

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Jawad Akbar Sarwana

Criminal Misc. Application No. 734 of 2025

Applicant/Complainant: Zahid Khan Khado s/o Muhammad Hassan Khado through Mr. Majid Ali, Advocate

Respondent No.1 : The State through APG. Nemo

Respondent No.2 : Ali Asghar s/o Muhammad Hassan Dholo. Nemo.

Dates of Hearing : 08.09.2025

Date of Decision : 15.09.2025

ORDER

Jawad Akbar Sarwana, J.: The applicant/complainant is aggrieved by the impugned order dated 12.06.2025 passed by the 1st Judicial Magistrate, Thatta, accepting the final report u/s 173 Cr.P.C. in a road accident case after dropping section 322 PPC (Qatl-bis-sabah), which is a non-bailable offence and was mentioned in the FIR filed by the applicant/complainant accepting the remaining sections of the FIR, namely, Sections 320, 279 and 427 Cr.P.C. The applicant/complainant has relied on the case of Khalid Hussain and Six Others v. Asif Iqbal and 2 Others, 2021 P.Cr. L.J. 242 wherein given the facts and circumstances mentioned in the said case, it was observed that the Magistrate in a case which was based on a police report, could not add or subtract sections of P.P.C at the time of taking cognizant. After hearing Counsel, I reserved this application for maintainability.

2. Heard Counsel. In Khadim Hussain v. The State and 12 Others, PLD 2005 Sindh 12, the learned Single Judge of the High Court made the following observations concerning the criterion the magistrate should consider when considering a final challan presented by the I.O.:

“4. It is settled, as per scheme of law, that in a positive report of I.O. in investigation referring the accused to a trial, the Magistrate has no jurisdiction to disagree with him by disposing of the case or deleting a particular section. The conclusion drawn by the I.O. that there is sufficient material to show that a particular offence or the case as reported has been made out for the Court to hold a trial thereon is always based on some material collected by him during investigation. The evidentiary value of which the Magistrate is not competent to discard on taking a summary tour of material before him. It requires examination of witnesses. Therefore, it would be for the Court, be it Magistrate's trial or the Sessions' trial, to apply its mind, in the trial, and decide whether the case is made out; or there is sufficient material to attract applicability of a particular section and then follow the procedure accordingly.

5. The Magistrate's power to disagree with the opinion of I.O. is limited to only reports disposing of the case or deleting a particular section. In such cases, the Magistrate by going through the material can form his own opinion disagreeing with the opinion of I.O. and take cognizance of offence against the accused by accepting the Challan or restoring the deleted provision. The ratio laid down in 1972 SCMR 516, 1983 SCMR 370 (para-8), 2010 YLR 470 and 2015 YLR 2312 postulates that the Magistrate has no power to dispose of the case recommended for trial by the I.O. on the basis of investigation. The same rule would be equally applicable in the case where the Magistrate proceeds to delete a particular provision, although the same has been opined to have been made out by the I.O. on the basis of material collected in the investigation.”

3. Although the FIR was lodged u/s 322 of the PPC, including certain other sections of the PPC, the Magistrate dropped the said section from the final report u/s 173 of the Cr. P.C. In the present case, the learned 1st Judicial Magistrate Thatta based on the material collected by the I.O., the pontification of the Deputy Public Prosecutor, and the Final Challan submitted by the I.O. took note that while the respondent no.2/accused had a valid learner's license to operate the motor vehicle, the deceased persons did not have a driver's license to operate the motorcycle. Therefore, it cannot be said in the instant case that the concerned 1st Magistrate, Thatta, did not apply his mind or did not go through the case law, as mentioned above on the point by the learned single Judge of this Court. In the instant case, the 1st Magistrate, Thatta, has passed the impugned order dated 12.06.2025, keeping in view the ratio laid down by this Court as well as by the Supreme Court in the above cases, within 15 days.

4. Meanwhile, the facts of the case relied upon by the applicant/complainant in 2021 P.Cr.L.J. 242 are entirely different from the facts in hand. That case involved the Magistrate taking cognizance of an offence upon receiving a private complaint of facts which constitute such offence. This is not the factual case before this bench. The matter at hand is a traffic accident case leading to death involving a collision between a motor vehicle operated by an operator having a valid learner's license and a motorcycle being operated by a biker without a valid license/permit. The 1st Judicial Magistrate Thatta accepted the challan after hearing all the parties and applying his mind. I find there is neither any irregularity nor illegality nor error in law in the impugned Order dated 12.06.2025 passed by the learned 1st Judicial Magistrate, Thatta.

5. Given the above, at present, no case is made out for any interference in the impugned Order dated 12.06.2025. Accordingly, the complainant/applicant's Application u/s 561-A Cr.P.C. is not maintainable and dismissed herewith.

J U D G E