

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

*Criminal Miscellaneous Application No. S-687 of 2025.
(Nasrullah Chandio vs Ist Civil Judge/ J.M Naushahro Feroze and others)*

Before:-

Mr. Justice Ali Haider 'Ada'

16.03.2026.

Mr. Muhammad Hassan Pathan, Advocate along with Applicant

Mr. Moula Dad Rind, Advocate for Respondent No.4 / Complainant

Mr. Mansoor Ahmed Shaikh, Deputy Prosecutor General for the State

ORDER

Ali Haider 'Ada', J: Through this Criminal Miscellaneous Application, the applicant/accused has assailed the order dated 30.09.2025 recorded on the report submitted under Section 173 Cr.P.C., whereby although the applicant/accused had been nominated in the FIR but was declared innocent by the police during investigation, the learned Magistrate nevertheless passed an order on the said report directing that he be proceeded against in accordance with law.

2. Briefly stated, the facts of the case are that the applicant, along with another accused, was nominated in the FIR for the commission of offences punishable under Sections 380 PPC (theft) and 457 PPC (lurking house-trespass or house-breaking by night). The complainant/respondent No.4 lodged the FIR on 20.08.2025, while the date of the alleged incident was mentioned as 06.08.2025. During the course of investigation, the Investigating Officer submitted the challan under Section 173 Cr.P.C., wherein the present applicant was placed in Column No.2 and declared innocent; however, the co-accused Sheeraz was sent up for trial and his name was shown in the challan as an accused.

3. Learned counsel for the applicant/accused submits that the material available on record clearly indicates that the present applicant was not present at the place of occurrence at the time of the alleged commission of the offence. It is contended that such plea was duly brought to the notice of the Investigating Officer during investigation. However, the learned Magistrate, without properly applying his judicious mind to the facts and circumstances of the case, passed the impugned order merely on the ground that cognizance of the offence had already been taken, and therefore directed that the applicant Nasrullah, despite having been let off by the police, be summoned and proceeded against in accordance with law. According to the learned counsel, such findings are contrary to the settled principles of law.

4. On the other hand, learned counsel for respondent No.4/complainant submits that sufficient incriminating material is available on record in the form of statements recorded under Section 161 Cr.P.C., wherein the present applicant has been specifically nominated. It is further argued that the defence version relied upon by the applicant is primarily based upon statements of his father and other close relatives, who cannot be considered independent witnesses and whose testimony is inherently interested in nature. Therefore, he supports the impugned order passed by the learned Magistrate.

5. The learned Deputy Prosecutor General has also supported the impugned order, contending that a prima facie case is made out against the present applicant on the basis of the material available on record.

6. Arguments heard and record perused.

7. First and foremost, the order impugned through the present Criminal Miscellaneous Application is reproduced hereunder:-

“Cognizance is also taken against the let off accused Nasrullah Chandio as sufficient material is available let his B.Ws be issued and case be registered and process be issued as per law.”

8. Now, advertent to the merits of the case, there is no cavil to the settled legal position that the opinion of the police is merely an *ipse dixit* and is not binding upon the Court. However, such opinion may still be taken into consideration where it is supported by cogent and convincing material collected during the course of investigation. It is a well-recognized principle of law that although the Courts are not bound by the conclusions drawn by the Investigating Officer, the same may carry persuasive value. In this regard, reliance may be placed upon the judgments reported as **WAQAS UR REHMAN alias MOON Versus The STATE and others (2021 SCMR 1899)**, **Khalid Mehmood and others v. The State (2011 SCMR 664)**, and **Sajjad Hussain v. The State and others (2022 SCMR 1540)**.

9. The concept of providing an opportunity of hearing is deeply rooted in the principles of natural justice, particularly in the Latin maxim *audi alteram partem*, which signifies that no person should be condemned unheard. According to this well-established principle, every party to a proceeding has a fundamental right to be afforded a proper opportunity of hearing before any adverse order is passed against him. The matter must therefore be decided after due consideration of the submissions of the parties and not in a mechanical manner, rather by applying a judicious and conscious mind to the facts and circumstances of the case.

10. This principle also finds Constitutional protection under Article 10-A of the Constitution, which guarantees the right to a fair trial and due process. The principle of *audi alteram partem* constitutes one of the foundational pillars of natural justice and mandates that a judicial or quasi-judicial order must reflect that each party has been provided an opportunity to present his case before the Court. In this regard, reliance is placed upon the judgment reported as **FEDERAL GOVERNMENT EMPLOYEES HOUSING AUTHORITY through Director General, Islamabad Versus EDNAN SYED and others (PLD 2025 Supreme Court 11)**.

11. On the legal plane, it is well settled that the power conferred upon a Magistrate under Section 173(3), Cr.P.C. is not arbitrary in nature; rather, it is to be exercised on sound judicial principles while

ensuring a fair opportunity to the concerned parties. The Magistrate, while exercising such jurisdiction, is required to apply an independent and judicious mind to the material placed before him. In this regard, reliance is placed upon the judgment reported as **Syed Muhammad Raza Qaim Rizvi Versus The State and 4 others (2022 YLR Note 7)**.

12. Furthermore, such power, by its very nature, cannot be exercised merely on the *ipse dixit* of the police; otherwise, the very purpose of conferring supervisory authority upon the Magistrate would stand defeated. The Magistrate is expected to act as a responsible judicial authority and must independently examine the record and circumstances of the case before arriving at any conclusion. In the case of **Bahader and another v. The State and another (PLD 1985 Supreme Court 62)**, it was held that a Magistrate, while cancelling a registered criminal case, is required to act judicially, meaning thereby that he must act fairly, justly, and honestly. The aforesaid principle was subsequently followed in **Arif Ali Khan v. The State (1993 SCMR 187)** and **Muhammad Sharif and 8 others v. The State and another (1997 SCMR 304)**, which was also referred to in **Hussain Ahmad v. Mst. Irshad Bibi and others (1997 SCMR 1503)**. Further in case of **Sardar ATTIQUE UR REHMAN Versus The STATE and 5 others 2021 PCr.LJ 1216[Peshawar (DB)]**, it was held that:

14. It is by now settled that in all proceedings by whatsoever held, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting "the person or property or other right of the parties concerned" this rule applies even though there may be no positive words in the statute or legal document whereby the power is vested to take such proceedings, for, in such cases this requirement is to be implied into it as the minimum requirement of fairness. In this behalf reference may be made to the cases reported as Chief Commissioner Karachi v. Mrs. Dina Sohrab Katrak (PLD 1959 SC (Peshawar) 45), Faridoon Limited v. Government of Pakistan (PLD 1961 SC 537) and Abdur Rehman v. Collector and Deputy Commissioner Bahawalnagar and others (PLD 1964 SC 461).

13. In view of the foregoing discussion and reasons, the instant application is partly allowed and the impugned order passed on the challan sheet is hereby set aside. The learned 1st Civil Judge and Judicial Magistrate, Naushahro Feroze is directed to provide an

opportunity of hearing to the parties concerned and thereafter pass a speaking order after due consideration of the entire material available on record and by applying an independent and judicious mind. The learned Magistrate shall complete this exercise within a period of one month from the date of receipt of this order.

JUDGE

ARBROHI