

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Cr. Misc. Application No.S-452 of 2026

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For orders on office objections.
For hearing of main case.

07-09-2026

Mr. Agha Ghulam Abbas, advocate for the applicant.
Mr. Ansar Ali Shar, advocate for respondents No.4 & 5.
Ms. Sana Memon, Assistant Prosecutor General.

Preliminary objections filed by counsel for respondents No.4 & 5 (proposed accused nos.1 and 2) are taken on record.

Applicant/complainant, Mumtaz Ali, son of Khamiso, is aggrieved by the order dated 13.07.2026 passed by Sessions Judge/Ex-Officio Justice of Peace, Tando Muhammad Khan, in Criminal Miscellaneous Application No.696 of 2026.

As per the impugned order, the Ex-Officio Justice of Peace directed the SHO concerned to take legal action after receipt of the final post-mortem report of the complainant's (now deceased) son, Irfan Ali. Learned counsel for the applicant/complainant contends that once information of an alleged crime was available before the Ex-Officio Justice of Peace, he ought to have passed orders for recording of statement and let the matter concerning further proceedings flow therefrom. Learned counsel for proposed accused/respondents No.4 & 5 submits that following the impugned order dated 13.07.2026, as per the information available, the matter did not necessitate any recording of statement of accused; and consequently the impugned Order dated 13.07.2026 is in accordance with law.

Learned APG contends that the complainant's son, admittedly, had been brought to the Police Station and that, in the circumstances, at the very least, the statement of the father ought to have been recorded.

Heard learned counsel for the parties and APG. At the outset, prior to today's hearing date, this bench had directed the SHO to take certain action in terms of the order passed by this (High) Court as on 19.08.2026. This was on the assurance of the concerned SHO, PS Tando Muhammad Khan, who was present in Court and had undertaken to take action as per the information available on record and in accordance with law. Yet, instead of recording the statement of the deceased's father, the concerned SHO recorded the statements of the proposed accused nos. 1 and 2 only and has so far entirely ignored recording the statement of the complainant-father, Mumtaz Ali Khamiso.

It is a trite principle of law that the provisions of Sections 22-A & 22-B CrPC require the Ex-Officio Justice of Peace, while exercising powers under the

aforementioned sections, to keep his hands off matters concerning the investigation of crime. In the circumstances, when the Ex-Officio Justice of Peace qualified the recording of the statement of the complainant to be subject to the outcome of the Post Mortem Report, he transgressed the scope of powers assigned to him under the aforementioned sections. In the case in hand, the Ex Officio Justice of Peace stepped into matters pertaining to investigation. The timing of the post-mortem, in the facts and circumstances of the case, was not his domain. This was the task of the Police. Accordingly, the pre-condition for recording of statement of the father, which was made subject to the outcome of the post-mortem report in the impugned Order, cannot be sustained, and to this effect, the impugned order is hereby set aside.

In the facts and circumstances of the case, based on available information, a clear case has been/is made out for the recording of the statement of the father of the deceased, particularly when the father brought the allegedly injured son to the concerned P.S. Indeed, the SHO ought to have recorded the statement of the complainant-father first, particularly as the information concerned an alleged crime, in this case an alleged murder, and admittedly the police had also accompanied the father to the hospital. A case for recording statement was clearly made out. Indeed, the Criminal Procedure Code and Police Rules provide ample guidance to police officers to record information concerning crimes, whether cognizable or non-cognizable, and to proceed in either situation, including where false information has been provided. At this stage, this bench is also cognizant that the post-mortem report has arrived; however, this is still no ground for the SHO to defer/ignore the recording of the statement of the complainant-father, which, given the facts above, squarely triggers the provisions of Sections 22-A & B Cr.PC.

In view of the above, the SHO is directed to record the statement of the complainant-father within seven (7) days from the date of this Order and for the Police, applying their own independent mind based on the material available, including the statement of the proposed accused (already recorded), the statement of the complainant-father and the post-mortem report, acting in accordance with law, determine whether or not a cognizable offence is made out based on the available information in accordance with law. It is expected that the concerned Police Officer shall conclude this exercise in a fair, neutral, professional, and competent manner within the aforesaid time-frame, and no person shall be arrested without availability of any evidence of his culpability.

In view of the above, this Criminal Miscellaneous application is allowed in the above terms. Office to issue notice to the concerned P.S.

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