

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-702 of 2025

Applicant : Rizwan Ahmed s/o Jan Muhammad, Jamali
Through Mr. Ghulam Mujtaba Jakhar, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 04.12.2025
Date of order : 04.12.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— The applicant has sought relief under this Court's inherent jurisdiction challenging the impugned order dated 11.10.2025, passed by the learned Civil Judge & Judicial Magistrate/Consumer Protection Court, Sukkur, whereby the applicant was summoned and joined as an accused in a case bearing crime No.54/2025 registered at Police Station Airport Sukkur. This order is assailed on the ground that the applicant's name was initially excluded from the charge sheet (placed under Column II of section 173, Cr.P.C.) by the Investigating Officer (I.O), signifying insufficiency of evidence against him; nonetheless, without sufficient justification, the learned Magistrate exercised cognizance and subjected the applicant to judicial proceedings.

2. The factual matrix underlying the case reveals that complainant Abdul Haq Jamali lodged an FIR on 09.05.2025 wherein he accused several individuals including Jan Muhammad, Rizwan, Inamullah, Asadullah, and an unidentified person of forcibly entering his merchant shop located at Malik Chowk. It was alleged that at the instigation of accused Jan Muhammad, the assailants fired upon Muhammad Yousif, son of the complainant, inflicting multiple firearm injuries to the chest, abdomen, and other parts of his body, thereby causing his demise. Following the commission of the offense, the accused fled the scene on a motorcycle, prompting the filing of the FIR.

3. The applicant's counsel contended that according to the prosecution's initial allegations, the applicant was implicated alongside Jan Muhammad, Inamullah, and Asadullah as a direct participant in the commission of the murder through the infliction of firearm injuries. However, during the investigative process, the I.O examined the evidence and concluded the applicant's innocence, accordingly recording his name under Column II, indicating insufficient material for prosecution. Despite this clear investigative finding, the learned Magistrate, purportedly dissatisfied with the I.O's conclusion, proceeded to take cognizance of the offense against the applicant without assigning any cogent reasons, thereby undermining the principles of natural justice and procedural propriety.

4. Significantly, the complainant Abdul Haq, as the father of the deceased, together with eyewitnesses Shabbir Ahmed and Maqsood Ahmed appeared before the learned Magistrate during inquiry proceedings and submitted their affidavits categorically declaring the applicant's innocence. These same affidavits were produced before this Court, reinforcing that the allegations against the applicant were exaggerated and not borne out by credible evidence.

5. The learned Deputy Prosecutor General, while appearing on behalf of the State, candidly conceded that the complainant and eyewitnesses had expressly exonerated the applicant through sworn affidavits both before the Magistrate and this Court.

6. Upon careful examination of the entire record and considering the submissions of the parties, the Court reaffirms the well-established legal principle that while the investigating officer's opinion is not conclusive or binding upon the Court, the Court must be satisfied on the basis of cogent and credible evidence before taking cognizance against an accused. It is evident that initially, the complainant included the applicant

among those accused of causing fatal firearm injuries, possibly under emotional distress or in error, but later formally recanted those allegations and declared the applicant to be innocent.

7. Given the complainant's retraction, corroborated by eyewitnesses through affidavits exonerating the applicant, the Court finds that the learned Magistrate erred in taking cognizance against the applicant. The impugned order is thus manifestly unreasonable and prejudicial, lacking any solid rationale and running counter to the principles of fair trial and justice.

8. In the light of the above, the instant Criminal Miscellaneous Application is hereby allowed. The order dated 11.10.2025 passed by the learned Civil Judge & Judicial Magistrate/Consumer Protection Court, Sukkur insofar as it relates to taking cognizance against the applicant is set aside.

9. The application stands disposed of in the stated terms.

J U D G E