

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Crl. Misc. Application No.S-395 of 2024

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Applicants	Zaid Ashraf Rana & 3 others through M/s Asif Ali Khawaja & Ali Bux Talpur, Advocates.
Respondents	The State & Abdul Wahid through Mr. Neel Parkash, Deputy Prosecutor General (Sindh).
Date of hearing	<u>16.12.2025</u>
Date of Order	<u>24.12.2025</u> <><><> <u>ORDER</u>

Shamsuddin Abbasi, J.:- Through this Criminal Miscellaneous Application, the applicants, Zaid Ashraf Raza son of Muhammad Ashraf, Kamran Hussain Soomro son of Zameer Hussain Soomro, Essa Khan son of Muhammad Ali and Muhammad Saeed son of Ghulam Jilani, have assailed the validity of the order dated 25.02.2023, penned down by the learned Civil Judge & Judicial Magistrate-II, Kunri, District Mirpurkhas, whereby the learned Magistrate while declining the report submitted by the Investigating Officer recommending disposal of the case under "C" class took cognizance against the applicants and directed the issuance of Non-bailable warrants (NBWs) against them.

2. Anus Ghaffar, aged about 24 years, and Saad Ghaffar, aged about 22 years, both sons of Abdul Ghaffar, alleged to be drowned in Nabisar Charcoal Dam on 19.12.2022 and this information was conveyed to respondent No.2/complainant Abdul Wahid, who accompanied by Suhail Irshad and Nauman Ghaffar, proceeded to the site where Zohaib informed him that due to a slip of his foot he fell into the Dam and in an attempt to rescue him, Anus Ghaffar and Saad Ghaffar jumped into the Dam, however, Zohaib came out safely but both Anus Ghaffar and Saad Ghaffar drowned and their bodies were subsequently recovered from the Dam. According to the complainant, the deaths occurred due to the negligence of the administration as no safety measures including safety wires or watchmen were in place, therefore, he has lodged FIR No.04 of 2023 at P.S. Nabisar Road, District Mirpurkhas nominating the applicants for commission of offences under Sections 322 and 34, PPC.

3. Pursuant to the registration of the FIR, the investigation was followed and in due course the Investigating Officer submitted a final report under Section 173, Cr.P.C. recommending disposal of the case under "C" class. Upon receipt of the said report, the learned Magistrate instead accepting the report took cognizance and issued NBWs against the applicants, hence this Criminal Misc. Application.

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4. It is contended on behalf of the applicants that they are innocent and have been falsely implicated in this case as otherwise they have nothing to do with the alleged offence and have been made victim of the circumstances. It is next submitted that the applicants are employees of SECMCs contractors and Thar Power Company Limited having no nexus with the Administration which could be held responsible for negligence. It is also submitted that the impugned order suffers from misreading of facts and law and the incident is purely accidental in nature as both deceased at their own jumped into the Dam in an attempt to rescue their relative who slipped into the Dam, unfortunately resulting in their drowning. Learned counsel contends that no material is available on record to suggest that the applicants had any direct role, *mens rea* or criminal negligence so as to attract penal liability. It is argued that mere absence of safety arrangements, even if assumed, does not automatically constitute a criminal offence unless a specific duty and conscious negligence are established, which is missing in the present case. It is further submitted that the Investigating Officer after thorough investigation rightly recommended disposal of the case under "C" class concluding that no criminal offence is made out against the applicants and he learned Magistrate while rejecting the said report failed to assign cogent reasons and prematurely took cognizance thereby exceeding the settled parameters of law. The learned counsel while summing up his submissions maintains that the negligence, if any, pertains to administrative or civil negligence for which criminal prosecution is not sustainable in the eyes of law. He, therefore, prayed the impugned order taking cognizance may be set aside and the case may be disposed of under "C" class as recommended by the investigating officer.

5. The learned DPG, on the other hand, has controverted the submissions of learned counsel for the applicants and submitted that the applicants being responsible officers/officials connected with the management of the Dam failed to discharge their legal duties to ensure

safety of the public, which directly resulted in the death of two persons, which attracts criminal liability under the relevant provisions of law.

6. I have given my anxious consideration to the submissions of both the sides and have carefully perused the entire record available before me with their able assistance.

7. A bare perusal of the record reveals that the unfortunate incident occurred when Zohaib accidentally slipped into Nabisar Charcoal Dam, whereupon the deceased Anus Ghaffar and Saad Ghaffar voluntarily jumped into the Dam in an attempt to rescue him while Zohaib managed to come out safely, however, both the deceased drowned and their bodies were later recovered. These facts, even if taken at their face value, clearly point towards a tragic accident rather than a deliberate or culpable act on the part of the applicants.

8. The complainant's case is premised on alleged negligence of the administration owing to the absence of safety measures, however, criminal liability founded on negligence requires proof of a specific legal duty, coupled with a direct proximate and efficient cause between the omission and the resultant death. Mere allegations of administrative lapses, without establishing *mens rea*, criminal rashness or gross negligence do not constitute an offence under the penal law. Such lapses, at best, may give rise to civil or administrative consequences. The Hon'ble Supreme Court has consistently held that for fastening criminal liability on the basis of negligence the act or omission must be of such a degree as to show a reckless disregard for human life and that every act of negligence does not *ipso facto* attract penal consequences. It is also noteworthy that the complainant is the uncle of the deceased and none of the legal heirs such as father, mother or brother of the deceased, have come forward to lodge the FIR. This aspect of the matter has further strengthened the case of the applicants with regard to their innocence.

9. The Investigating Officer after conducting a thorough investigation reached the conclusion that no criminal offence is made out against the applicants and accordingly recommended disposal of the case under "C" class, however, the learned Magistrate while declining the such a report took cognizance of the offence and ordered issuance of NBWs against the applicants, however, a careful examination of the impugned order reveals

that the learned Magistrate has not pointed out any material illegality, perversity or omission in the investigation warranting such deviation from the police report. It is a well settled that while the Court is not bound by the opinion of the Investigating Officer rejection of a cancellation report must be supported by sound, cogent and plausible reasons, based on material available on record. Cognizance cannot be taken merely on sympathetic considerations arising out of a tragic incident nor can criminal proceedings be sued as a tool to assign blame in the absence of legal ingredients of an offence. Therefore, the registration of FIR against the applicants appears to be untenable under criminal law as there is no material indicating that they had *mens rea* or acted in a manner warranting criminal prosecution. The proper course of action, if any, would be administrative or civil proceedings against the authorities responsible for the safety and management of the Dam. The issuance of NBWs in the circumstances of the case appears to be unwarranted particularly when no *prima facie* criminal liability is disclosed against the applicants.

10. In view of the analysis and combined study of the entire record with such care and caution, I am of the humble view that that the impugned order dated 25.02.2023, passed by the learned Civil Judge & Judicial Magistrate-II, Kunri, District Mirpurkhas, suffers from non-application of conscious judicial mind and cannot be sustained in law. The incident in question is a case of accidental drowning and the record does not justify criminal prosecution of the applicants more particularly when they are working with SECMC and Thar Power Company Limited. The impugned order, is, therefore set-aside and the report submitted by the Investigating Officer recommending disposal of the case under "C" class is accepted. Needless to observe that the observations made hereinabove are confined only to the instant proceedings and shall not prejudice the rights of the parties in any other proceedings or remedy, if any, initiated or available to them under the law.

11. This Criminal Misc. Application No.S-395 of 2024 stands allowed in the foregoing terms.

JUDGE