

IN THE HIGH COURT OF SINDH, KARACHI.

Criminal Misc. Application No.553 of 2023

Applicant : Muhammad Kashif S/O Muhammad Ismail,
Through Irfan Aziz, Advocate.

Respondent No.5 : Syed Abdul Basit S/O Syed Masood Afroze
Through Mr. Muhammad Arif Shaikh, Advocate.

Respondents 1-4 &6 : The State,
Through Mr. Zahoor Shah,
Additional Prosecutor General, Sindh.

Date of hearing : 07.10.2025.

Date of Order : 30.10.2025.

ORDER

MIRAN MUHAMMAD SHAH, J:- This Criminal Miscellaneous Application bearing No.553 of 2023, filed under section 561-A Cr.P.C. is directed against the order dated 05.07.2023 passed by the learned IVth Civil Judge & Judicial Magistrate, Karachi-Central, on the Final Report submitted by the Investigating Officer under Section 173 Cr.P.C. in Crime No. 783 of 2022, registered at Police Station Shahrah-e-Noor Jehan, Karachi-Central, under Section 381-A PPC, whereby the learned Trial Court has accepted the Report/Challan as "B" Class and observed that the accused/respondent No.5, is at liberty to initiate proceedings under Section 182 PPC against the complainant/applicant, if he so desires in accordance with law. Hence, this Criminal Miscellaneous Application has been filed for setting aside the impugned order dated 05.07.2023 as well as the Final Report (Challan) submitted under Section 173 Cr.P.C.

2. The facts necessary for the disposal of the instant Criminal Miscellaneous Application are that an FIR was registered under section 381-A PPC by complainant, namely, Muhammad Kashif on 19.11.2022. It is alleged by the complainant that on the said date, he, along with his family, went to attend an engagement ceremony and returned to his house, at about 0300 hours and parked his Car No.BLV-694, make Suzuki Cults, model 2018, grey color outside his house and went inside. When he came out at about 1530 hours, he saw that his car was missing. He immediately called Madadgar-15, who inspected the scene. Meanwhile, he came to know from residents of his neighbourhood that at about 0400 hours, four persons arrived in a Honda City car, one of whom had long hair, and they were seen committing the theft of his vehicle. At the time of the theft, the

car contained 08 tolas gold jewelry including two Bangles, one Necklace, two earrings and one Rayben sun-glasses. Consequently, this FIR was lodged against Abdul Basit.

3. Learned counsel for the applicant/complainant has contended that despite best efforts, the FIR was not being lodged by the local police, even though the applicant/complainant repeatedly approached them. Consequently, the applicant/complainant approached the learned Sessions Judge, Karachi Central through an application under Sections 22-A and 22-B Cr.P.C with the prayer for lodgment of the FIR, although the said application was allowed with directions to the SHO to lodge the FIR, however, the SHO never complied with the order passed by the learned Vth Additional Sessions Judge, Karachi Central. After a delay of forty (40) days, such FIR was lodged. Thereafter, the concerned SHO submitted a report before the learned trial Court, stating that the proposed accused Syed Abdul Basit (Respondent No.5) had filed an application before him claiming ownership of the vehicle and seeking permission to take away the said vehicle. Without providing any ownership documents, the said vehicle was handed over to Syed Abdul Basit (respondent No.5). In fact, the legal owner of the vehicle was Sarfraz Bhojani. I.O./SHO continued to give undue favour to the proposed accused persons. No proper investigation was made with regard to the title documents of the said vehicle and without making any investigation the stolen items including gold. Ultimately a report was submitted before the learned trial Magistrate, who declared FIR lodged by the applicant/complainant as 'B' class, which was duly supported by the State Counsel. The counsel for the applicant further contends that the learned IVth Civil Judge and Judicial Magistrate, Karachi Central overlooked and ignored the merits of the case and without applying his mind followed report submitted by the I.O of the case, which was contrary to the case established and illegal in the eyes of law. By way of giving undue favour to the accused persons the I.O submitted the challan in 'B' class, which caused serious mental agony to the applicant/complainant. He lastly prays for the setting aside the order passed by the learned Magistrate.

4. On the other hand, learned counsel for respondent No.5 submits that the applicant/complainant is a blackmailer and a cheater, who is bent

upon to usurp the share of respondent No.5 and that car along with its original key and original file is in the possession of respondent No.5, who is the real and registered owner of the car in question and has also given a statement before the police in his favour; that it was the duty of the complainant to have all documents of the property duly cleared, which he failed to do so, resulting in the present dispute between the parties. Learned counsel for the complainant further submits that respondent No.5 paid an amount of Rs.2.2 Crore to applicant/complainant and also allowed the use of his car to respondent No.5. Moreover, the NTN of the applicant/complainant is registered at the business address of respondent No.5 and a legal notice was issued by the applicant/complainant to respondent No.5 eight months prior to the lodging of the FIR, had itself acknowledged that the original file is with respondent No.5/accused. Therefore, the plea of the complainant that the file was in the car is false and fabricated. He lastly prays for dismissal of the instant Crl. Misc. Application submitting that the learned trial Court has rightly disposed of the FIR in 'B' class.

5. Conversely, the learned Additional Prosecutor General, Sindh has vehemently opposed the grant of the Criminal Misc. Application and submits that the learned trial Court has rightly disposed of the FIR in 'B' Class on the basis of report submitted by the Investigating Officer. Hence, he prays for dismissal of the instant Crl. Misc. Application.

6. I have heard the learned counsel for the applicant, the learned counsel for respondent No.5 as well as the learned Additional Prosecutor General, Sindh and have perused the material available on record. After perusing the entire police papers it appears that the learned Magistrate has hurriedly allowed the report submitted by the Investigating Officer (I.O), declaring the FIR as 'B' class. It is well settled law that when a report is filed by the Investigating Officer in any criminal case recommending the FIR to be classified as 'B' class, it implies that the case has been found to be maliciously false, hence, before accepting such a report, the learned Magistrate is required to go through the entire police file and investigation papers to come to the conclusion as to whether the report truly establishes that the FIR is maliciously false. The case as narrated by the complainant as well as the nominated accused reveal that there existed some

property/financial dispute between the parties. However, no record has been produced by either side to establish that any financial transaction or business dealing took place between the complainant and the nominated accused. Only verbal assertions in this regard have been made. Solely on the basis of such assertions, the learned Magistrate concluded that due to some financial transactions, the nominated accused was justified in taking away the disputed car from the premises of the complainant. Furthermore, the ownership of the said car was also not established by either party. In fact the learned Magistrate/trial Court relied upon the statement of a previous owner to determine ownership. The matter, therefore, appears to have been decided not on the basis of documentary evidence but on the basis of oral statement. Despite the dispute being of a financial nature, reliance ought to have been placed upon the documentary evidence rather than mere verbal assertions. The act of the nominated accused Abdul Basit in taking away the vehicle from the private premises of the complainant Muhammad Kashif in itself requires thorough investigation. No one can be allowed to trespass any private property in order to settle a civil or financial dispute with another party. While the learned trial Court remained focused on the question of ownership of the vehicle, it erred in deciding the dispute and overlooked the fact that merely being a subsequent purchaser of the vehicle does not allow the nominated accused to enter complainant's premises, use the key and remove the parked car without informing the person, who is in possession of the said vehicle from his property. It is yet to be determined who holds the actual ownership of the car, as no documentary evidence in this regard was produced by either party. The learned trial Court, therefore, decided the matter solely on verbal statements, treating them as gospel truth, which was not justified in the circumstances of the case. The investigation report of IO became the guiding light for the learned magistrate, which has been strictly prohibited by the superior courts. It has been held that Magistrate is not to blindly follow the report of IO. In the case reported in 2014 PCrLJ 1031

'the Investigating Officer is bound to carry out the process of investigation of the offence registered with police strictly in accordance with the relevant provisions of Cr.P.C., Police Rules 1934, Police Order 2002 and submit report before the Magistrate as envisaged under the relevant law. However, the Investigating

Officer has no power to conclude the process of investigation by means of judicial proceedings. The iota of evidence produced by the complainant and P.Ws. though suffering from minor discrepancies, could not be discarded on the strength/basis of defence evidence including documents or affidavits produced by the accused party before the Investigating Officer. The factum of genuineness of defence evidence be left upon the concerned trial Court to determine such fact during trial.'

7. So also I place my reliance on PLD 2013 Sindh 423

'It is well settled principle of law that the Magistrate is not bound to agree with the report submitted by police under section 173, Cr. P.C. and he is at liberty under the law, either to agree or disagree with the conclusions reached by the Investigating Officer subject, of course, to give cogent reasons for the conclusion arrived at by him. The Magistrate under section 173, Cr. P.C. is not expected to blindly follow investigation undertaken by police as ipse dixit of police was never binding on Magistrate or Court. Of course, the Magistrate is legally bound to apply his independent mind to the material placed before him and then form his own opinion about the matter'

8. I am of the view that there are many lacunas remained unaddressed in the case before declaring the FIR as 'B' class. While blindly relying upon the police report the learned Magistrate has erred in deciding the matter. In such a situation, I find that the FIR No.783 of 2022 registered at police station Shahrah-e-Noor Jahan, District Central, Karachi requires a thorough probe. The learned Magistrate has incorrectly assessed the material produced before him and has prematurely decided the fate of the case. Therefore, I allow Criminal Misc. Application No.553 of 2023 as prayed and set aside the order dated 05.07.2023 passed by the learned Civil Judge and Judicial Magistrate District Central, Karachi with directions to the learned trial court to join accused/respondent in trial in accordance with law.

5. The instant Criminal Misc. Application stands disposed of in the above terms.

JUDGE