
ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Criminal Miscellaneous Application No. S- 457 of 2025
(Mst. Irshadan vs The State and others)

<i>Date</i>	<i>Order with signature of Judge</i>
	1. For orders on office objection-A. 2. For hearing of main case.

17.08.2026.

Mr. Habibullah G. Ghouri, Advocate for the Applicant.
Mr. Shahbaz Ali Brohi, Advocate for the Respondents.
Mr. Sardar Ali Solangi, Deputy Prosecutor General.

Ali Haider “Ada’ J:- Mst. Irshadan has filed the instant Criminal Miscellaneous Application on the ground that she lodged FIR against Respondents No.2 to 5 for offences punishable under Sections 395, 365, 427, 454, 148 and 220, P.P.C, vide Crime No.75 of 2025. After investigation, the Investigating Officer submitted a report recommending disposal of the case under “B” Class. When the said report was placed before the learned Judicial Magistrate, Khanpur, he passed the impugned order dated 10.12.2025, whereby Respondents No.2 to 5 were discharged. However, on the same set of material, the learned Magistrate proceeded to take cognizance against some of the accused.

2. Learned counsel for the applicant submits that the impugned order suffers from illegality, as the learned Magistrate, on the one hand, accepted the report submitted by the Investigating Officer and discharged Respondents No.2 to 5, while, on the other hand, took cognizance against some of the accused on the same set of material. He contends that such approach is arbitrary and capricious and, therefore, prays for setting aside of the impugned order.

3. On the other hand, learned counsel for Respondents No.2 to 5 submits that, although the learned Magistrate passed the impugned order, the material available on record did not connect Respondents No.2 to 5 with the commission of the alleged offences and, therefore, they were rightly discharged.

4. Learned Deputy Prosecutor General does not support the impugned order and submits that it is the function of the trial Court to scrutinize the entire material available on record. He contends that the learned Magistrate was required to either accept or disagree with the report submitted by the Investigating Officer; however, in the present case, the learned Magistrate appears to have recorded findings in the manner of a trial Court. He, therefore, does not support the impugned order.

5. Heard and perused the record.

6. From the face of the record, it appears that the Investigating Officer, after conducting the investigation, disposed of the case under “B” Class against all the seven accused. However, the learned Magistrate, while considering the said report, proceeded to take cognizance against some of the accused and discharged the others on the same set of material. Such a course is not permissible in law. It is well established that a Magistrate takes cognizance of an offence and not of an accused; cognizance relates to the crime as a whole and not to individual accused. Reliance in this regard is placed upon **Khushbakhtur Rehman v. The State (1985 SCMR 1314)**.

7. In the present case, the learned Magistrate was required to consider the police report and the material collected during investigation and thereafter pass an appropriate order in accordance with law. The impugned order, however, does not reflect a proper application of the aforesaid principle and, therefore, cannot be sustained.

8. Accordingly, the instant Criminal Miscellaneous Application is allowed. The impugned order dated 10.12.2025 passed by the learned Magistrate, Khanpur, is hereby set aside, and the matter is remanded to the learned Magistrate with a direction to pass a fresh order after hearing the concerned parties and examining the material available on record, strictly in accordance with law.

JUDGE