IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-524 of 2025

Applicants	:	1. Muhammad Hussain son of Belo, Shar 2. Allah Dad son of Muhammad Hussain, Shar 3. Shaman Ali son of Muhammad Hussain, Shar *Through* Mr. Mumtaz Ali Naich, Advocate
The State	:	*Through* Mr. Muhammad Raza Katohar, DPG
Date of Hearing	:	03.11.2025
Date of Order	:	13.11.2025

O R D E R

KHALID HUSSAIN SHAHANI, J.— Applicants Muhammad Hussain & 2 others have invoked the inherent jurisdiction of this court, seeking to set aside the impugned order dated 26th August, 2025 passed by the learned Civil Judge and Judicial Magistrate, Daharki, whereby the learned Magistrate took cognizance of the offence against all nominated accused persons, including the present applicants, despite the fact that the Investigation Officer had declared them innocent and placed their names in Column No.2 of the challan report. The applicants contend that the learned Magistrate's order is illegal, perverse, arbitrary, against law and equity, and liable to be set aside, with consequential discharge of the applicants from the said case.

2. The facts of this case arise from FIR No.11/2025 was registered on July 24, 2025 at Police Station Khenjhu by complainant Mst. Shahzadi following a fatal incident that occurred on July 23, 2025 stemming from an earlier dispute regarding a pathway that had resulted in a prior FIR (No. 9/2025). On the morning of July 23, 2025 at 06:20 hours, the complainant and three male relatives including brothers-in-law Akbar Shar, Obhayo Shar, and nephew Rashid Shar were engaged in agricultural work on land near Village Belo Shar when an armed group of nine persons, allegedly motivated by grievances from the earlier dispute, suddenly appeared with criminal intent, armed with guns and hatchets. According to the complaint, accused Mubarak Shar instructed the group to commit murder, upon which accused Muhammad Hussain allegedly fired a gun at the complainant's nephew Rashid Shar, striking him in the head, followed by other accused members assaulting and abusing the

complainant party while engaging in aerial firing for intimidation purposes before fleeing. Rashid Shar was immediately transported to hospital but died during transit to District Headquarters Hospital, Sukkur, and the FIR was lodged about 24 hours after the incident, following completion of postmortem examination and funeral ceremonies.

3. Mr. Naich, learned counsel appearing on behalf of the applicants/accused, submitted that the order of the learned Magistrate is bad in law and wrong on facts. The Magistrate has erred in taking cognizance against the applicants/accused who have been discharged and declared innocent by the Investigation Officer. The counsel emphasized that the learned Magistrate has failed to accord proper weight and consideration to the unexplained and inordinate delay of about 24 hours in the lodging of the FIR, which is demonstrably indicative of deliberation, consultation, and afterthought by the complainant party in fabricating the case and implicating the applicants. The learned counsel contended that the learned Magistrate has failed to take into consideration the concrete material available on record. Specifically, the counsel submitted that the learned Magistrate has overlooked the material aspect that co-accused Arbab Shar has confessed his guilt before the police, and a gun was recovered from him. The Forensic Science Laboratory examination report confirms that one spent cartridge marked as C-2 has been matched and fired from the twelve bore SBBL shotgun recovered from co-accused Arbab, thereby establishing that the deceased Rashid was killed by co-accused Arbab, not by Muhammad Hussain as alleged. The learned counsel further submitted that the learned Magistrate has deliberately overlooked that two other empties, marked as C-1 and C-3, recovered by the Investigation Officer from the place of occurrence, have not been matched with any weapon and bear dissimilar ballistic characteristics. This fact is conclusive evidence that the fatal shot was not fired by Muhammad Hussain and that there is no reliable evidence connecting the applicants to the commission of the murder. The learned advocate submitted that the learned Magistrate has deliberately ignored the version of co-accused Arbab Shar, which version is squarely corroborated by the report of the forensic expert from the

Forensic Science Laboratory, Larkana. The confession of Arbab coupled with the ballistic matching of his weapon with one of the recovered empties clearly indicates that Arbab is the actual perpetrator of the murder, not the present applicants. The counsel contended that the learned Magistrate has failed to apply judicial mind and has given undue weight to the bald statement of the complainant in the form of the FIR without corroboration from independent and objective sources. The mere allegations contained in a FIR, without proper substantiation through investigation, cannot constitute a basis for taking cognizance against accused persons. The learned advocate further submitted that the learned Magistrate has failed to accord proper weight to the fact that the applicants/accused were not present at the spot and that statements of six independent persons of different tribes have been recorded by the Investigation Officer, all supporting the plea of alibi of the applicants. The learned Magistrate has dismissed this crucial evidence out of hand without proper consideration. The counsel emphasized that the learned Magistrate has completely failed to consider the earlier FIRs against each other, specifically FIR No.9/2025 registered by the complainant party and FIR No.10/2025, which is a counter-version registered by the opposing party. A critical observation is that in FIR No.9/2025, the applicants/accused are neither accused nor are they mentioned as complainants or witnesses. Similarly, in FIR No.10/2025, the complainant is not even mentioned as a party. This squarely suggests that the applicants/accused have been falsely implicated in the present case, possibly because they are elders of the tribe in their village, and the complainant party has attempted to implicate them to enhance their position in the existing dispute. The learned advocate submitted that there is a deficiency of material to connect the applicants/accused with the commission of the alleged offence. The mere bald statements of the complainant in the form of the FIR and the Section 161 Cr.P.C statements of prosecution witnesses are not sufficient to prove the guilt of the applicants/accused without corroboration from objective sources. The counsel further contended that the report of the Investigation Officer and the ballistic reports are corroborated with the version of co-accused Arbab Shar regarding the commission of the offence. The I.O., after careful investigation, found

no credible evidence against the applicants and accordingly placed their names in Column No.2 of the challan. This professional assessment of the Investigation Officer, based on concrete investigation, should have been respected by the learned Magistrate. The learned advocate submitted that the learned Magistrate has passed the impugned order without proper attention and due concentration. The Magistrate has not applied judicial mind while passing the order and has given erroneous assumptions and wrong presumptions. The Magistrate has misconceived the facts and misconstrued the law applicable to the case. The counsel further submitted that the learned Magistrate has misapplied the law in relation to the facts and material available on record. The order is in derogation of the norms of criminal justice and fair play. The impugned order is improper, unjust, without adequate reasoning, and not sustainable under law. The Magistrate has misread, misunderstood, and misconcluded the inferences in respect of the material available on record. The learned counsel argued that the applicants/accused are law-abiding citizens with no criminal antecedents. They are not connected in any manner with the commission of the alleged offence. To subject them to trial on the basis of weak and uncorroborated allegations would amount to harassment and abuse of process. In conclusion, the learned counsel prayed for the setting aside of the impugned order and for the discharge of the applicants/accused from the alleged case, arguing that finding no other prompt and efficacious remedy, the applicants had been constrained to approach this Court under Section 561-A Cr.P.C.

4. The learned counsel for the complainant and learned DPG for the State opposed the miscellaneous application, advancing that the complainant contended that the applicants/accused are clearly and specifically nominated in the FIR with distinct and active roles. The accusation against Muhammad Hussain involves the firing of a fatal shot upon the deceased's head, which is supported by medical evidence establishing that the head injury was sufficient to cause death. The other applicants, Allah Dad and Shaman Ali, are nominated as being armed with hatchets and as having shared the common object of committing murder with the other accused members. The learned counsel submitted that the applicants/accused are

nominated in the FIR and that the same witnesses who implicate them in their statements under Section 161 Cr.P.C. are credible and reliable witnesses. While it is true that these witnesses are close relatives of the complainant, their relationship does not render their testimony unreliable; rather, their proximity to the facts makes them eyewitnesses to the commission of the offence. The counsel submitted that the delay in lodging the FIR has been adequately explained by the complainant. The injured party was rushed to the hospital for emergency medical treatment. When Rashid succumbed to his injuries, the complainant party had to attend to the postmortem examination, arrange for the custody of the deceased, and perform funeral rites in accordance with Islamic law. These are natural and unavoidable actions that any bereaved family member would undertake. The explanation for the delay is reasonable and does not cast doubt on the authenticity of the FIR. The learned counsel further submitted that the opinion of the Investigation Officer regarding the innocence of the applicants/accused is merely the I.O.'s opinion and does not carry binding force upon the Court. The learned Magistrate, in the exercise of independent judicial judgment, carefully scrutinized the entire investigative record and disagreed with the I.O.'s opinion. The Magistrate took cognizance against all the accused, including the present applicants, based on the material collected during investigation and the statements of eyewitnesses. This judicial determination overrides the I.O.'s exoneration and demonstrates that sufficient prima facie material exists against the applicants. The counsel argued that although co-accused Arbab has made a statement before the police confessing to his involvement, such statement before police custody has limited evidentiary value. Moreover, the fact that Arbab has confessed does not exonerate the present applicants, as the crime involved multiple assailants and coordinated action. The presence of multiple weapons and the recovery of multiple spent cartridges supports the theory that multiple individuals fired shots at the scene. The fact that one cartridge matched Arbab's weapon does not mean that he alone was responsible for the fatal shot. The eyewitness accounts clearly attribute the fatal firearm injury to Muhammad Hussain. The learned counsel submitted that the allegation involves a heinous offence of

murder punishable under Section 302 PPC accompanied by sections relating to instigation, criminal intimidation, wrongful restraint, rioting, and common intention. The magnitude and brutality of the attack, wherein nine armed individuals appeared with specific intent, demonstrates a premeditated and organized crime. Such gravity of the charge clearly calls for progression to trial The counsel submitted that the investigation is ongoing, and the weapons allegedly used by the present applicants have not yet been recovered. This outstanding investigative matter necessitates the production of the applicants before the trial court, where the complete evidence can be properly evaluated and where the defence can be rigorously tested through cross-examination of witnesses. The learned counsel argued that while plea of alibi is recognized as a defence available to an accused, it cannot be decided at the stage of cognizance by the Magistrate. The assessment of alibi requires a full examination of the evidence at trial. Statements of defence witnesses recorded under Section 161 Cr.P.C. do not constitute admissible evidence at the investigation or cognizance stage and cannot be relied upon to determine the veracity of the alibi. The learned counsel further submitted that the applicants have failed to demonstrate any mala fide or ulterior motive on the part of the investigating authorities or the complainant. While there exists admitted enmity arising from the earlier pathways dispute, mere enmity without more does not justify interference with the legitimate exercise of judicial jurisdiction by the Magistrate to take cognizance based on material evidence. In conclusion, the learned counsel for the complainant prayed for the dismissal of the miscellaneous application and for maintaining the order of cognizance passed by the learned Magistrate.

5. Upon careful consideration of the submissions made by the learned counsel for the applicants/accused, the learned counsel for the complainant, the case materials, and the impugned order of the learned Magistrate, the following observations emerge:

6. The jurisdiction conferred upon this Court under Section 561-A Cr.P.C is indeed extraordinary. The Court can exercise this power to prevent abuse of process, to prevent the ends of justice from being thwarted, or where no other

adequate remedy is available. However, the exercise of this jurisdiction is not to be undertaken lightly, and the Court must be satisfied that there is a clear case of abuse of process or that the Magistrate has acted without or in gross excess of jurisdiction.

7. The first question to be addressed is whether the learned Magistrate has exceeded his jurisdiction in taking cognizance despite the I.O.'s recommendation to place the applicants in Column No.2 of the challan. This question must be answered in the negative. It is well-settled law that the opinion of the Investigation Officer regarding the guilt or innocence of an accused is merely opinion and does not bind the Magistrate. The Magistrate is required to conduct an independent examination of the record and form his own opinion regarding whether sufficient prima facie material exists to proceed with cognizance.

8. In this case, the learned Magistrate has clearly applied his judicial mind. The Magistrate has examined the eyewitness accounts recorded under Section 161 Cr.P.C, has considered the medical evidence establishing the cause of death, and has evaluated the role attributed to each accused. Upon this examination, the Magistrate has found that sufficient material exists to proceed against all accused, including the present applicants. This is a reasonable exercise of judicial discretion and does not constitute abuse of process.

9. The contention regarding the delay in lodging the FIR must be examined. While delay of 24 hours in lodging a FIR can sometimes raise suspicions, in the present case, the explanation provided is reasonable and adequately supported by the circumstances. The complainant party's attendance to the injured, their efforts to secure medical treatment, their grief upon the death of their relative, and their obligation to perform funeral rites are all natural and unavoidable circumstances that would delay the lodging of a FIR. The courts have consistently recognized that such delays in rural settings and in cases of sudden death are not uncommon and do not necessarily indicate false implication.

10. Regarding the ballistic evidence and the confession of co-accused Arbab, it must be noted that while the recovered weapon from Arbab matched one of the three spent cartridges, this does not conclusively establish that Arbab alone

was responsible for the murder. In cases involving multiple armed assailants, it is not uncommon for multiple individuals to discharge firearms at the scene. The fact that one cartridge matched Arbab's weapon does not preclude the possibility that another individual fired the fatal shot. The eyewitness account specifically attributes the fatal shot to Muhammad Hussain, and the postmortem report confirms that the cause of death was a head injury inflicted by a firearm. The ballistic evidence regarding the two unmatched cartridges (C-1 and C-3) does not exclude the culpability of other accused.

11. The allegation that co-accused Arbab has confessed and that this confession is corroborated by ballistic evidence does not, in law, amount to exoneration of the present applicants. The confession of one accused cannot serve as automatic acquittal of another accused. Each accused must be judged on the basis of evidence directly implicating him. In this case, the eyewitness accounts clearly attribute the firing of the fatal shot to Muhammad Hussain. The presence of Allah Dad and Shaman Ali at the scene, armed with hatchets and as members of the unlawful assembly, clearly establishes their participation in furtherance of the common object of committing murder.

12. The plea of alibi advanced by the applicants, supported by statements of defence witnesses under Section 161 Cr.P.C., cannot be given determinative weight at the stage of cognizance. It is well-established law that the plea of alibi is the weakest form of defence and must be proved through cogent, credible, and convincing evidence at trial. Statements of defence witnesses recorded under Section 161 Cr.P.C are investigative aids and do not constitute admissible evidence at the cognizance stage. The decision regarding the veracity of the alibi must await the trial, where the evidence can be properly evaluated and where witnesses can be subjected to rigorous cross-examination.

13. The reference made by the applicants to FIRs No.9/2025 and 10/2025 does not assist their case. These FIRs relate to a different incident and reflect the existing dispute between the parties. The fact that the applicants were not mentioned in one or both of these FIRs does not suggest that they have been falsely implicated

in the present case. The present FIR is based on distinct allegations regarding a distinct incident occurring on 23rd July, 2025. The involvement of multiple FIRs arising from the same underlying enmity does not constitute grounds for discharging the accused where specific allegations and corroborating evidence exist regarding the commission of the present offence.

14. The argument that the applicants are elders of the tribe and have been falsely implicated to enhance the position of the complainant party is speculative and is not supported by concrete evidence. The applicants have failed to demonstrate any circumstance suggesting that the legal process is being weaponized against them for extraneous purposes. The mere assertion of enmity, without more, does not constitute proof of mala fide on the part of the investigating authorities or the complainant.

15. The learned Magistrate has considered the opinion of the I.O., has noted that the I.O. placed the applicants in Column No. 2, but has disagreed with this opinion after independent examination of the record. The Magistrate has clearly articulated the reasons for disagreement, noting that the eyewitness accounts, medical evidence, and the significance of the charge warrant proceeding against all accused. This articulation of reasons demonstrates that the Magistrate has applied judicial mind and has not acted arbitrarily or in excess of jurisdiction.

16. Regarding the contention that the learned Magistrate has failed to consider concrete material, the record demonstrates otherwise. The Magistrate has considered the statements of eyewitnesses, the postmortem report, the FIR content, the recovery of physical evidence, and the forensic reports. The Magistrate has also considered the submissions of the learned counsel for the accused and the opinion of the Investigation Officer. Having considered all this material, the Magistrate has formed the opinion that sufficient prima facie case exists to proceed against all accused.

17. The power conferred under Section 561-A Cr.P.C. is not intended to serve as a substitute for the appellate remedy or to be used to second-guess the careful exercise of judicial discretion by the Magistrate. Where the Magistrate has

applied judicial mind, has considered the relevant material, and has articulated reasons for his decision, the Court should not readily interfere. The present case does not present circumstances of such gravity or peculiarity as would warrant interference with the Magistrate's decision. It is noteworthy that the offence in question is murder under Section 302 PPC, a serious and heinous offence. The allegation is supported by eyewitness accounts, by medical evidence confirming the cause of death, and by the recovery of physical evidence from the scene. The applicants are specifically nominated with roles attributed to each. These circumstances collectively justify the Magistrate's decision to proceed with cognizance. To interfere with the Magistrate's order at this stage would amount to truncating the criminal process prematurely and would undermine the right of the State to prosecute alleged crimes based on prima facie evidence.

18. The applicants have sought refuge in technical objections and in attempts to re-evaluate evidence at a stage where the Court is only required to conduct a tentative assessment. The task of the Magistrate at the cognizance stage is precisely to conduct such a tentative assessment and to determine whether prima facie case exists. Where such a determination has been made by the Magistrate after due consideration, this Court should not interfere merely because the defence has raised alternative theories or has presented evidence suggesting a different version of events.

19. Upon careful consideration of all submissions and materials, this Court is of the candid view that the learned Magistrate has exercised his jurisdiction properly and has not acted arbitrarily or in gross excess of jurisdiction. The learned Magistrate has conducted an independent examination of the investigative record, has considered the opinions and submissions of all parties, and has arrived at a reasoned conclusion that sufficient prima facie material exists to proceed against all accused, including the present applicants. The order of cognizance is based on concrete material and reflects a proper exercise of judicial discretion. The applicants have failed to demonstrate any circumstance suggesting abuse of process or use of criminal procedure for extraneous purposes. The allegations are specific, the

evidence is corroborative, and the involvement of the applicants is clearly attributed by eyewitnesses. The further investigation required in the case, including the recovery of weapons allegedly used by the applicants, necessitates their production before the trial court. Accordingly, the miscellaneous application filed under Section 561-A Cr.P.C on behalf of Muhammad Hussain, Allah Dad, and Shaman Ali is hereby dismissed. The impugned order dated 26th August, 2025 passed by the learned Civil Judge and Judicial Magistrate, Daharki, taking cognizance against the applicants/accused, is hereby upheld and maintained. The applicants are directed to appear before the trial court as per the orders of the trial court, or face such consequences as permitted by law for non-appearance. The observations made herein are limited to the disposal of this miscellaneous application and shall not prejudice the trial or the ultimate determination of guilt or innocence of the applicants. The trial court shall conduct the trial on merits, and the applicants shall have full opportunity to raise such defences and to lead such evidence as they deem fit.

J U D G E