

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.**  
**Cr.Misc. Appln:No.S-221 of 2026**

Applicant: Babar Khan son of Habibullah Jamali through Mr. Meer Ahmed Mangrio, Advocate.

Respondents: Inspector Khalil-u-Rehman Massan SHO PS B-Section Dadu and DSP/I.O Faraz Ali Metlo through Mr. Altaf Hussain Khokhar, Deputy Prosecutor General, Sindh.

Date of Hearing: 01.06.2026.

Date of Order 01.06.2026

**ORDER**

**TASNEEM SULTANA, J:-** Through this Criminal Miscellaneous Application under section 561-A Cr.P.C., the applicant has called in question the legality and propriety of the order dated 13.04.2026 passed by the learned Sessions Judge, Dadu, in Criminal Revision Application No.10 of 2026 whereby the revision preferred by the State was accepted, the order dated 06.04.2026 passed by the learned Civil Judge & Judicial Magistrate-III, Dadu, was set aside and the learned Magistrate was directed to accept the report submitted under section 173 Cr.P.C. Consequent thereto, the learned Magistrate passed order dated 14.04.2026.

2. The brief facts of the prosecution case are that FIR No.05 of 2026 and FIR No.06 of 2026 were registered at Police Station B-Section, Dadu, concerning the death of Nadir Ali Jamali. Upon completion of investigation, report under section 173 Cr.P.C. was submitted before the learned Magistrate. Through order dated 06.04.2026, the learned Magistrate deferred consideration of the report till conclusion of the judicial inquiry and recording of the version of the legal heirs of the deceased. Aggrieved thereby, the State preferred Criminal Revision Application No.10 of 2026 before the learned Sessions Judge, Dadu, which was accepted through the

impugned order dated 13.04.2026. Consequently, the learned Magistrate passed order dated 14.04.2026. Hence, the instant application.

**3.** Learned counsel for the applicant contends that the impugned order dated 13.04.2026 is not sustainable in law; that the order dated 06.04.2026 was not amenable to revisional jurisdiction under sections 435 and 439-A Cr.P.C.; that the revisional Court could not substitute its own satisfaction for that of the learned Magistrate while dealing with a report under section 173 Cr.P.C.; that the directions to accept the report, take cognizance and transmit the case to the Court of Sessions travelled beyond the controversy before the revisional Court; that acceptance or otherwise of a report under section 173 Cr.P.C. falls within the exclusive statutory domain of the Magistrate; that the impugned directions unlawfully fettered the independent discretion vested in the Magistrate under sections 173 and 190 Cr.P.C.; and that all proceedings flowing from the impugned order are liable to be declared without lawful authority and of no legal effect.

**4.** Learned Deputy Prosecutor General, while supporting the legality of the revisional order dated 13.04.2026 and the consequential order dated 14.04.2026, submits that the learned Magistrate had no lawful authority to keep the report pending consideration and that the learned Sessions Judge had rightly interfered with the order dated 06.04.2026. Learned D.P.G., however, fairly concedes that the observations made by the learned Sessions Judge in paragraph 12 of the impugned order and those reproduced by the learned Magistrate in paragraph 2 of the order dated 14.04.2026 were not necessary for deciding the controversy before the Court, as the only question requiring determination was whether the learned Magistrate could lawfully postpone consideration of the report submitted under section 173 Cr.P.C.

**5.** Heard. Record perused.

6. The principal question requiring determination is whether the order dated 06.04.2026 passed by the learned Magistrate was amenable to revisional jurisdiction under sections 435 and 439-A Cr.P.C. and whether the learned Sessions Judge could lawfully direct the learned Magistrate to accept the report, take cognizance of the offences and proceed in a particular manner while exercising revisional jurisdiction.

7. A perusal of the order dated 06.04.2026 reveals that the learned Magistrate neither accepted nor rejected the report submitted under section 173 Cr.P.C.; nor did he discharge any accused person; nor finally determine any right of the parties. The learned Magistrate merely deferred consideration of the report till conclusion of the judicial inquiry and recording of the version of the legal heirs of the deceased. Although serious objection can be taken to the course adopted by the learned Magistrate in postponing cognizance and keeping the report pending, the correctness or otherwise of the said order is distinct from the question whether such order was amenable to revisional jurisdiction. An order does not become revisable merely because it is perceived to be erroneous. Before interfering with the order on merits, the revisional Court was required to examine whether the order itself fell within the scope of sections 435 and 439-A Cr.P.C. and whether the jurisdiction of revision could lawfully be invoked.

8. The law on the subject stands settled by the august Supreme Court of Pakistan in *Bahadur and another v. The State and another* (PLD 1985 SC 62), wherein it was held that while dealing with a report submitted under section 173 Cr.P.C., a Magistrate does not invariably function as a Criminal Court and that orders passed in such capacity are not necessarily amenable to revisional jurisdiction under sections 435 to 439 Cr.P.C. The aforesaid principle was subsequently followed in *Nooruddin v. Bhooro alias Bhooral and another* (PLD 2004 Karachi 130), wherein it was held that orders passed by Magistrates in their administrative capacity while dealing with report is not

amenable to the revisional jurisdiction and that the Sessions Court had acted without jurisdiction in entertaining the revision petition.

**9.** It is not necessary in the present proceedings to finally determine whether the order dated 06.04.2026 was within administrative or judicial in nature even assuming, for the sake of argument, that the revisional Court possessed jurisdiction to examine the legality of the deferment order, the observations and directions contained in paragraph 12 of the revisional order cannot be sustained for independent reasons.

**10.** The controversy before the learned Sessions Judge was confined to the legality of the order dated 06.04.2026 whereby the learned Magistrate had deferred consideration of the report submitted under section 173 Cr.P.C. The revisional Court was therefore only required to determine whether such deferment was lawful or otherwise. However, while deciding that limited controversy, the learned Sessions Judge proceeded further and directed the learned Magistrate to accept the report submitted under section 173 Cr.P.C., take cognizance of the offences and transmit the case to the Court of Sessions for trial.

**11.** These directions neither arose from nor were necessary for adjudication of the controversy involved before the revisional Court. The issue whether the report was to be accepted, rejected, or otherwise dealt with remained a matter to be independently considered by the learned Magistrate in accordance with law. The direction compelling acceptance of the report under section 173 Cr.P.C. effectively foreclosed the exercise of discretion otherwise vested in the Magistrate by law.

**12.** The direction to accept the report under section 173 Cr.P.C / challan was not merely procedural in nature. Acceptance or otherwise of a report submitted under section 173 Cr.P.C constitutes a matter entrusted by law to the Magistrate. Likewise, the decision whether cognizance should be taken under section 190 Cr.P.C. is

dependent upon the Magistrate's independent satisfaction after application of judicial mind to the material available on record. By directing acceptance of the report and taking of cognizance, the revisional Court effectively predetermined questions which the law required the learned Magistrate himself to determine.

**13.** The Honourable Supreme Court in *Falak Sher and another v. The State* (PLD 1967 SC 425) held that a Magistrate is not bound by the opinion expressed in a report submitted under section 173 Cr.P.C. and may independently agree or disagree with the conclusions of the Investigating Officer. The underlying principle emerging from the said judgment is that the Magistrate is required to exercise independent decision while dealing with a report submitted under section 173 Cr.P.C. and is not bound to act mechanically upon the opinion of the police. The observations and directions contained in paragraph 12 of the impugned order substantially curtailed the exercise of that statutory function.

**14.** The order dated 14.04.2026 was not the product of an independent judicial determination by the learned Magistrate. A plain reading thereof demonstrates that it was passed in obedience to and implementation of the directions contained in paragraph 12 of the revisional order dated 13.04.2026. Consequently, once paragraph 12 is found unsustainable in law, the corresponding observations incorporated in the order dated 14.04.2026 cannot survive independently.

**15.** It is clarified that this Court has not expressed any opinion regarding the legality, propriety or sustainability of the order dated 06.04.2026 passed by the learned Magistrate, nor on the merits of the report submitted under section 173 Cr.P.C. All questions arising therefrom shall remain open for consideration by the learned Magistrate, who shall proceed in accordance with law, uninfluenced by any observations contained in paragraph 12 of the revisional order dated 13.04.2026.

**16.** For the foregoing reasons, the directions contained in paragraph 12 of the impugned order dated 13.04.2026 requiring acceptance of the report submitted under section 173 Cr.P.C., taking cognizance of the offences and transmission of the case to the Court of Sessions cannot be sustained in law. The said directions are beyond the scope of the controversy involved before the revisional Court and amount to an impermissible intrusion into the jurisdiction vested in the Magistrate under sections 173 and 190 Cr.P.C. Accordingly, this Criminal Miscellaneous Application is partly allowed. The observations and directions contained in paragraph 12 of the order dated 13.04.2026 passed by the learned Sessions Judge, Dadu, whereby the learned Magistrate was directed to accept the report submitted under section 173 Cr.P.C., take cognizance of the offences and transmit the case to the Court of Sessions for trial, are hereby set aside. The corresponding observations incorporated in the order dated 14.04.2026 are likewise declared to be of no legal effect. The matter is remanded to the learned Civil Judge & Judicial Magistrate-III, Dadu, who shall proceed to deal with the report submitted under section 173 Cr.P.C. strictly in accordance with law and pass an appropriate order on the merits, uninfluenced by any observations contained in paragraph 12 of the revisional order dated 13.04.2026.

**J U D G E**

Ahmed/Pa,