IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

Criminal Misc. Application No.S-07 of 2025

<><><>

Applicant	Muhammad Ibrahim Sehto son of Dodo Sehto through Mr. Salahuddin Panhwar, Advocate.
Respondent No.1	The State through Mr. Neel Parkash, DPG a/w I.O. Inspector Syed Ghulam Mustafa Shah, P.S. Umerkot City, Mr. Asif Kalroo, Mukhtiarkar Samaro and Mr. Shaukat Ali, Supervising Tapedar Shadi Palli of Taluka Pithoro.
Respondent No.2	Ahmed Ali Aresar son of Ghulam Muhammad Aresar through Mr. Fayaz ul Karim Memon, Advocate.
Date of hearing	**06.11.2025**
Date of order	**18.11.2025**

Shamsuddin Abbasi, J.- Applicant is complainant in FIR No.13 of 2022 registered at Police Station Shadi Palli, District Umerkot, for the offences under Sections 302, 114, 506(ii), 337-H(ii) and 34, PPC whereas the respondent No.2 is one of the nominated accused in the FIR on whose instigation co-accused Sikandar Ali Halipoto and Abdul Shakoor Nohrio made straight fires at Raza Muhammad, brother of the applicant/ complainant, who succumbed to his injuries on the way to hospital. The motive set-forth in the FIR is that he contested election of Vice Chairman, UC- Haji Pir Shah on the penal of GDA and the accused belong to rival political party committed murder of his brother.

2. Pursuant to the registration of FIR, the investigation was followed and in due course challan was submitted before the Court of competent jurisdiction, whereby co-accused Sikandar Ali Halepoto and Abdul Shakoor Nohrio were sent up to face the trial whereas the name of respondent No.2 (Ahmed Ali Aresar) was placed in column No.2 of the challan for lack of evidence. The applicant /complainant filed application under Section 190 read with Section 173, Cr.P.C. seeking cognizance against respondent No.2 and sought his trial.

3. The learned Magistrate having gone through the report under Section 173, Cr.P.C. and hearing the parties' respective counsel declined to take

cognizance against respondent No.2 and accepted the report of investigating officer while dismissing applicant's application vide order dated 13.10.2022. Aggrieved by the order of the learned Magistrate, the applicant /complainant preferred Criminal Misc. Application No.S-692 of 2022 before this Court, which was dismissed as not pressed with permission to file a fresh one after recording evidence at trial. The trial commenced and the statement of applicant/ complainant was recorded on 24.08.2023 and on the same day he filed application under Section 193, Cr.P.C. seeking cognizance against respondent No.2 and prayed that he may also be joined as accused in the trial and proceeded accordingly. The learned trial Court dismissed the application vide order dated 08.01.2025 and aggrieved of the said order, the applicant has filed the instant Criminal Misc. Application.

4. It is contended on behalf of the applicant that the respondent No.2 is nominated in FIR attributing specific role of instigation and at his instance co-accused have fired direct shots at complainant's brother and committed his murder. It is next submitted that the respondent No.2 is highly influential person and the investigating officer has extended him undue favour. It is also submitted that no sincere efforts were made by the investigating officer to dig out the truth and he intentionally failed to collect important evidence against respondent No.2 just to save him from punishment. The entire investigation is based upon malafides on the part of I.O. who failed to discharge his duty and extended undue favour to the respondent No.2 placing his name in column No.2 of the challan despite of the fact that he was fully nominated in the FIR and the witnesses in their respective statements under Section 161, Cr.P.C. have involved him in the commission of offence. Per learned counsel, the investigating officer joined hands with the respondent No.2 and recorded statements of witnesses favouring to the respondent No.2, and failed to dig out the truth. The learned counsel while summing up his submissions has submitted that sufficient material is available on record to prove the charge against respondent No.2 and opinion of the investigating officer is not binding on Courts. He, therefore, prayed that the impugned order may be set-aside and the respondent No.2 may be tried in accordance with law. The learned counsel in support of his submissions has placed reliance on the cases of *Sher Muhammad Unar and others v The State* (PLD 2012 Supreme Court 179), *Raja Khushbakhtur Rehman and another v The State* (1985 SCMR 1314), *Abdul Wahid v The*

State (2003 SCMR 668), *Safdar Ali v Zafar Iqbal and others* (2002 SCMR 63), *Mameez Khan v The State and 2 others* (2010 P.Cr.L.J. 1137), *Hayatullah Khan and another v Muhammad Khan and others* (2011 SCMR 1354), *Bakhsh Ali v The State and 7 others* (2013 YLR 1948), *Abdul Rashid Khan v The State and 14 others* (PLD 2012 Peshawar 39) and *Shah Daraz Khan v Muhammad Jabbar Khan and 2 others* (PLD 2008 Peshawar 63).

5. On the other hand, the learned counsel appearing on behalf of the respondent No.2 has submitted that there is long standing enmity existed between the parties and the complainant has falsely involved the respondent No.2 in the commission of crime in the background of such enmity as otherwise he was not present at the scene of offence and at the relevant point of time was present in the Mosque and offering "Maghrib" prayer. It is next submitted that the investigating officer has conducted fair and transparent investigation and found the respondent No.2 innocent, therefore, he has placed his name in column No.2 of the challan and the learned Magistrate has accepted such report and also declined to take cognizance against respondent No.2 and such an order has been endorsed by the learned trial Court. It is also submitted that the applicant has exhausted all legal remedies including this Court and failed to succeed, therefore, instant application merits no consideration. Lastly submitted that the impugned order is based on fair evaluation of record and no legal infirmity or irregularity has been pointed out by the learned counsel for the applicant in the impugned order, hence calls for no interference by this Court and prayed for dismissal of the instant application.

6. The learned Deputy Prosecutor General (Sindh) has supported the arguments advanced by the learned counsel for the applicant and submitted that the respondent No.2 is nominated in the FIR with specific role and complainant and other prosecution witnesses have fully involved him in the commission of offence. The impugned order is not speaking order and contrary to the precedents of Hon'ble apex Court, therefore, the same may be recalled and the trial Court may be directed to join respondent No.2 as accused and decide the case on merits after initiating full dressed trial against him.

7. I have given my anxious consideration to the submissions of respective parties and gone through the entire material available before me with their able assistance.

8. The applicant is aggrieved of the order of the learned trial Court whereby his application under Section 193, Cr.P.C. was dismissed declining to take cognizance against the respondent No.2, who was let-off by the police and his name was placed in column No.2 of the challan. Per learned counsel, the case is heinous one and pertains to commission of murder of complainant's brother, who in the background of previous enmity was done to death by firing with fire-arms.

9. A tentative assessment of record reveals that the respondent No.2 is nominated in FIR with specific role of instigation and at his instance co-accused Sikandar Ali and Abdul Shakoor made direct fires with their respective weapons at complainant's brother namely, Raza Muhammad, who sustained severe injuries and died on the way to hospital. The two co-accused were tried and convicted to life imprisonment. On the other hand, the respondent No.2 took plea of *alibi* in his defence that he was offering "Maghrib" prayer and not present at the crime scene when the incident occurred and the complainant in the background of previous enmity has falsely implicated him in the commission of offence. The investigating officer collected CDR and recorded the statements of witnesses, produced by the respondent No.2 in his defence, and based on such statements /evidence let-off the respondent No.2 placing him in column No.2 of the challan and such a report was accepted by the learned Magistrate while dismissing application under Section 190, Cr.P.C. and subsequent thereto the learned trial Court affirmed the decision of the learned Magistrate and declined to take cognizance against respondent No.2 while dismissing applicant's application under Section 193, Cr.P.C.

10. The contention that the applicant was placed in Column No. 2 of the challan does not *ipso facto* entitle him to exoneration. Likewise, mere assertion of plea of *alibi* is not sufficient to exonerate an accused more particularly when he /she is nominated in the FIR attributing specific role and the witnesses in their respective statements under Section 161, Cr.P.C. have involved him in the commission of offence. Even otherwise, a plea of *alibi*

unless supported by irrefutable and cogent evidence, does not per se exonerate an accused at the pre-trial stage. The necessity of proof always lies with the one who asserts with full force placing the burden upon the accused to establish his plea conclusively at trial.

11. It is of paramount importance to comprehensively expound upon the provision enshrined in Section 190 Cr.P.C. which delineates the circumstances under which a Magistrate may take cognizance of an offence. The said provision being fundamental to the administration of criminal justice, confers upon the Magistrate the jurisdiction to take cognizance through three distinct modes viz upon receiving a complaint of facts which constitutes such offence, upon a report in writing of such facts made by any police officer and upon information received from any person other than a police officer, or upon his own knowledge or suspicion. It is imperative to highlight that the jurisdiction of the Magistrate is not constrained by the conclusions drawn in the police report. The Magistrate is neither bound by nor obligated to adopt the opinion rendered by the Investigating Officer as the latter's assessment is merely recommendatory in nature and does not hold binding force. Rather, the Magistrate is duty-bound to exercise independent judicial discretion, guided by sound reasoning and an objective appraisal of the material placed before him, in order to ascertain whether sufficient grounds exist for proceeding against an accused. In the case of *Bilal Ahmed v The State* (2021 P.Cr.L.J. 261), it has been clarified that a Magistrate does not function as a mere rubber stamp of the police rather he possesses the inherent discretion to proceed with a case even in instances where the police recommend its closure. The judicial mind of a Magistrate must, therefore, remain unfettered, and his adjudication must be predicated upon a fair and impartial assessment of all available material rather than an unquestioning acceptance of the investigating officer's report. This principle has been reaffirmed in the case of *Naeem Akhtar v Judicial Magistrate* (2018 MLD 1173), wherein it has explicitly held that the opinion of the police carries no binding effect upon the Courts, thereby reiterating the doctrine that judicial determinations must remain independent of executive influence. Similarly, in the case of *Soomar v Civil Judge and Judicial Magistrate* (2020 P.Cr.L.J. 835), it has been held that a Magistrate retains the authority to take cognizance of an offence even in cases where the investigating officer submits a negative report. It is, therefore, a settled position that a Magistrate or a trial Court is not bound by

the findings of the police and must exercise its judicial discretion in accordance with law ensuring that the sanctity of the legal process is preserved.

12. As to the plea of *alibi* taken by the respondent No.2 in his defence that at the relevant point of time he was offering "Maghrib" prayer and not present at the crime scene is concerned, suffice to say that such a plea at the initial stage cannot be entertained because the same requires comprehensive evaluation at trial. Mere assertion of an *alibi* plea*,* particularly when it is premised on statements of witnesses, produced by the accused in his defence during investigation, rather than unimpeachable evidence like documentary in nature, the same is manifestly insufficient to prove his innocence. An *alibi* plea unless supported by irrefutable and cogent evidence does not per se exonerate an accused at the pre-trial stage. A plea of *alibi* is a matter of evidence and it can only be established at trial when accused gets an opportunity to lead evidence in his defence and proves his plea through positive, independent and cogent evidence.

13. For what has been discussed above and placing reliance on the case laws (supra), I am of the view that the order passed by the learned Magistrate dismissing application under Section 190, Cr.P.C. and affirmed by the learned trial Court vide impugned order dated 08.01.2025 are without appreciating the available material and application of conscious judicial mind and contrary to the precedents of Hon'ble apex Court. Therefore, the same are set-aside. Here it would not be out of place to mention that after a full dressed trial, the learned trial Court found co-accused Sikandar Ali and Abdul Shakoor guilty of the offences charged with and, thus, convicted and sentenced them to imprisonment for life vide judgment dated 26.04.2025. This aspect has strengthened the case of the applicant that sufficient material is available on record to substantiate the involvement of the respondent No.2 in the commission of the crime and he cannot be exonerated without initiating a full dressed trial. The learned trial Court is, therefore, directed to summon the respondent No.2 /accused, initiate trial against him with regard to the charges leveled against him by the prosecution and decide the case on merits in accordance with law. In case the respondent No.2 fails to appear, the learned trial Court shall ensure his appearance by issuing coercive process against him including issuance of non-bailable

warrants. The respondent No.2 is also directed to surrender himself before the learned trial Court for a regular trial where he shall have ample opportunity to substantiate his defence during the trial and may produce concrete and admissible evidence in support of his plea of *alibi* and other defence(s), if any.

14. While parting with this order, the trial Court is directed to expedite the trial and complete it as quickly as possible by adopting all methods in procuring the attendance of prosecution witnesses and decide the case preferable within a period of six months under intimation to this Court through Additional Registrar. It is, however, need not to state that the observations recorded herein above are of tentative assessment and meant for the purpose of the instant application, therefore, the learned trial Court shall not be influenced in any manner whatsoever while deciding the case on merits and material made available before it without causing prejudice to either side. A copy of this order shall be sent to the learned trial Court for information and compliance.

JUDGE