

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No.304 of 2025

Applicant : Musawer Ahmed son of Israr Ahmed
Through Muhammad Rehman Ghous, Advocate.

Respondent No.1 : The State
Through Mr. M. Mohsin Mangi, APG Sindh

Respondent No.2 : Mst. Nasreen Bano
M/s Muhammad Jibran Nasir, Daniyal
Muhammad Hussain and Rana Daniyal Akram,
Advocates

Date of hearing : 19.05.2025

Date of order : 30.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J:- Through this Criminal Miscellaneous Application, applicant seeks to assail and set aside the order dated 21.03.2025 passed by the learned Judicial Magistrate-V, Karachi South, in Criminal Case No. Nil/2025 emanating from FIR No.555/2024 registered at P.S. Darakhshan. By the impugned order, the learned Magistrate took cognizance of offence under Sections 302/34 PPC read with Sections 9 and 16 of the Control of Narcotics Substances Act, 1997 (CNS Act), and directed the forwarding of the case to the Honourable Court of Sessions for trial.

2. The genesis of the instant matter lies in FIR No. 555/2024, lodged after directions from a learned Court on an application under section 22-A Cr.P.C. The Investigating Officer (IO) eventually submitted a final challan under Section 319/34 PPC. However, the District Public Prosecutor for the State, through a separate scrutiny note dated 23.12.2024, opined that Section 302/34 PPC read with Sections 9 and 16 of the CNS Act, 1997, were attracted, primarily in view of the chemical report indicating the presence of Methamphetamine, Cannabis, and Caffeine in the deceased's body, and the final cause of death being "Cardio-pulmonary arrest Secondary to chronic Ischemic heart disease, precipitated by Cannabis/methamphetamine /caffeine/Nicotine overdose." The learned Magistrate, after hearing all parties and perusing the record, passed the impugned order, taking cognizance under the graver sections as proposed by the DPP and forwarding the case for trial to the Sessions Court, holding that the IO had "clearly misapplied the

Sections in challan" due to the incompatibility of Section 319 PPC with Section 34 PPC.

3. Learned counsel for the applicant vehemently contended that the impugned order is void and against the settled principles of law. It was argued that the learned Magistrate lacked jurisdiction to add or delete sections in a positive report submitted by the IO under Section 173 Cr.P.C., asserting that such power is reserved for the trial court at the stage of framing charge under Sections 221 or 227 Cr.P.C. Reliance was placed on various reported judgments, including *Muhammad Ajmal and others v. The State and others* (2018 SCMR 141), *Jalal and 2 others v The State and another* (1972 SCMR 516), and *Muhammad Hanif vs. The State* (2019 SCMR 2029), to underscore the limited scope of a Magistrate's interference in a positive police report. It was further submitted that the chemical reports, when read in their entirety, did not unequivocally support the addition of narcotics-related offences, and that the delay in lodging the FIR and conducting the post-mortem indicated malafide on the part of the complainant.

4. Conversely, learned counsel for the complainant/Respondent No. 2 supported the impugned order, submitting that the order of the learned Magistrate is a speaking one, reflecting due application of judicial mind. He contended that the statements of prosecution witnesses (P.Ws) along with the medical report were duly submitted and considered. It was further argued that Section 9 of the Sindh Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2009, denotes the Public Prosecutor's scrutiny note as an essential part of the process after investigation, and that the present application under Section 561-A Cr.P.C. is not maintainable in this matter. He emphasized that Section 265-D Cr.P.C. is available with the trial court to examine the record before framing of charge. Learned counsel also highlighted that prior to this, Constitutional Petition No. D-294 of 2025 was filed, and as per the order dated 07-03-2025, the learned Judicial Magistrate was specifically directed to decide the final report submitted by the IO by scanning the relevant material, including the scrutiny report submitted by the DPP, and in the light of Section 9 of the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009, within two weeks. Hence, in the present scenario, the present application under Section 561-A Cr.P.C. is not maintainable. Learned counsel for Respondent No. 2 further pointed out that Para No. 5 of the impugned order clearly states that as per the FIR, it has

been mentioned that the deceased was given poisonous/intoxicant substance by accused persons in food/coffee, a fact also supported by the final cause of death certificate issued by JPMC Karachi, which *prima facie* shows the unnatural death of the deceased. This cause of death was further authenticated by the chemical report dated 13-08-2023, wherein metabolites of methamphetamine were detected. Additionally, he argued that the CCTV Reports are supporting in nature and Call Detail Records (CDR) show calls by the accused persons to the mother of the deceased. He relied upon the case laws cited at 2012 P.Cr.L.J 1823 (Lahore), 2013 P.Cr.L.J 1411, and 2010 YLR 470.

5. The learned Assistant Prosecutor General (APG) for the State supported the arguments of the learned advocate for Respondent No. 2 and further added that the case is at the charge stage, and it is for the Sessions Court to decide under Section 265-D Cr.P.C., as held in the case of 2012 P.Cr.L.J 1823.

6. Adverting to the first controversy pertaining to the alteration of Section 319, PPC to Section 302, PPC read with Sections 9 and 15 of the Control of Narcotic Substances Act, 1997, on the directions of the District Public Prosecutor, the record reveals that upon conclusion of investigation, the Investigating Officer submitted his report under Section 173, Cr.P.C., proposing prosecution of the accused under Sections 319/34, PPC. The said report was forwarded to the District Public Prosecutor for scrutiny in accordance with law. Upon examination of the material collected during investigation, the Prosecutor, through his Scrutiny Note dated 23.12.2024, rendered his opinion in the following terms:—

"In light of the facts and circumstances of the case I am of the of that the matter does not fall under Section 319 PPC and that it mas pr under Section 302/34 of the PPC, along with the relevant sections of the Narcotics Substance Act, 1997. The absconding accused should be apprehended, and further investigation should focus on establishing the chain of events leading to the administration of the banned substances to the deceased.

In view of the facts, evidence, and lapses highlighted during the investigation, it is evident that the death of Zain Abbasi was not accidental hut a result of intentional administration of banned and harmful substances leading by a fatal overdose. The forensic reports substantiate the presence of methamphetamine and cannabis in his body, alongside further corroborating the allegation of deliberate drugging. Despite the flawed

conclusion of investigating officer, the chain of events and evidence strongly suggest a premeditated act involving the accused, Musawir Ahmed and others in concert. The motive appears to be certain financial dealings gone wrong between the deceased Zain Abbasi and Accused Musawir Ahmed Tunio as not only alleged by family of deceased but certain financial agreements between the deceased and Musawir Ahmed Tunio are also available on record to substantiate same.

In view of the evidence and investigative lapses highlighted it evident that the death of Zain Abbasi was caused by the intentional administration of banned and harmful substances, leading to a fatal overdose. The forensic reports confirm the presence of methamphetamine, cannabis, and caffeine in the body of the deceased, strongly indicating deliberate drugging. Despite the flawed of investigating officer, the available evidence and chain of events suggest premeditated involvement of the accused, Musawir Ahmed Tunio, and others, particularly in light of the financial disputes between the deceased and the primary accused. Given the gravity of the offense and the substantial forensic and circumstantial evidence, the investigation officer is strongly advised to revise and amend the Final Charge. The report may be submitted under Section 302-34 PPC, read with the relevant provisions of the Control of Narcotics Substances Act 190 and Section 512 Cr.P.C., for the evaluation of the Honorable Court Furthermore, the absconding accused must be apprehended, and further investigation may be aim to solidify the motive and method of administering the banned substances. It is necessary that the matter be presented nee the honorable court for a judicial verdict to ensure justice is served.

7. Before examining the issue it would be beneficial to reproduce section 9 of the Ordinance 2006, which places the responsibility of Prosecution on behalf of the Government upon the Prosecutors:--

9. Conduct of Prosecution---(1) The prosecutors shall be responsible for the conduct of prosecution on behalf of Government.

(2) The Prosecutor-General or if so authorized by him, an Additional Prosecutor General shall distribute work to the Prosecutors in the Supreme Court, the High Court, the Federal Shariat Court or a Special Court established under any law for the time being in force.

(3) A District Public Prosecutor shall distribute work to the Prosecutors with respect to the Courts of Sessions and Courts of Magistrate within a District.

(4) A port report under section 173 of the Code including a report of cancellation of the first information report or a request for discharge of a suspect or an accused shall be submitted to a Court through the Prosecutor appointed under this Ordinance.

(5) The Prosecutor shall scrutinize the report or the request and may--

(a) return the same within three days to the Officer Incharge of Police Station or investigation officer, as the case may be, if he finds the same to be defective, for removal of such defects as may be identified by him; or

(b) if it is fit for submission, file it before the Court of competent jurisdiction.

(6) On receipt of an interim police report under section 173 of the Code, the Prosecutor shall---

(a) Examine the reasons assigned for the delay in the completion of investigation and if he considers the reasons compelling, request the Court for the postponement of trial and in case investigation is not completed within reasonable time, request the Court for commencement of trial; and

(b) In cases where reasons assigned for delay in the completion of investigation are not compelling, request the Court for commencement of trial on the basis of the evidence available on record.

(7) Prosecutor may submit to the Court results of his scrutiny in writing as to the available evidence and applicability of offence against all or any of the accused as per facts and circumstances of the case.

8. A careful examination of the relevant statutory provision reveals that the responsibility for conducting prosecution on behalf of the State squarely rests with the Prosecutors. It is a legal requirement that every report under Section 173, Cr.P.C, whether it pertains to the cancellation of an FIR, discharge of an accused, or otherwise, must be submitted to the Court only after it has undergone scrutiny by the Public Prosecutor. In terms of clause (a) of subsection (5), the Prosecutor is vested with the authority to return such report to the Officer Incharge of the Police Station or the Investigating Officer for rectification, should any defect be identified therein.

9. Furthermore, sub-section (7) stipulates that the result of such prosecutorial scrutiny may be placed before the Court as an expert opinion, which, while not binding, serves to assist the Court in its consideration of the matter. The Prosecutor, by virtue of expertise and experience, is better positioned to evaluate the investigative material and determine the appropriate provision of law under which an accused may be prosecuted. In the present case, the involvement of police officials as accused persons is a material fact that cannot be overlooked. In this context, the opinion rendered by the District Public Prosecutor appears to be entirely in conformity with the mandate of law. The acceptance of such opinion by the Investigating Officer and the consequent alteration of the applicable penal provision cannot be faulted. To hold otherwise would effectively negate the purpose and utility of Section 9 of the Prosecutors Ordinance, 2006. It must also be borne in mind

that the ultimate determination of the legal provisions under which an accused is to be tried remains within the exclusive domain of the Court.

10. Moreover, in the instant case, even the initially proposed offences were triable by a Court of Session. Thus, no tangible prejudice has been shown to have been caused to the accused as a result of the alteration.

11. With regard to the second contention pertaining to the alleged lack of application of judicial mind by the learned Magistrate while transmitting the case to the Court of Session for trial, it is to be noted at the outset that there is no dispute concerning the well-settled principle that where the Investigating Officer submits a report under Sections 169 or 173, Cr.P.C., proposing cancellation of the First Information Report, whether on the ground of it being false, unsupported by evidence, or for any other reason, the Magistrate seized of the matter is obliged to examine the report in light of the material collected during the investigation. In such circumstances, it is incumbent upon the Magistrate to render a reasoned and speaking order demonstrating judicious application of mind, irrespective of whether he concurs with or disagrees with the conclusion reached by the Investigating Officer. The rationale for this requirement is rooted in fairness and transparency, as such an order either endorses the termination of proceedings or, conversely, reflects the Magistrate's decision to take cognizance despite the recommendation for cancellation. In either scenario, the parties to the proceedings, whether the complainant or the accused, are entitled to be apprised of the reasons that weighed with the Magistrate in arriving at such a decision.

12. However, in the considered view of this Court, the aforementioned principle is not attracted in cases where, upon conclusion of the investigation, the Investigating Officer, relying on the evidence collected, submits a report under Section 173 read with Section 170, Cr.P.C., recommending that the accused be sent up for trial. In such cases, the Magistrate is not vested with the authority to reject the report or to conduct a further evaluation akin to a preliminary inquiry. Rather, the Magistrate is legally obliged to act in accordance with law by either issuing process or transmitting the case to the Court of Session, depending on the nature of the offence alleged. This legal position is fortified by the dictum laid down by the Hon'ble Supreme Court in *Said Jalal and 2 others v. The State and another* (1972 SCMR 516),

wherein it was held that upon receipt of a challan under Section 173, Cr.P.C., proposing trial, the Magistrate is under a statutory duty to take cognizance and proceed in accordance with law. Similar observations were reiterated in *Habib v. The State* (1983 SCMR 370), wherein the apex Court emphasized the procedural obligations of the Magistrate in such circumstances. More so the accused persons neither become remediless in either case i.e. where the Magistrate upon taken cognizance of an offence proceeds to try it or send it up to the Court of Session for its trial nor loses the presumption of innocence merely for the reason of being sent up for trial as observed in the case of *Syed Saeed Muhammad Shah and another v. The State* (1993 SCMR 550).

13. Now back, the contention of the applicant revolves around the powers of a Judicial Magistrate vis-à-vis a positive police report under Section 173 Cr.P.C. While it is a settled principle that a Magistrate cannot disagree with a positive report to the extent of disposing of a case or deleting sections without cogent reasons and material, the instant case presents a different scenario. The learned Magistrate, in the impugned order, has clearly articulated that there is "no clear embargo upon a Magistrate to add section" when supported by the material on record. This distinction is crucial. The Magistrate's role at the cognizance stage is not merely ministerial but judicial; it entails a careful application of mind to determine whether *prima facie* a case for certain offences is made out from the collected evidence, irrespective of the IO's initial legal opinion.

14. In the present matter, the learned Magistrate's decision to take cognizance under Sections 302/34 PPC is firmly rooted in the available material. The final cause of death certificate explicitly attributes the cardio-pulmonary arrest to chronic ischemic heart disease *precipitated by Cannabis/methamphetamine/caffeine/Nicotine overdose*. This finding is further corroborated by the chemical report dated 13.08.2024, which detected metabolites of methamphetamine and constituents of Cannabis in the deceased's organs. Such compelling forensic evidence, coupled with the allegations in the FIR that the deceased was administered "poisonous/intoxicant substance by accused persons in food/coffee," provides a strong *prima facie* basis for the application of the graver sections. Furthermore, the learned Magistrate rightly pointed out the inherent legal inconsistency in the IO's original challan for offence under Section 319 PPC

(Qatl-i-Khata) and Section 34 PPC (common intention). It is indeed jurisprudentially unsound to suggest that an act committed by "mistake" (Qatl-i-Khata) could simultaneously be in "furtherance of common intention." This glaring misapplication of law by the IO necessitated the Magistrate's intervention to ensure that the correct legal provisions, supported by the evidence, are applied at the stage of cognizance. The role of the Public Prosecutor, as enshrined in Section 9 of The Sindh Criminal Prosecution Service (Constitution, Functions & Powers) Act, 2009, is not merely to act as a conduit for the police report. Subsection (6) of Section 9 specifically empowers the Prosecutor to "forward the report under section 173 of the Code, to the Court and applicability of offences against all or any of the accused as per facts and circumstances of the case." This statutory provision clearly vests the Public Prosecutor with the authority to scrutinize the report and offer an expert opinion on the applicable sections. The learned Magistrate, by considering this scrutiny note alongside other evidence, acted in consonance with the legislative intent behind the said Act. The Public Prosecutor's opinion, while not absolutely binding, carries significant weight as it emanates from a legally trained mind tasked with overseeing the prosecution.

15. The judgments cited by the learned counsel for the applicant, while laying down important principles regarding the Magistrate's powers, are distinguishable from the facts of the present case. They predominantly address situations where a Magistrate seeks to *discard* a positive report or *delete* sections without sufficient material, or where a Magistrate undertakes an investigative function at the cognizance stage. Here, the Magistrate has relied on *existing* and *compelling* material (medical and chemical reports) and the expert legal opinion of the Public Prosecutor to take cognizance under sections that *prima facie* appear to be attracted. The High Court, in its previous order dated 07.03.2025 in C.P No.D-294 of 2025, had specifically directed the learned Magistrate to "decide the final report by scanning relevant material including scrutiny report submitted by the District Public prosecutor," which mandate has been duly complied with. Any contentions regarding delays in lodging the FIR or conducting the post-mortem, or allegations of malafide, are factual disputes that can be appropriately agitated and determined during the course of the trial before the competent Sessions Court, where all evidence will be meticulously examined. At the stage of

cognizance, the Court is primarily concerned with whether a *prima facie* case is made out for the offences.

16. Before parting with this order, it is imperative to discuss the relevant sections of the Control of Narcotic Substances Act, 1997. Section 9 of the CNSA criminalizes the possession, production, manufacture, sale, purchase, transport, import, export, use, or distribution of narcotic drugs or psychotropic substances without lawful authority. The section further classifies punishments based on the quantity of the recovered substance. A plain reading of this provision indicates that its application is contingent upon proof of actual or constructive possession, or engagement in a transaction involving narcotic drugs. In the present case, there is no recovery of any narcotic substance from the accused, nor is there any documentary or testimonial evidence establishing that the accused were in possession of, or were trafficking, manufacturing, or distributing any prohibited substance. The presence of methamphetamine and cannabis in the deceased's body, while medically established, does not ipso facto link the accused to possession under Section 9 unless it can be affirmatively shown that they were in unauthorized control of those substances at the relevant time. The jurisprudence surrounding Section 9 consistently reinforces the principle that recovery is an essential precondition for attracting liability under this provision. Courts have held that mere forensic detection of a substance in a person's bloodstream is insufficient to establish the offence of possession unless accompanied by other circumstantial or direct evidence tying the accused to the contraband. The language of Section 9 is regulatory in nature and targets drug-related activity per se, not the consequence of such activity unless independently proven. Thus, in the absence of any narcotic recovery or seizure memo under Section 21 of the CNSA, the learned Magistrate's inclusion of Section 9 appears to exceed the statutory remit. Turning to Section 16 of the CNSA, the provision penalizes contravention of Sections 6, 7, and 8, which respectively relate to the cultivation of narcotic plants, import/export and trafficking, and financing of illicit traffic or harboring of offenders. Section 16 is designed to cover organized or commercial narcotics offences, and its invocation is only valid where the prosecution can establish that the accused was involved in acts amounting to systemic drug crime, such as trafficking, cross-border movement, or facilitation of drug operations. In the present case, no material has been brought on record indicating that the

accused cultivated, imported, exported, financed, or trafficked narcotics, nor that they abetted or harbored any such activity. The facts, as alleged, suggest a one-time administration of drugs, which is not contemplated within the scope of Sections 6 to 8 and therefore does not invite penal consequences under Section 16.

17. It is important to underscore that while the administration of a narcotic substance resulting in death may constitute intentional homicide or culpable homicide under the Pakistan Penal Code, this does not automatically invoke penal consequences under the CNSA unless the offence of possession or trafficking is independently established. The causal link between drug administration and death, while essential to a charge under Section 302 PPC, is not sufficient to sustain a charge under the CNSA in the absence of possession, trafficking, or other defined narcotics-related conduct under the Act. In conflating the homicide with drug-related offences without satisfying the distinct legal thresholds of each statute, the learned Magistrate has effectively broadened the scope of the CNSA beyond what is contemplated by its text and jurisprudence. Therefore, while the prosecution may proceed under Section 302/34 PPC given the gravity of the allegation and the forensic support indicating a drug-induced fatality, the inclusion of Sections 9 and 16 of the CNSA in the absence of any recovery, possession, or evidence of organized drug crime constitutes an erroneous extension of statutory jurisdiction. The purpose of the CNSA is to regulate drug-related offences independent of their consequences, whereas the PPC is equipped to deal with the consequences of criminal acts, including death. Accordingly, the legal framework does not support invocation of the CNSA provisions in this scenario, and any such inclusion is unsustainable

18. In view of the foregoing analysis, this Court does not find any other material irregularity or jurisdictional infirmity in the impugned order dated 21.03.2025, passed by the learned Judicial Magistrate-V, Karachi South, save to the extent of the applicability of Sections 9 and 16 of the Control of Narcotic Substances Act, 1997. The invocation of said provisions, in the absence of any recovery or evidence establishing possession, trafficking, or other penal conduct envisaged under the CNS Act, is held to be legally untenable and is accordingly set aside. The remainder of the findings rendered by the learned Magistrate, particularly the cognizance taken under

Section 302 read with Section 34 PPC, is found to be well-reasoned and supported by the material on record.

19. Consequently, Criminal Miscellaneous Application No. 304 of 2025 is hereby dismissed, subject to the above-noted variation. The order of the learned Magistrate is upheld with modification limited to the exclusion of Sections 9 and 16 of the CNS Act, 1997. The learned Sessions Court is directed to proceed with the trial strictly in accordance with law and to conclude the same expeditiously, preferably within the timeframe prescribed under the relevant statutory framework.

J U D G E