

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Misc. Appl. No.314 of 2022

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DATE

ORDER WITH SIGNATURE OF JUDGES

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Muhammad Asim Khan..... Vs. ....The State & others

17.01.2025

Mr. Shoib Khatyan, advocate for applicant.

Mr. Aftab Ahmed, advocate for respondent No.5

Mr. Faheem Hussain Panhwar, DPG.

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**MUHAMMAD IQBAL KALHORO J:** By way of this Cr. Misc. Application, applicant has impugned an order dated 22.04.2022 passed by learned XXX-Civil Judge and Judicial Magistrate, East Karachi disposing of case under "C" class arising out of FIR No.81/2022 U/s 448, 511, 506-B,337A(i) r/w section 392, 34 PPC of P.S. KIA, Karachi against the opinion of the I.O. who had referred the respondents/accused for a trial by submitting a positive report u/s 173 Cr.P.C.

2. Learned counsel for applicant has submitted that this point is already settled that in a positive report submitted by the I.O. referring the accused to the court for a trial, the Magistrate has no jurisdiction to disagree with the I.O. and cancel the case.

3. On the other hand, learned counsel for respondent No.5 has submitted written arguments essentially supporting the impugned order.

4. I have considered submissions of the parties and perused material available on record. The point in question has already been settled by the superior courts in a number of cases. While dealing with the same point, the undersigned while deciding Cr. Misc. Appl. No.647/2023 vide order dated 26.02.2024 sitting at Sukkur Bench has observed in paras 4 & 5 as under:-

4. It is settled, as per scheme of law, that in a positive report of I.O. in investigation referring the accused to a trial, the Magistrate has no jurisdiction to disagree with him by disposing of the case or deleting a particular section. The conclusion drawn by the I.O. that there is sufficient material to

show that a particular offence or the case as reported has been made out for the Court to hold a trial thereon is always based on some material collected by him during investigation. The evidentiary value of which the Magistrate is not competent to discard on taking a summary tour of material before him. It requires examination of witnesses. Therefore, it would be for the Court, be it Magistrate's trial or the Sessions' trial, to apply its mind, in the trial, and decide whether the case is made out; or there is sufficient material to attract applicability of a particular section and then follow the procedure accordingly.

5. The Magistrate's power to disagree with the opinion of I.O is limited to only reports disposing of the case or deleting a particular section. In such cases, the Magistrate by going through the material can form his own opinion disagreeing with the opinion of I.O and take cognizance of offence against the accused by accepting the Challan or restoring the deleted provision. The ratio laid down in 1972 SCMR 516, 1983 SCMR 370 (para-8), SBLR 2010 Sindh 306 and 2015 YLR 2312 postulates that the Magistrate has no power to dispose of the case recommended for trial by the I.O on the basis of investigation. The same rule would be equally applicable in the case where the Magistrate proceeds to delete a particular provision, although the same has been opined to have been made out by the I.O on the basis of material collected in the investigation.

5. In view of aforesaid ratio, the impugned order is not sustainable in law and is accordingly set-aside. The Cr. Misc. Application is allowed.

The Cr. Misc. Application is disposed of.

J U D G E

A.K