

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-578 of 2025
Fahad Junaid Versus Province of Sindh

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Petitioner: Fahad Junaid son of Junaid Jalal
Through Mr. Mr. Ahsan Siyal, Advocate

Respondents: Province of Sindh
Through Mr. Ali Haider Saleem, Additional Prosecutor General Sindh.
Mr. K.A Vaswani, Assistant Advocate General Sindh, along with
Mr. Raza Mian, DSP Legal-II, COP, Karachi,
PI Jawed Ahmed, SDPO, Gulshan-e-Iqbal
PI Qamar Rashid, P.S. Aziz Bhatti.

Date of hearing: 29.07.2025
Date of order: 29.07.2025

ORDER

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Nisar Ahmed Bhanbhro, J. Through instant petition, the petitioner has sought indulgence of this Court to direct police officials to place on record number of FIRs registered against him at different police stations of the province of Sindh and to restrain the police officials from recording any fresh FIR against the Petitioner and his family members without prior permission of this Court.

2. At the very outset Learned Counsel for the Petitioner was directed to satisfy this Court as to the maintainability of instant petition in terms of relief claimed by him, seeking restraint against registration of FIRs.
3. Learned Counsel for the Petitioner contended that two FIRs No.02/2025 and 211/2024 are registered against the petitioner at Police Station SIRS Sukkur and “A” Section Sukkur by one Aijaz Ali, resident of Sukkur on account of cheques given by the petitioner pertaining to certain obligations and the said cheques on presentation before the banks were dishonored. Learned counsel for the petitioner contended that the FIRs were fake and he was booked in false cases under the instructions of Respondent No 6 on account of a dispute over immoveable property. He contended that the fundamental rights of the petitioner were at risk and in the similar circumstance the Honorable Supreme Court of Pakistan in Suo Moto case

No.16/2011 vide order dated 18.11.2012, has held that the Court is the guardian of every citizen of Pakistan in any manner whatsoever nature. He prayed for allowing this Petition.

4. Mr Ali Haider Saleem Learned Additional Prosecutor so Assisted by Mr K.A Vaswani Learned Assistant Advocate General on behalf of the Official Respondents contended that Petition was not maintainable under the law to the extent of prayer clause (b) seeking restraint for registration of FIRs. He contended that per statements filed by the SDPO, Gulshan-e-Iqbal, District East Karachi and SHO, P.S. Aziz Bhatti, Gulshan Town, Karachi no FIR stands registered against the petitioner or his family members at Police Station Aziz Bhatti. He prayed for dismissal of the

5. Careful examination of record revealed that Petitioner seeks indulgence of this Court to restrain police authorities from recording any complaint against him and to bind police authorities to obtain permission from this Court if any complaint to record FIR against petitioner is brought. The Code of Criminal Procedure 1898 and Police Rules 1934 are leading law regulating the powers of police to record complaint of an aggrieved person under the relevant register. Section-154 and 156 of CrPC read with Chapter-24 and 25 of Police Rules, 1934 obligate the police to record FIR and conduct investigation of the cases falling within the definition of cognizable offence. Section 154 CrPC lays a procedure to set law into motion by conveying information of commission of an offence and it is obligatory upon the officer Incharge of the police station to reduce such information in writing if conveyed orally then to decide whether the information conveyed constituted an offence of cognizable or the non-cognizable in nature. In the former case, officer Incharge of the Police Station shall record the information in 154 CrPC book and shall proceed with the investigation as laid down under section 156 CrPC and in the latter case officer Incharge of the Police Station shall record the information in 155 CrPC book but investigation would be conducted subject to the permission granted by the Magistrate of Ist Class or Second having power to try such offence. The language contained in section 154 CrPC casts an obligation and duty upon the officer incharge of the Police Station to record statement of a person, he cannot refuse to record the statement. For academic purposes section 154 CrPC and 155 CrPC are reproduced below:

154. Information in cognizable cases. *Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance*

thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf

155. Information in non-cognizable cases. *(1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.*

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of first or second class having power to try such case or send the same for trial to the Court of Session.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

6. Perusal of record revealed that the Petitioner was booked in two FIRs containing charge of issuing cheques dishonestly, which were dishonored on presentation to the concerned banks. In both the FIRs complainant is a private person and does not belong to police department. To restrain police from recording statement of a complainant on the touchstone of violation of fundamental rights is never warranted under the law. The recording of FIR by police never meant the violation of fundamental rights of a person under accusation. The person nominated in the FIR shall have right to a fair investigation and fair trial enunciated under article 10 – A of the Constitution. Investigation follows the FIR, if during the course of investigation, it evidenced that information so furnished was false, an appropriate action shall be taken by the police against the informant referring him to the Court of law for prosecution under section 182, 211 of Pakistan Penal Code coupled with the discharge of accused under section 169 CrPC for want of sufficient evidence. The provisions of law, which obligate the officer incharge of a police station to record the information in the relevant register, if exercised, would not in any manner amount to violation of fundamental rights, for the reason that any action taken by the police on receiving the information in oral or in writing of commission of an offence had statutory backing. The petitioner has sought indulgence of this Court to bind the police to record information conveyed against him in the FIR book after getting permission from this Court, such a relief cannot be granted by this Court. If this Court starts binding police to record FIRs after obtaining permission, then the purpose of statutory provisions of section 154 CrPC would become redundant.

7. Record further reflected that both the FIRs were registered by the Sukkur police, and petitioner has not arrayed Sukkur police as Respondents in the instant petition. The petitioner has failed to make out a case that the registration of the FIRs

at the hands of the police was colorful exercise of powers. Had the petitioner been aggrieved of the registration of FIRs, he might have impleaded Sukkur police as party in the petition. The contention of the Petitioner that both the FIRs registered against the petitioner were false and result of a dispute of civil nature between the parties over certain agreement of investment effected on 16.09.2022 in between the petitioner and the Respondent No.6 (available at page 15 of memo of Petition) and police at his instance would book him into other false cases, even was not a sufficient ground to restrain the police from taking action on the complaint of an aggrieved person. In case of any dispute of civil nature going on between the parties, and they take law into hands, the dispute over properties would not serve as an impediment to restrain police from taking an action under section-154 CrPC. If any party commits a cognizable offence, the action by due course of law would follow. It is by now, well-established principle of law that the civil and criminal proceedings can run simultaneously, even on the same subject matter. The commission of an offence would set law into motion at once, and person accused of a criminal charge cannot take benefit of pendency of any civil litigation. The Incharge of a police station cannot refuse to record an FIR where the information conveyed disclosed the commission of a cognizable offence. Law did not permit the Officer Incharge of a Police Station to hold any inquiry into the correctness or otherwise of the information conveyed, as check against lodging of false FIRs was not refusal to record FIRs but prosecution and punishment to the informants under section 182, and 211 P.P.C. which if enforced, would serve as a deterrent against the false informants.

8. This view finds support from the principle laid down by the Honorable Supreme Court of Pakistan in the case of Syed Qamber Ali Shah Versus Province of Sindh and others reported in 2024 S C M R 1123, wherein the Honorable Apex Court has held that:

7. At whatever time, an Officer Incharge of a Police Station receives some information about the commission of an offence, he is expected first to find out whether the offence disclosed fell into the category of cognizable offences or non-cognizable offences. There is no provision in any law, including Section 154 or 155 of the Cr.P.C., which authorizes an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or falsity of the information before complying with the command of the said provisions. He is obligated to reduce the same into writing, notwithstanding the fact whether such information is true or otherwise. The condition precedent for recording an FIR is that it should convey the information of an offence and that too a cognizable one. The remedy of filing a direct complaint cannot measure or match up to the mechanism provided under section 154,

Cr.P.C., in which the Officer Incharge of a Police Station is duty bound to record the statement and register the FIR if a cognizable offence is made out. If in each and every case it is presumed or assumed that instead of insisting or emphasizing the lodgment of an FIR, the party may file a direct complaint, then the purpose of recording an FIR, as envisaged under section 154, Cr.P.C., will become redundant and futile and it would be very easy for the police to refuse the registration of an FIR with the advice to file direct complaint. However, in some exceptional circumstances, the alternate remedy in the shape of direct complaint may be availed but not in every case. The statutory duty casts upon the officer of a police station to enter information regarding the cognizable offence first and then the investigation comes later in order to gather evidence and other relevant material to prosecute the identified culprits. No doubt, an Investigating Officer plays a crucial role in the administration of the criminal justice system and the constituent of investigation report and its worth keeps hold of plenteous value and repercussions on the outcome of any criminal case, but tainted investigations can become an acute obstacle in the administration of justice.

9. There is no cavil to the preposition that this Court in terms of its powers conferred under Article-199 of the Constitution of Islamic Republic of Pakistan is the custodian of fundamental rights of the citizens guaranteed under Chapter-1 Part II of the Constitution. The Constitution, subject to restrictions imposed under the law, obligated the state to safeguard the fundamental rights of citizens regarding lawful trade, business, access to information, forming of association, fair trial, and right to be dealt with in accordance with law. This Court is conferred jurisdiction under article 199 to exercise the powers of judicial review against the persons discharging its functions in connection with affairs of Federation, The Petitioner has sought reliefs, which fall under clause (1), sub-clause (a) (i) and (ii) of Article 199 of the Constitution. The jurisdiction, which this Court exercises under sub-clause (a) (i) and (ii) of clause (1) of Article 199 of the Constitution is corrective and supervisory in nature. This Court under the powers of judicial review may declare that "any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect". The Petitioner in the instant petition has not challenged any act done by the police but he seeks a protection for future actions, for which this Court is not conferred any powers to so declare, because every action is subject to examination and judicial review when taken by the person so performing. If any FIR is lodged

against the Petitioner, he can seek the aid of the provisions of article 199 of the Constitution seeking judicial review of the powers exercised by the officer of police and can get it quashed if found based on false facts. Writ cannot be issued for an intended action, which a person apprehends will be taken against him.

10. In the case of Brig Retd. Imtiaz Ahmed Versus the Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others reported in 1994 SCMR 2142, Honorable Supreme Court of Pakistan, while dealing with an identical issue has held as under:

“18. The significance of the above-quoted observations lies in the fact that one of the declarations sought by the petitioner was to direct the Government "to place all incriminating material before the High Court to enable it to exercise judicial review to ensure that the criminal proceedings are not- being initiated for reasons and proposes extraneous to statute". In other words what the petitioner wanted the High Court to do was to assume the role of Investigator. This could obviously not be done, for the authority to register and investigate a criminal case in law vests in the police and not in Court. We must hold, therefore, that the learned judges in the High Court were eminently justified is not assuming that role.”

11. No doubt, an officer of Police while recording FIR and conducting investigation of a case discharged its functions in connection with the affairs of province and such actions were always subject to judicial review of this Court in its jurisdiction conferred under article 199 of the Constitution. The power conferred under Article 199 of the Constitution is a great weapon in the hands of this Court, but this Court is required to observe the Constitutional limits set by our parliamentary system for exercise of this beneficial power to seek enforcement of fundamental rights.

12. If this Court binds the police to record any FIR subject to the permission granted by the Court, it will amount to place a check on the functions of police. Any action on the part of Court that interferes with the functions and duties of the police would tantamount to judicial overreach and encroachment of the powers vested with the police. It would be a fallacy of the thought to treat this Court an Appellate Authority against the functions and duties of the Executive. In any circumstances, except in exceptional cases of political victimization or booking of innocent persons by the police under extraneous consideration, this Court cannot restrain the police from recording the statement of aggrieved person and lodging the FIRs. The Constitution has conferred powers to the Court to be exercised within the limits granted to it. The Court cannot go beyond the powers conferred by the Constitution

or any other law enacted by the Parliament. The Incharge of the police station is obligated under the provisions of section 154 CrPC, to record the statement of informant and proceed further in accordance with law, such powers cannot be restricted, limited or curtailed in any manner.

13. For what has been discussed hereinabove no case for indulgence of this Court is made out. The Petition therefore fails and accordingly dismissed along with pending applications if any.

JUDGE

Ayaz Gul