

ORDER-SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA  
Crl. Misc. Appln. No. S- 185 of 2013.

Date of hearing	Order with signature of Judge
24.03.2014.	

1. For Katcha Peshi.
2. For hearing of M.A. No. 1880/2013.

Mr. Abdul Qadir Abro, Advocate for applicant.  
Mr. Rashid Mustafa Solangi, Advocate for respondents No.3 to 20.  
Mr. Imtiaz Ali Jalbani, A.P.G.

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Salahuddin Panhwar, J. Through instant criminal miscellaneous application, applicant/ complainant has challenged Order dated 21.08.2013, passed by learned 4<sup>th</sup> Civil Judge and Judicial Magistrate, Shikarpur, while accepting the Summary Report under "B" class, regarding offence under Sections 395, 147, 148, 114, 337 (2), 337-A 19), 337- F (i) P.P.C.

2. Precisely, relevant facts are that complainant and rival party lodged two F.I.Rs bearing Crime No.104/2013, and Crime No.103/2013 at P.S Laxhi Ghulam Shah, District Shikarpur, contending therein that due to dispute between both parties some persons received injuries by both side. However, complainant in instant case narrated the ingredients of dacoity as well; whereas another case pertains to the injuries "attempt to murder" under Section 324 P.P.C. It is further revealed that during investigation of Crime No.103/2013, report was submitted whereby Investigating Officer submitted that there was sufficient evidence, therefore, learned Magistrate agreed upon that report and sent up the accused persons for facing the trial, whereas in crime No.104/2013, I.O submitted report under "B" class, same was agreed upon by the same Magistrate.

3. Without dilating upon the merits of the case, it would be conducive to refer relevant portion of the impugned Order:

"In view of the above facts and reasons I am of the view that the I.O has conducted fair investigation, as per F.I.R 28 accused persons made aerial firing in Otaq of P.W Hamadullah but as per mashirnama of place of vardat no any single empty shell has been recovered from the spot and the complainant has shown time of incident at 06.00 p.m. and from the perusal of medical certificates the time of arrival is 10.00 p.m. in roznamcha book of P.S Lakhi Ghulam Shah the complainant party appeared at P.S 10.00 p.m. while the distance between place of incident and P.S Lakhi Ghulam at about 8/9 K.M. and village Jamra (Place of occurrence) is adjacent to main road Sukkur Shikarpur which also shows that the complainant and injured went to police and hospital after four hours, though per F.I.R, the complainant party instead of going to police station they directly went to hospital but such delay of four hours have not been explained. The accused Sanaullah lodged F.I.R basing Crime No.103/2013 PS Lakhi Ghulam Shah under Section 324, 337-A (i), 337-F (i), 147, 148, 427, 337-H (2) P.P.C against the complainant party.

As per F.I.R 28 accused persons were with lethal weapons but surprisingly some of them caused minor injuries/scratched to P.Ws. The area people have also denied the incident and they have contended before I.O that complainant party has managed this false F.I.R in order to pressurize the complainant party of F.I.R No.103/2013, under Section 324 P.P.C of P.S Lakhi Ghulam Shah. I.O has rightly submitted his report under "B" class. In this regard respectful reliance can be placed on unreported case law of the Hon'ble High Court of Sindh, Circuit Court, Larkana, in Cr. M.A. No. 1374 & 1375/2008, dated 23.09.2008, (Ghulam Nabi v. The State)."

4. Bare perusal of above, it is manifest that learned Magistrate has concurred report of the Investigating Officer mainly on two grounds. In first, it is said that "F.I.R is delayed for about four hours, for which no proper explanation was submitted", and it was further held that "complainant party instead of going to Police station directly went to hospital and that complainant has nominated 28 persons with lethal weapons, but surprisingly some of them caused minor injuries/scratched to the prosecution witnesses. While holding this conclusion learned Magistrate has further contended "that police has rightly reported that instant case is false." Perusal of this, it appears that learned Magistrate has not exercised his administrative powers in judicious manner and at the one hand he has admitted that some persons received injuries and complainant party instead of approaching directly P.S went to the hospital, whereas on the other hand it is

mentioned that instant case is false. It is pertinent to mention that when evidence was available that some persons received injuries, then it was not a case which can be recommended in false class. Patently this is a case whereby cognizance was liable to be taken, therefore, I am of the view that impugned order is in negation of the settled principles of criminal administration of justice, consequently, impugned order is hereby set aside, all the accused persons nominated in such F.I.R are hereby arraigned to face the trial. Resultantly, learned Magistrate is hereby directed to send such summary before trial Court in accordance with law.

5. Instant criminal miscellaneous application is accepted.

Judge