

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. App. No. S – 308 of 2026

[Shahzado Lashari v. The State and others]

Applicant by : Ms. Marvi Belaie, Advocate

Respondents No.1 & 2 by : Mr. Shafi Muhammad Mahar, Deputy
Prosecutor General

Respondent No.3 : Mst. Sana, present in person

Date of Hearing : **18.09.2026**

Date of Decision : **18.09.2026**

ORDER

ARBAB ALI HAKRO J. – Through this application, the applicant has challenged the order dated 14.04.2026 (hereinafter referred to as “**the impugned order**”), passed by learned Civil Judge & Judicial Magistrate-III (MTMC), Sukkur (hereinafter referred to as “**the learned Magistrate**”), in Summary No.62 of 2026, arising out of Crime No.130 of 2025 registered at Police Station New Pind, Sukkur. The learned Magistrate declined the Investigating Officer’s recommendation to dispose of the case under “C” class and took cognizance under Section 190(1)(b), Cr.P.C., against the accused persons for offences under Sections 324, 506/2 and 34 P.P.C.

2. The case set out by respondent No.3 is that she married the applicant and that two children were born of the wedlock. According to her, the applicant’s conduct towards her changed after he contracted another marriage. She alleged that on 22.11.2025 the applicant, accompanied by his third wife, entered her room, assaulted her and fired a pistol at her with the intent to kill, the shot striking the door; that her children arrived and intervened; and that she thereafter went to the house of one Lal Hussain and narrated the occurrence. She subsequently approached the police, and pursuant to an order passed by learned Additional Sessions Judge-IV(H)/ Ex-Officio Justice of Peace, Sukkur, her statement was recorded, and the aforesaid FIR was registered.

3. During the investigation, the Investigating Officer submitted a report under Section 173 Cr.P.C. recommending disposal of the case under “C” class. Learned Magistrate, however, upon examining the police papers, the statements recorded under Section 161 Cr.P.C, the inspection memo and the medical material, declined the recommendation and took cognizance under Section 190(1)(b) Cr.P.C.

4. Learned counsel for the applicant submits that the FIR is false and motivated; that there are material discrepancies between the version given before the learned Ex-Officio Justice of Peace and that set out in the FIR; that the children, though portrayed as eyewitnesses, were not examined under Section 161, Cr.P.C.; that Lal Hussain and Atta Hussain are not eyewitnesses to the occurrence; that respondent No.3 neither sought medical treatment nor produced any medico-legal certificate; that no video recording of the occurrence was produced; that the Investigating Officer, upon completion of the investigation, recommended cancellation of the case; and that the learned Magistrate failed to appreciate the defence version and passed the impugned order without lawful justification. In support of the application, reliance has been placed on **Abdul Karim**.¹

5. Respondent No.3, who is present in person, opposes the application and supports the impugned order. Learned Deputy Prosecutor General submits that, after the impugned order was passed, the challan has been submitted, and that the applicant may avail himself of the remedies available to him before the trial court, including those under Section 249-A or Section 265-K Cr.P.C, as may be applicable.

6. Heard learned counsel for the applicant, respondent No.3 in person and learned Deputy Prosecutor General and perused the available record with their assistance.

7. It is well settled that a Magistrate is not bound by the opinion of the Investigating Officer contained in a report under Section 173 Cr.P.C. Investigation, in law, is no more than a process of collecting evidence;

¹ *Abdul Karim and 2 others v. The State and 2 others* 2013 P Cr. LJ 1600.

whether the material so collected warrants the trial of an accused person is a judicial question, the determination of which rests with the Magistrate alone. Upon consideration of the material on record, the Magistrate may take cognizance under Section 190(1)(b) Cr.P.C. notwithstanding a negative or cancellation report submitted by the police.²

8. The authority relied upon by learned counsel is distinguishable on facts. In **Abdul Karim** (n.1 above), interference was warranted because the order impugned therein reflected a want of proper consideration of the material collected during the investigation and an absence of reasons for disagreeing with the police report. In the present case, by contrast, the learned Magistrate has considered the material on record and has recorded reasons for declining the “C” class report; the cited authority, therefore, does not advance the applicant’s case.

9. The objections raised regarding contradictions in the complainant’s version, the non-examination of her children, the status of Lal Hussain and Atta Hussain as witnesses, the absence of medical evidence, alleged improvements and the matrimonial dispute essentially relate to the appreciation of evidence, which is the domain of the trial Court. At this stage, this Court cannot undertake a detailed assessment of the prosecution and defence evidence as though conducting a trial, particularly where the learned Magistrate has already found the material sufficient to proceed against the accused.³

10. The plea that the Investigating Officer recommended disposal under “C” class does not, by itself, furnish a ground for quashing the proceedings. The Investigating Officer’s opinion is not binding on the Court and remains subject to judicial scrutiny⁴. The competent Magistrate is required to apply his mind independently to the material placed before him, which the impugned order shows he has done.

² Syed Muhammad Ahmed v. The State PLD 2006 SC 316; Falak Sher v. The State PLD 1967 SC 425.

³ Dr. Sher Afgan Khan Niazi v. Ali S. Habib 2011 SCMR 1813.

⁴ Muhammad Abbasi v. The State 2011 SCMR 1606.

11. The subsequent submission of the challan is also significant, as the matter has now entered the domain of the learned trial Court. Should the applicant consider the prosecution evidence insufficient to warrant his continued trial, he may avail himself of the remedy provided by law, including under Section 249-A or Section 265-K Cr.P.C, as the case may be. Any such application shall be decided by the competent Court strictly in accordance with law and on its own merits.

12. The jurisdiction invoked is extraordinary in nature and is not to be exercised merely because another view of the material is possible. Interference is warranted only where continuation of the proceedings amounts to an abuse of the process of the Court or where the impugned order suffers from patent illegality, want of jurisdiction or material non-application of mind. Nor is such jurisdiction ordinarily exercised where the remedy under Section 249-A or Section 265-K Cr.P.C. remains open to the accused (*n.3 above*). No such defect has been demonstrated in the present case.

13. For the foregoing reasons, no case for interference with the impugned order is made out. The Criminal Miscellaneous Application is accordingly **dismissed**.

14. However, it is clarified that the observations made herein are confined to the legality of the impugned order and shall not prejudice either the applicant or respondent No.3 before the learned trial Court. The learned trial Court shall decide the case and any application under Section 249-A or Section 265-K Cr.P.C., if filed, independently and strictly in accordance with law.

J U D G E

Abdul Basit