

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

***Criminal Miscellaneous Application No.S-691 of 2024.
(Shamsuddin vs The State and others).***

Date	Order with signature of Judge
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*For orders on office objections.
For hearing of main case.*

13.04.2026.

Mr. Shahid Ali Panhwar, Advocate for Applicant.

Mr. Zulfiqar Ali Jatoi, Additional Advocate General.

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ORDER

Ali Haider 'Ada' J:- The applicant lodged FIR No. 133 of 2024 at Police Station Padidan for offences punishable under sections 496-A and 494 PPC. The Investigating Officer disposed of the matter under 'C-class', which was subsequently approved by the learned Judicial Magistrate-III, Naushahro Feroze, vide order dated 16.10.2024. The said order has been assailed by the applicant/complainant through the instant criminal miscellaneous application.

2. The crux of the prosecution case is that Mst. Irfana, the daughter of the applicant/complainant contracted a second marriage with co-accused Ihsan without obtaining a divorce from her first husband. It was further alleged that she was abducted by the accused party, and the incident was reported to the police, upon which the FIR was registered.

3. During investigation, however, the Investigating Officer recorded the statement of the alleged abductee and also produced her before the Magistrate for recording her statement under section 164 Cr.P.C. In her statement, she

categorically denied the allegation of abduction and stated that she had contracted marriage with co-accused Ihsan Ali of her own free will. She further stated that she had already been divorced by her previous husband about five months prior to the marriage and, after completion of the iddat period, she contracted the subsequent marriage.

4. Learned counsel for the applicant submits that the impugned order is arbitrary in nature, contending that although the offence relating to unlawful nikah was committed, the Investigating Officer conducted a partial and defective investigation and wrongly disposed of the case under 'C-class', which was wrongly affirmed by the learned Magistrate. It is further argued that the order suffers from illegality and misappreciation of material on record, and is therefore liable to be set aside.

5. On the other hand, learned Additional Prosecutor General contends that no interference is warranted in the impugned order, as the allegation of abduction stands negated by the statement of the prosecutrix herself. It is further submitted that the prosecutrix clearly stated that she had been divorced five months earlier and had contracted marriage out of her free will after completion of the iddat period. Therefore, the Magistrate has rightly relied upon the conclusion of the Investigating Officer, and the application is liable to be dismissed.

6. Despite service of notices, none has appeared on behalf of the respondents. Arguments have been heard and the material available on record has been perused.

7. It is the domain of the Investigating Officer, after collecting and assessing the available evidence, to reach a conclusion as to how the case is to be disposed of under the

relevant law. In the present matter, the Investigating Officer recorded the statement of the alleged abductee and also produced her before the learned Magistrate for recording her statement under section 164 Cr.P.C. However, she categorically disowned the contents of the FIR, not only in respect of the allegation of abduction but also with regard to the allegation of nikah during subsistence of prior marriage. She further stated that the divorce had already been effected about five months earlier and, after completion of the iddat period, she contracted marriage with co-accused of her own free will.

8. It is well-settled that investigation of a criminal case falls within the exclusive domain of the police, and if on one hand independence of the judiciary is a hallmark of a democratic dispensation, on the other hand independence of the investigating agency is equally essential to the concept of rule of law. Undue interference in each other's domain not only disturbs the balance of powers but also undermines the criminal justice system and impedes the cause of justice. Reliance in this regard is placed on the judgment of the Honourable Supreme Court in **Muhammad Hanif versus The State (2019 SCMR 2029)**.

9. After scrutinizing the entire material available on record, it transpires that the star witness of the prosecution case is the alleged abductee herself, who has not supported the prosecution version at any stage. She has categorically disowned the FIR, not only with regard to the allegation of abduction but also in respect of the alleged offence of nikah during subsistence of previous marriage. She has consistently stated that she had already been divorced about five months prior and, after completion of the iddat period; she contracted marriage with co-accused Ihsan Ali of her own

free will. In such circumstances, the continued prosecution of the case would amount to nothing but a futile exercise, particularly when the Investigating Officer, after collecting tangible and relevant material, has reached a conclusion and submitted the report, which has duly been approved by the learned Magistrate.

10. It is well settled that the Magistrate is not bound to agree with the report submitted by the police and is at liberty either to accept or disagree with the conclusions drawn by the Investigating Officer, provided that such discretion is exercised judiciously and supported by cogent reasons. The Magistrate is not expected to blindly follow the opinion of the police, as the ipse dixit of the Investigating Agency is neither binding upon the Magistrate nor upon the court. Rather, the Magistrate is required to apply his independent judicial mind to the material placed before him and to form an opinion in accordance with law. Where, after such judicial scrutiny, the Magistrate finds that the opinion expressed by the Investigating Officer is based on proper appreciation of evidence and is just and appropriate, he is fully competent to accept the report and dispose of the case in the manner proposed by the Investigating Officer. Reliance is placed upon **Syeda Afshan versus Syed Farukh Ali (PLD 2013 Sindh 423) and Muhammad Younis Waggan versus The State (2026 PCrLJ 188)**.

11. Keeping in view the discussion made above, this Court finds no reason to interfere with the impugned order. The material available on record clearly reflects that the prosecution case lacks support from the star witness, namely the alleged abductee, who has categorically disowned the allegations levelled in the FIR. The Investigating Officer, after conducting an investigation and collecting tangible evidence, reached a conclusion, which was duly accepted

by the learned Magistrate upon application of judicial mind. In these circumstances, the impugned order does not suffer from any illegality, irregularity, or jurisdictional defect warranting interference by this Court. The instant Criminal Miscellaneous application is, therefore, found to be devoid of merit and is accordingly dismissed.

JUDGE