

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Misc. Application No. S-201 of 2025

Applicant : Mahesh Kumar through Mr. Om Parkash H. Karmani
Advocate

Respondents : SSP Umerkot and others through Mr. Muhammad
Ali Jani, Advocate for Respondent No. 6 and Mr.
Dhani Bakhsh Mari, APG Sindh.

Date of Hearing : 24.08.2026

Date of Order : 27.08.2026

ORDER

Muhammad Humayon Khan, J.: The Applicant, being aggrieved and dissatisfied with the order dated 21.08.2025, passed by the learned Consumer Protection Court/Judicial Magistrate, Umerkot, whereby the summary submitted in N.C. Report No. 02 of 2025, Police Station Khokhrapar, under sections 504, 337-L(ii) and 506 PPC, was accepted under the “C/Cancelled Class”, has invoked the inherent jurisdiction of this Honourable Court under section 561-A of the CrPC.

2. The factual history, according to the Applicant, the private respondents came to his house on 03.11.2024, abused him and extended threats. It is further alleged that on the following morning, 04.11.2024 at about 09:30 a.m., they again came to his house, threatened and assaulted him, and that Mst. Lachmi intervened. The Applicant asserts that he sustained injuries, obtained a police letter for treatment, was examined at Taluka Headquarter Hospital, Umerkot, and was thereafter referred to Hyderabad.

3. The Applicant's effort to obtain registration of an FIR did not succeed. His application under sections 22-A and 22-B of the CrPC was dismissed on 16.11.2024. He thereafter approached this Court through Criminal Miscellaneous Application No. S-607 of 2024. By order dated 10.04.2025 this Court observed that the alleged occurrence disclosed a non-cognizable offence and left the Applicant to approach the competent Magistrate. N.C. Report No. 02 of 2025 was consequently

processed by Police Station Khokhrapar and the matter came before the learned Consumer Protection Court/Judicial Magistrate, Umerkot, who accepted the police recommendation under the “C/Cancelled Class” on 21.08.2025.

4. Mr. Om Parkash, learned counsel for the Applicant, contended that the order is arbitrary and results from misreading and non-reading of the record. He submits that the private respondents were specifically nominated; definite roles were attributed to them; the Applicant's injuries were medically documented; the investigation was neither fair nor impartial; and the Investigating Officer failed to collect evidence which, according to the Applicant, would have established the case. Particular reliance is placed upon an application dated 31.05.2025 by which the Applicant sought change of Investigating Officer on the allegation of partiality. It is submitted that the learned Magistrate accepted the cancellation conclusion in a cursory manner and that the order consequently deserves to be set aside.

5. Conversely, Mr. Muhammad Ali, learned counsel for Respondent No. 6, along with Mr. Dhani Bakhsh, learned Assistant Prosecutor General, rebutted the contentions advanced on behalf of the Applicant and supported the impugned order dated 21.08.2025. Their submission is that mere nomination of a private respondent cannot compel submission of a challan where investigation does not substantiate the accusation; that the Magistrate was entitled independently to agree with the police conclusion; and that no jurisdictional illegality, perversity, or other circumstance justifying exercise of inherent jurisdiction has been demonstrated.

6. Having heard the learned counsel and examined the available material, the controversy may conveniently be divided into the following questions: first, what is the statutory character of investigation of a non-cognizable case and what is the respective role of the police and Magistrate; secondly, what is the legal character of an order concurring with a cancellation recommendation; thirdly, to what extent section 561-A permits this Court to interfere with that process; and finally, whether the medical material, nomination of the private respondents, alleged deficiencies in investigation, request for change of Investigating Officer, and discrepancy

concerning the date of occurrence demonstrate such illegality or non-application of mind as would justify interference.

7. Since the allegations disclosed a non-cognizable offence, section 155 of the CrPC. squarely applies, under which the police cannot investigate without an order of the competent Magistrate. Once such permission is granted under subsection (2), the authorised police officer may investigate the matter in terms of subsection (3), except for arrest without warrant. Thus, the learned Magistrate acted within lawful authority in permitting investigation, while the conduct and conclusion of such investigation remained within the domain of the Investigating Officer.

8. In *Said Jalal and 2 others v. The State and another* 1972 SCMR 516, the Supreme Court held that investigation primarily falls within the police domain and a Magistrate cannot substitute a parallel inquiry for a lawful investigation, though an aggrieved complainant may resort to a complaint under section 200 of the CrPC. This principle was reaffirmed in *Muhammad Hanif v. The State* 2019 SCMR 2029, wherein the Supreme Court emphasised the separation of judicial and investigative functions; thus, while a Court may ensure legality of the investigation, it cannot compel the Investigating Officer to reach a predetermined conclusion merely because a party is dissatisfied with its outcome.

9. In *Habib v. The State* 1983 SCMR 370, the Supreme Court held that a Magistrate is not bound by the police conclusion and may agree or disagree with a final report, the power of cancellation flowing from sections 173 read with 190 of the CrPC. Likewise, in *Bahadur and another v. The State and another* PLD 1985 SC 62, it was held that an order concurring with cancellation is administrative in nature, does not amount to an acquittal or attain the finality of a judicial determination, and does not preclude the Magistrate from subsequently entertaining a private complaint arising from the same allegations.

10. The description “administrative” does not, however, mean arbitrary or mechanical. *Bahadur* requires the Magistrate, as an officer exercising State power, to act fairly, justly and honestly. The Sindh High Court applied this principle

in *Hussain Bux Rajpar* Cr. Misc. App. No. S-359 of 2020, decided on 20.07.2020.

There too the complainant alleged unfair investigation and want of application of mind. The Court recognised that cancellation concurrence is administrative, but examined whether the Magistrate had considered the investigative material. Finding that the allegations were not supported by witness statements and that the Magistrate had stated reasons for agreeing with the Investigating Officer, the application was dismissed, with liberty to bring a private complaint under section 200 of the CrPC.

11. The nature of the cancellation order has a direct bearing upon the jurisdiction invoked in the present proceedings. Section 561-A preserves the inherent power of the High Court to give effect to orders under the Code, prevent abuse of the process of a Court and otherwise secure the ends of justice. Yet the Supreme Court has consistently warned that this is not an additional appellate or supervisory jurisdiction over every act occurring within the broader criminal-justice system. *Shahnaz Begum v. Hon'ble Judges of the High Court of Sindh and Balochistan* PLD 1971 SC 677 held that the inherent power does not authorise the High Court to take over, quash, or transfer a police investigation merely because its fairness is questioned; a police investigation alleged to be mala fide or beyond jurisdiction is ordinarily addressed through the proper constitutional remedy.

12. That distinction was expressly reiterated in *Muhammad Ali v. Additional I.G., Faisalabad and others* PLD 2014 SC 753, where the Supreme Court treated section 561-A as relevant to judicial proceedings and actions rather than executive or administrative acts. More recently, *FIA through Director General, FIA and others v. Syed Hamid Ali Shah and others* PLD 2023 SC 265 explained that registration of an FIR and conduct of investigation are acts of officials performing functions in connection with public affairs and, when attacked as unlawful, are judicially reviewable through Article 199 subject to its requirements; section 561-A, by contrast, is concerned with judicial proceedings before subordinate courts.

13. This Court has already applied that distinction to a materially similar procedural situation. In *Ishtiaque Ahmed Mahessar v. State* Criminal

Miscellaneous Application No. S-407 of 2024, decided on 20.02.2025, a complainant invoked section 561-A of the CrPC against a Judicial Magistrate/Consumer Protection Court's order disposing of a police report under "C" Class. After considering *Syed Hamid Ali Shah, Syed Qamber Ali Shah, Muhammad Hanif and Bahadur*, the learned Single Judge held that concurrence in the "C" Class report was administrative and dismissed the section 561-A application, observing that a challenge to the administrative phase belongs, where otherwise maintainable, to constitutional jurisdiction.

14. There are older Sindh authorities recognising that because cancellation concurrence is not revisable, an exceptional resort to section 561-A may still be contemplated where what has occurred itself amounts to an abuse of process or is plainly without jurisdiction. The two lines of authority need not be resolved more broadly than the present facts require. On the stricter and more recent approach, a section 561-A application is not the proper vehicle for appellate reconsideration of an administrative cancellation. Even on the assumption most favourable to the Applicant; that this Court may nevertheless look into the record to satisfy itself that there is no patent jurisdictional defect, manifest abuse of process or failure of justice, the Applicant must still demonstrate something substantially more than disagreement with the result of investigation.

15. The recent judgment of the Supreme Court in *Aurangzaib Alamgir v. Muhammad Sajid and others* PLD 2025 SC 53 does not enlarge section 561-A into an appeal on facts. Rather, the Supreme Court describes inherent jurisdiction as "curative" and identifies its proper field as an apparent and perceptible abuse of judicial process or circumstances in which intervention is necessary to secure the ends of justice. The Court further recognises that direct invocation may exceptionally occur where abuse is manifest, but the power remains exceptional and cannot be used merely to displace the ordinary procedural structure. That approach is consistent with *Muhammad Farooq v. Ahmed Nawaz Jagirani and others* PLD 2016 SC 55, which cautions against using inherent jurisdiction as a substitute for another remedy supplied by law.

16. Tested against those principles, the first submission of the Applicant, that the private respondents were specifically nominated and definite roles attributed to them, does not by itself demonstrate that the police were legally compelled to recommend prosecution. The distinction between an accusation and material substantiating the accusation is fundamental. In *Saad Zia v. The State and others* 2023 SCMR 1898, the Supreme Court held that mere nomination of a person in a crime report does not by itself settle his criminal involvement where the investigation does not substantiate the accusation. The Court relied in that connection upon *F.B. Ali v. The State* PLD 1975 SC 506.

17. That proposition should not be misunderstood. An Investigating Officer is not entitled to discard a complainant's nomination arbitrarily, nor may a Magistrate ignore credible material merely because the police have recommended cancellation. *Habib* makes the latter point clear. But nomination supplies the allegation to be investigated; it does not constitute conclusive proof of identity. The Applicant therefore had to demonstrate, for purposes of the present challenge, that some material capable of connecting the private respondents with the occurrence was overlooked, suppressed, irrationally discarded, or materially misread in a manner bringing the matter within the exceptional supervisory threshold. On the record recited before this Court, that has not been demonstrated.

18. The Applicant next relies upon his medical material. It is important to give that material its correct legal value. The Final Medico-Legal Report cannot simply be ignored if it objectively establishes bodily hurt; however, proof that a person was injured and proof identifying the person who caused the injury are distinct propositions. In *Naveed Asghar and 2 others v. The State* PLD 2021 SC 600 at para [31], the Supreme Court explained that medical evidence may assist in establishing the nature and location of injuries, their possible cause and related medical circumstances, but it does not, standing by itself, identify the offender.

19. The same evidentiary principle is reflected in *Muhammad Mansha v. The State* 2018 SCMR 772, where the Supreme Court reiterated that medical evidence

does not ordinarily pinpoint the identity of the culprit and operates as supporting material when read with substantive evidence connecting the accused to the occurrence. It follows that the Applicant's medical record may support his assertion that he suffered an injury, but it does not inexorably establish that Respondents Nos. 4 to 6, or any particular one of them, inflicted that injury.

20. This distinction is particularly relevant here because the record, as recited in the judgment, contains a material temporal inconsistency. The Applicant's narrative places the initial incident on 03.11.2024 and the alleged assault on the following morning, 04.11.2024, whereas the Final Medico-Legal Report records 02.11.2024 as the date of occurrence. The same discrepancy had already been noticed in the earlier proceedings under sections 22-A and 22-B of the CrPC.

21. The Court does not treat that discrepancy as a conclusive adjudication that the Applicant's allegations are false. Nor should a cancellation proceeding be converted into a miniature criminal trial upon the issue. Nevertheless, when the Applicant invokes exceptional jurisdiction to contend that the investigative conclusion was so unreasonable as to require annulment, a discrepancy between the asserted date of assault and the date appearing in the medical document upon which he principally relies is a legitimate circumstance capable of being considered cumulatively with the rest of the record. The Supreme Court's medical-evidence jurisprudence requires medical material to be read together with the substantive account rather than in isolation.

22. The Applicant also states that his wife, Mst. Lachmi, sustained injuries. The supplied record, however, notes that no medico-legal certificate or other medical document supporting injuries to Mst. Lachmi was placed before the Court. This omission does not demonstrate that she could never be examined as a witness in appropriate proceedings; it simply means that the particular contention that her own physical injuries supplied objective medical corroboration was not supported by medical material in the present record.

23. The further grievance concerns the Applicant's application dated 31.05.2025 seeking change of the Investigating Officer on grounds of alleged partiality. The Code does recognise legal mechanisms concerning transfer of investigation. In *Younas Abbas and others v. Additional Sessions Judge, Chakwal* PLD 2016 SC 581, the Supreme Court considered section 22-A(6), under which the ex-officio Justice of the Peace is entrusted with specified quasi-judicial functions concerning, inter alia, transfer of investigation and neglect, failure or excess by police authorities. The availability of such a statutory mechanism demonstrates that allegations of investigative partiality are cognisable by law, but it does not follow that the filing of an application requesting change of Investigating Officer automatically nullifies every investigative act subsequently performed.

24. In other words, a litigant has a right to invoke the mechanisms supplied by law; he does not acquire an unqualified right to have the investigation conducted by an officer of his own choice or to require that the investigator ultimately endorse his version. The controlling consideration is legality and fairness of the investigation, not satisfaction of either party with its result. *Muhammad Hanif* emphasises institutional independence of investigation, while *Younas Abbas* identifies the statutory channels through which genuine police neglect, failure or transfer issues may be addressed.

25. The record presently before this Court shows that the Applicant made the application dated 31.05.2025 and complains that it did not receive due consideration; it does not disclose, in the material recited in the judgment, any order of a competent authority actually transferring the investigation, any binding direction prohibiting the existing Investigating Officer from proceeding, or any separately established fact demonstrating that the final recommendation was the product of personal interest, extraneous influence, or deliberate suppression of identified evidence. Mere allegation of partiality, without identifiable supporting material, does not make the subsequent cancellation void.

26. A recent persuasive exposition in *Muhammad Aslam Khan v. Judicial Magistrate, etc.* 2024 MLD 1796 is useful in this context. The Lahore High Court

reiterated that a cancellation order is administrative and not to be treated as routine; the Magistrate is expected to satisfy himself as to the basis on which cancellation is requested. The judgment also recognises that questions concerning change or further investigation and the complainant's independent complaint remedy exist within their own legal channels. This reinforces the distinction between demonstrating an actual legal defect and merely asserting that a different investigator might have arrived at a different conclusion.

27. The Court accordingly cannot accept the proposition that because the Applicant named the private respondents, produced a medical record showing injury, and disputed the impartiality of the Investigating Officer, the only lawful result was a recommendation that the respondents be sent for trial. Such a proposition would effectively convert the complainant's accusation into a command to prosecute and would deprive investigation of the function assigned to it by the Code. It would also conflict with *Saad Zia, Muhammad Hanif* and the statutory scheme of sections 155 and 173.

28. Conversely, the Court does not hold that a Magistrate may accept any cancellation recommendation simply because it emanates from the police. *Habib* and *Bahadur* preclude such an approach. The Magistrate must address the material and independently satisfy himself whether concurrence is warranted. The order is administrative in legal character, but the discretion remains a public power to be exercised honestly and upon relevant considerations. *Hussain Bux Rajpar* illustrates the Sindh High Court's application of that standard.

29. In the present matter, nothing placed before this Court establishes that the learned Magistrate acted without jurisdiction, proceeded upon a legal prohibition that did not exist, treated himself as bound by the Investigating Officer, or ignored some identified objective material which, if considered, would have rendered concurrence legally impossible. The Applicant's challenge is, in substance, that the existing material should have been weighed differently and that further evidence should have been collected. Those grievances may be relevant in a properly constituted challenge to demonstrated police illegality or in an independent

complaint where the Applicant himself can place his evidence before the Magistrate, but they do not, on the record presently shown, establish an abuse of judicial process within section 561-A.

30. It is also necessary to avoid language that might prejudice any future complaint. The observations regarding absence of corroborative material, the medical-date discrepancy and the result of police investigation are made solely to determine whether this Court should annul the impugned cancellation in the present proceeding. They are not findings after recording evidence, cross-examination or trial. Neither the Applicant's allegations nor the private respondents' denials have been finally adjudicated.

31. That limited effect follows directly from *Bahadur*. A Magistrate's concurrence in cancellation is not an acquittal and does not render the Magistrate functus officio in relation to a later complaint on the same facts. The complainant remains free to institute a complaint and produce whatever lawful evidence he possesses.

32. A local precedent from this Circuit also demonstrates the practical availability of that course. In *Arbab Ibrahim Rahimoon v. SSP Umerkot & others* 2024 SHC MPK 684, this court preserved the applicant's right to institute a private complaint under section 200 before the competent Magistrate and directed that such a complaint be dealt with according to law. Similarly, in *Hussain Bux Rajpar* the Sukkur Bench, while refusing to interfere with a cancellation order, expressly preserved the remedy under section 200.

33. I, therefore, find no ground to hold that the impugned action represents an abuse of the process of a Court, an exercise without lawful authority cognisable in the present inherent jurisdiction, or such patent illegality or material irregularity as would warrant setting it aside under section 561-A. In reaching that conclusion the Court remains conscious of *Aurangzaib Alamgir*, which requires a genuine allegation of abuse of judicial process to be considered rather than rejected mechanically; that threshold has been considered here and is not met.

34. Consequently, Criminal Miscellaneous Application No. S-201 of 2025 is **dismissed**. The order dated 21.08.2025 passed by the learned Consumer Protection Court/Judicial Magistrate, Umerkot, accepting N.C. Report No. 02 of 2025 under the “C/Cancelled Class”, shall remain undisturbed. The Applicant shall remain at liberty, if so advised and subject to all applicable requirements of law including limitation where relevant, to institute a direct complaint under section 200 of the CrPC., or to avail any other remedy legally available to him.

JUDGE

APPROVED FOR REPORTING

FAISAL