

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc. Appln:No.S-886 of 2024

Applicants: Dr. Saddam Zia & others through Mr. Ghulam Mustafa Channa, Advocate.

RespondentNo.3: Habibullah through Mr. Faqir Rehmatullah Hisbani, Advocate.

The State: Through Ms. Sana Memon, A.P.G.

Date of hearing: **17.02.2025**

Date of Order: **26.02.2025**

O R D E R

ABDUL HAMID BHURGRI, J.-Through this Criminal Miscellaneous Application filed under Section 561-A Cr.P.C, the applicants have challenged the order dated 18.12.2024, passed by the learned Civil Judge & Judicial Magistrate-VI, Hyderabad. The impugned order was issued in response to the report submitted by the Investigating Officer under Section 173 Cr.P.C, whereby the learned Magistrate concurred with the Investigating Officer's findings and directed that the accused/applicants be sent to trial in Crime No.47 of 2024, registered under Sections 302 and 34 PPC at Police Station B-Section Latifabad, Hyderabad. Consequently, this Criminal Miscellaneous Application has been filed.

2. The brief facts of the case, as narrated in the FIR, are that the complainant is the uncle of Abdul Rehman (deceased). According to the FIR, Abdul Rehman was employed at the clinic of the applicant/accused Dr. Mehwish and had been residing at her residence for the past five years. On 16.03.2024, the complainant received a phone call from the applicant/accused Dr Saddam, informing him that Abdul Rehman had committed suicide and that his body was at Hilal-e-Ahmar Hospital. Upon receiving this information, the complainant, accompanied by his cousin Zulfiqar Ali and Abdul Malik, arrived at the hospital, where Dr Saddam stated that Abdul Rehman had taken his own life by hanging himself from a

bathroom hanger at approximately 23:30 hours on 15.03.2024. By the time they arrived, the post-mortem examination had already been conducted. Upon inquiry as to why the post-mortem was performed before their arrival, Dr Saddam failed to provide a satisfactory response. Subsequently, the complainant approached the police station and lodged an FIR, alleging that the applicants/accused Dr Mehwish, Dr Naeem, and others had murdered his nephew Abdul Rehman, who had been residing and working at Dr Mehwish's clinic and residence.

3. The learned counsel for the applicants argued that the impugned order was issued without proper judicial application of mind and in a premeditated and mechanical manner, relying on erroneous assumptions. He contended that the deceased had been residing and working at the clinic of Dr Mehwish, who is a senior gynecologist of BPS-19, while co-accused Dr Naeem and Dr Saddam are also senior government-employed doctors. Given their professional standing, they could not have committed any offence. The post-mortem report explicitly indicated that the deceased had died by suicide, as no signs of violence were found on his body. Furthermore, a second post-mortem, conducted under the order of the learned Magistrate by a medical board, corroborated the findings of the initial post-mortem, confirming that the cause of death was compression of the neck by ligature, resulting in asphyxia. The report further stated that Abdul Rehman had used his vest band (nara) to hang himself in the bathroom. Given the deceased's young age, the counsel argued that had he been murdered, there would have been evident signs of struggle or physical violence, none of which were present on his body. Both post-mortem reports are available on record. He further asserted that the complainant had maliciously lodged a false FIR with the intent to harass and coerce the accused, who are respectable medical professionals, into providing financial compensation. He emphasized that this is a case of conflicting versions, and an individual's liberty, being a fundamental right, cannot be compromised merely on the basis of

unsubstantiated allegations lacking evidentiary support. The learned trial Court, he contended, had failed to consider the absence of ocular, circumstantial, or medical evidence substantiating the alleged murder of the deceased. In conclusion, he prayed for justice. In support of his arguments he relied upon case laws reported in 2006 P.Cr.L.J 518 Karachi, 2016 PLD Sindh 300, 2006 MLD 663 Karachi, 1994 SCMR 122, 2002 SCMR 1076, Un-reported judgment of Hon'ble Supreme Court of Pakistan in Criminal Petition No.58-K of 2023, 2020 Sindh 491, 2024 SCMR 1782 and 2018 YLR 1223 Peshawar.

4. Conversely, the learned counsel for respondent No.3 supported the impugned order, maintaining that the accused had committed the offence and subsequently fabricated a narrative of suicide to cover it up, warranting further investigation. He contended that the allegations of mala fide intent against the complainant were baseless and unsubstantiated. He questioned why the applicants had not informed the legal heirs of the deceased immediately after his demise and why the body had been hastily shifted to the hospital for post-mortem without their consent. These suspicious circumstances, he argued, implicated the accused in the offence, as an innocent person had lost his life. The learned trial Court, he submitted, had rightly accepted the report under Section 173 Cr.P.C and passed the impugned order. Learned counsel contended that the charge has been framed in the subject case by the learned trial Court. Therefore, he urged that the present Criminal Miscellaneous Application, being devoid of merit, should be dismissed. Additionally, the learned Assistant Prosecutor General (A.P.G) for the State endorsed the impugned order, adopting the arguments advanced by the learned counsel for respondent No.3.

5. I have carefully considered arguments put forward by the respective counsels of both parties and learned A.P.G.

6. Through this application, the applicant has challenged the order of the Magistrate-VI, Hyderabad dated 18.12.2024, wherein

cognizance was taken under Sections 302 and 34 PPC. The offence under Section 302 PPC falls exclusively with the jurisdiction of the Court of Sessions, the matter was accordingly referred to the appropriate forum.

7. The legal principle is now firmly established that when an Investigating Officer, upon completing an inquiry, submits a positive report recommending that the accused be sent to trial, the Magistrate lacks the jurisdiction to disregard such a report by either disposing of the case or omitting a specific offence. Once the Investigating Officer, after collecting material evidence, concludes that a particular offence has been substantiated and merits judicial determination, it is not within the Magistrate's competence to set aside such findings, as doing so would require the scrutiny of witnesses. Consequently, it falls within the purview of the trial court—be it a Magistrate's or a Sessions Court—to assess the evidence during trial and determine whether a case has been established or whether sufficient material exists to justify the application of a particular statutory provision, proceeding accordingly in compliance with due process.

8. The authority of a Magistrate to diverge from the Investigating Officer's conclusions is confined solely to instances where a report seeks to dispose of the case or eliminate a specific section of the charges. In such circumstances, the Magistrate, upon examining the evidence, may independently form an opinion, diverging from that of the Investigating Officer, and take cognizance of the offence by accepting the challan or reinstating the omitted charges. The legal precedents set forth in *Jalal and 2 Others v. The State and Another* (1972 SCMR Page-516), *Habib v. The State* (1983 SCMR 370), *Abdul Hafeez Junejo v. The State* (SBLR 2010 Sindh 306), and *Amanat Ali v. 1st Civil Judge and J.M Daharki and Others* (YLR 2015 2312) affirm that a Magistrate lacks the authority to dispose of a case that the Investigating Officer has recommended for trial following due investigation.

9. The investigation of a criminal case is an exclusive domain of the police. While judicial independence is a fundamental tenet of a democratic system, the autonomy of investigative bodies is equally crucial to the concept of rule of law. Undue interference in each other's domains undermines the doctrine of separation of powers and significantly hampers the administration of justice. This principle has been unequivocally affirmed by the Hon'ble Supreme Court in the case of Muhammad Hanif v. The State (2019 SCMR 2029).

10. During the course of arguments, it emerged that charge has been framed in the subject case by the learned Additional Sessions Judge-I, Hyderabad. Since, the charge has been framed by the learned Sessions Judge, it is only appropriate that the applicants seek redressal of their grievance from the said forum, in accordance of law. Any factual determination made by this Court at this stage may inadvertently prejudice the case of either party.

11. There is no ambiguity in the settled principle that the High Court is empowered under Section 561-A Cr.P.C to quash proceedings in appropriate circumstances. However, in the criminal jurisprudence, each case is factually distinct, and exercise of such extra ordinary jurisdiction must be approached with judicial prudence and restraint.

12. In the light of above discussion, the instant Criminal Miscellaneous Application is dismissed along with pending application[s], if any. However, the applicants are at liberty to approach the trial Court and avail any remedy permissible under the law, if, they so advised.

13. Needless to mention here that observations made hereinabove are tentative in nature and would not prejudice the case of either party at the trial.

JUDGE