

HIGH COURT OF SINDH CIRCUIT COURT, MIRPURKHAS

Criminal Miscellaneous Application No.S-238 of 2025

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Applicant: Chandiyoo S/o Soomar,
Through Mr. Rasheed Ahmed
Panhwar, Advocate.

Respondent Nos.1 to 6 Through Mr. Neel Parkash, D.P.G
and 11: along with I.O/Inspector Noor
Muhammad SHO PS Chhore.

Respondent Nos.7 to Through Mr. Ghulam Saeed Arain,
10: Advocate.

Date of Hearing: 27.01.2026

Date of Order: 06.02.2026

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ORDER

Miran Muhammad Shah, J:- Through this Criminal Miscellaneous Application, the applicant has impugned the Order dated 01.10.2025 passed by the learned Consumer Protection Judge/JM, Umerkot on final report under section 173 Cr.P.C submitted by the Investigation Officer, whereby the learned Magistrate deleted the section 302, 147, 148, 149 and took cognizance under section 322 PPC, hence applicant filed instant Criminal Miscellaneous Application.

2. The brief facts giving rise to the instant application are that the applicant/complainant, Chandiyoo, lodged FIR bearing Crime No. 10/2025 under Sections 302, 147, 148, and 149 PPC at PS Khokhra Par. During the investigation, the I.O. submitted the final report before the learned Magistrate for taking cognizance under Section 322 PPC against only one accused (hereinafter referred to as Respondent No.7), namely Bheero s/o Sawan, while the co-accused (hereinafter referred to as Respondent Nos. 8 to 10), namely Anu s/o Malho, Togu W/o Sawan, and Mochar s/o Paro, were released under Section 169 Cr.P.C. The learned Consumer Protection Judge/JM, Umerkot accepted the challan and took cognizance under Section 322 PPC. Being aggrieved and dissatisfied, the applicant has filed the instant Criminal Miscellaneous Application under Section 561-A Cr.P.C. with the prayer

to set aside the impugned order passed by the learned Court below, take cognizance under Sections 302, 147, 148, and 149 PPC, and direct that the accused persons be challaned before the competent Court of law.

3. Learned counsel for the applicant contends that the impugned order is illegal, arbitrary, and against the settled principles of law and natural justice, having been passed without proper application of judicial mind. He submits that the learned Civil Judge & Consumer Protection Judge/Judicial Magistrate, Umerkot, failed to consider the contents of the FIR and the statements of the complainant and other eye-witnesses, which fully support the prosecution case, and instead mechanically relied upon an incorrect and mala fide police report submitted by Respondent No.6. It is further contended that the applicant had specifically nominated the accused persons with distinct roles in the commission of the offence, yet the learned Court below ignored these material facts and, without lawful justification, deleted Sections 302, 147, 148, and 149 PPC. Learned counsel further argues that sufficient material, including ocular account and medical evidence showing multiple injuries on the deceased, was available to attract Sections 302, 147, 148, and 149 PPC, clearly indicating that Respondent Nos.7 to 10 brutally assaulted the deceased and caused her death. He contends that the learned Magistrate confined himself solely to the police report and failed to independently examine the FIR and supporting material, which is contrary to settled law regarding taking of cognizance, therefore, in the interest of justice, the impugned order dated 01.10.2025 is liable to be set aside, and the accused persons be challaned and tried under Sections 302, 147, 148, and 149 PPC before the competent Court of law.

4. On the other hand, learned Deputy Prosecutor General opposed the contentions of learned counsel for the applicant and submits that the impugned order has been passed strictly in accordance with law after proper application of judicial mind. He contends that the learned Magistrate rightly relied upon the police report submitted after due investigation and lawfully exercised his jurisdiction while taking cognizance. He further submits that mere nomination in the FIR is not sufficient to proceed against an accused in the absence of supporting material, and the Investigating Officer, finding no incriminating evidence

against Respondent Nos.8 to 10, rightly released them under Section 169 Cr.P.C., while submitting challan only against Respondent No.7 under Section 322 PPC. The deletion of Sections 302, 147, 148, and 149 PPC was based on material available on record and does not suffer from any illegality or perversity. Learned Deputy Prosecutor General submits that no exceptional circumstances have been shown to invoke the inherent jurisdiction under Section 561-A Cr.P.C.; therefore, the instant application is misconceived and liable to be dismissed.

5. Learned counsel for respondent Nos.7 to 10 while adopting the arguments of. DPG submits that no material came on record during investigation to suggest that respondent Bheero had murdered his wife. Consequently, the learned Magistrate deleted the penal sections, and even section 322 PPC is not attracted against respondent Bheero. Therefore, this Honourable Court may set aside the impugned order passed by the learned Magistrate.

6. I have heard the counsel for the applicant as well as the counsel for the respondent as well as learned DPG Sindh.

7. The present case seems a prime example of cases where the police tried to convert the domestic violence/ domestic murder cases into accidental cases where the innocent victim's case, usually a female goes unattended and unpunished. The accused party goes scot free in the name of accidental death. Such pattern is also adopted in honor killing cases. In the present case, when the complainant has categorically stated in his statement under section 154 CRPC that his sister, Shreemati Tari, was being victimized by her husband, Sawan, and when the family of the victim saw with their own eyes the treatment meted out to victim Tari, they agitated with those who were beating her, they were given threats of severe consequences and were also beaten up. It was also narrated in the FIR in detail about how she sought permission to go and meet her father but was stopped by her husband, resultantly she was beaten up so severely which caused her death. Despite information furnished by the police that a death was due to hanging there were indeed marks of violence on her body, on her forehead, her eye and multiple abrasions on right side of her abdomen which were irregular in shape. With such marks of violence in the

medical certificate yet the opinion was reserved by the medical officer till arrival of chemical report as well as DNA report. However, the reports also provided inconclusive results. It was strange to see when the allegations were of death by severe beating on part of the accused, the report was only based on death by poison and death followed by rape which was never the case in the present incident. In a very sluggish manner, WMO in the last line of the report wrote it as death due to hanging however no detailed reasoning was provided. It is very alarming to observe that the learned magistrate in such cases do not ponder into the material available before them and place their sole reliance upon the report of the investigation officer knowing fully well that a single order can decide the fate of a crime so also decide the fate of the accused person and complainant's story. Learned magistrates must be careful while giving their opinion in cases of domestic violence and honor killing about veracity of the facts and delicacy of such cases. They must not rely upon the police reports which are submitted before them by the investigation team which many times is based on malafides. In the present case, I am of the opinion the learned magistrate did not go through the record available before him minutely and declared the presence of 302 (qatal e amd) as case of 322 PPC (accidental). Hence in these circumstances, the impugned order dated 01.10.2025, passed on the final report under Section 173 Cr.P.C., is set aside. The learned Magistrate is directed to reconsider the case and take cognizance in accordance with law, after independently assessing the material available on record. Let a fresh challan report be submitted by the investigation officer, prima facie under Section 302 PPC, along with other applicable sections, for trial against all accused/respondents. The present Criminal Miscellaneous Application No. S-238 of 2025 is allowed in the above terms.

JUDGE

Adnan Ashraf Nizamani