IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Misc. Application No. S- 286 of 2025

Applicant:	Jumo Khan son of Muhammad Bachal bycaste Jarwar, through M/s J.K Jarwar and Ghulam Mujtaba Jakhar, Advocate.
Respondents:	State through Mr. Shafi Muhammad Mahar Additional P.G.
Date of hearing & Order:	**23.11.2026.**

O R D E R.

Suresh Kumar,J,- Through this Criminal Miscellaneous Application, the applicant, Jumo Khan, has impugned the order dated 07.05.2025, whereby the learned Civil Judge & Judicial Magistrate Sobhodero at Ranipur disposed of the charge sheet under 'B' Class instead of taking cognizance, as submitted by the Investigating Officer in crime No. 25/2025 registered at Police Station Ranipur. Being aggrieved by the impugned order, the applicant has preferred this Criminal Miscellaneous Application.

2. Learned counsel for the applicant has mainly contended that the impugned order passed by the learned Civil Judge & Judicial Magistrate, Sobhodero at Ranipur, is not warranted by law. He has also contended that the Magistrate has only the jurisdiction to agree or disagree with the conclusion of the Investigating Officer. Furthermore, he has asserted that the powers of the learned Magistrate are limited. He has further contended that the Magistrate can only take cognizance and form an opinion based on the material on record, and that the Magistrate has no powers to dispose of the

case after a recommendation for trial by the Investigating Officer based on the investigation. In this regard, he has relied upon the case of Khadim Hussain vs. The State and 12 others (PLD 2025 Sindh 12). Lastly, he has contended that the impugned order may be set aside and the case may be remanded to the learned Magistrate for a fresh order.

3. While learned DPG for State has not supported the impugned order and conceded to the extent that case may be remanded back for passing fresh order.

4. I have heard learned counsel for applicant, learned D.P.G for State and perused the material available on record.

5. Having given due consideration to the arguments of the learned counsel for the applicant and the learned D.P.G for the State, I find that from the perusal of the record, it reveals that the Investigating Officer has submitted a charge sheet; however, the learned Magistrate has disposed of the case as 'B' class while discussing other material that is not part of the investigation. It is well-settled law that the Magistrate must form his opinion based on the material collected by the Investigating Officer during the investigation. This Court, in the case of Khadim Hussain and 12 others vs. The State, has held in similar circumstances at paragraph No. 5 as under :-

> *"5. The Magistrate's power to disagree with the opinion of the Investigating Officer is limited to only reports disposing of the case or deleting a particular section. In such cases, the Magistrate, by reviewing the material, can form his own opinion, disagreeing with the opinion of the Investigating Officer, and take cognizance of the offence against the accused by accepting the Challan or restoring the deleted provision. The ratio laid down in the case*

reported as 1983 SCMR 370 states that the Magistrate has no power to dispose of a case recommended for trial by the Investigating Officer based on the investigation. The same rule would be equally applicable in cases where the Magistrate proceeds to delete a particular provision, even though it has been opined to have been made out by the Investigating Officer based on the material collected during the investigation."

6. In view of above facts, circumstances and guidance taken from the above cited case laws, I am of considered view that the impugned order passed by learned Civil Judge & Judicial Magistrate Sobhodero at Ranipur is not sustainable under the law, therefore, the same is set aside and with the consent the case is remanded back to learned Magistrate for passing afresh order keeping in view the ratio laid down by this Court as well as Honourable Supreme Court within 15 days. Order accordingly.

7. The Criminal Misc. Application is disposed of in the above terms.

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JUDGE