.2023 after more than four months on the purported plea that the family of the complainant left for the USA and on their return he complained with police on 19.04.2023. This aspect was investigated by the Investigating Officer who collected the CDR record of the parties and witnesses which confirms that the version of the accused is in line with the interrogation report. Prima facie there is a family dispute between the parties as such false implication of the accused side cannot be ruled out and this was the reason the Investigating Officer disposed of the case under B Class, which report under Section 173 Cr. P.C. was approved by the learned Magistrate with direction to the Investigating Officer to proceed against the complainant under Section 182 PPC.

6. At this stage complainant who is also present along with his counsel has referred to the objections over 173 Cr. P.C report submitted by the Investigating Officer before the trial Court ( available on page 75) submitted that the Investigating Officer has not recorded the statement of the complainant's side, his role is sketchy in all aspects and he is not fit to investigate the crime anymore and this was the reason he moved an application for transfer of investigation as Investigating Officer failed to investigate the matter properly even he failed and neglected to investigate that the main intention of accused and his family was to commit theft of golden ornaments on 24.10.2022, which reflects their character; that Investigating Officer failed to mention the documentary evidence brought on record in favor of the applicant; that he failed to investigate the matter that Family Suit for khula was filed on 05.11.2022 but he was not bothered to show it in the investigation report, which shows his bias; that Investigating Officer has relied on the statements of accused and his family only without counter checking it from CDR, showing it that Hadia and Uzma were available at the subject premises for patch up; that Investigating Officer failed to consider that previously in A class report was prepared where the accused and his family stated that the khula was filed on 15<sup>th</sup> November 2023 while documentary evidence. He prayed for a direction to the Investigating Officer to submit challan in the subject crime.

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

8. As far as Section 506 PPC is concerned the same provides the punishment for criminal intimidation to the extent of two years, however, if the death threat is issued to any person, the punishment may extend to seven years and then it becomes a non-bailable offense. So far as 'criminal intimidation' is concerned, the same has been defined in Section 503 PPC in the following words:-

**“503. Criminal Intimidation: Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”**

9. A bare perusal of the afore-quoted provision of law makes it clear that whenever an overt act is materialized and ended into an overt act, the provision of Section 506(ii) PPC would not be applicable and the only provision that will remain in the field is the overt act, which is committed in consequence of criminal intimidation. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of *Rana Muhammad Imran Nasarullah Vs. The State* 2022 SCMR 1946. However, in the present case, the complainant simply stated that the accused came to his house and on the pointation of a pistol extended threats of dire consequences, intimidated him to sign a divorce deed and other documents, and left such house after intimidation. However the subject act was no materialized and ended into an overt act for the investigating officer opined that no such incident ever took place and the complainant had falsely roped the accused in the case.

10. 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.

11. 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. 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.

12. 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.

13. 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.

14. 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.

15. 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**.

16. 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 13.01..2024.

17. 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 506-B PPC 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.

18. Since the parties have leveled allegations and counter-allegations against each other on the issue of the alleged threats of dire consequences and intimidation, therefore, judicial propriety demands that the aggrieved party may resort to an 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.

19. In view of the above the order dated 13.01.2024 passed by the learned XXXII Judicial Magistrate East Karachi in FIR No. 122/2023 under Section 506/34 PPC of PS Shahara-e-Faisal Karachi 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 under law.

JUDGE