HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Miscellaneous Application No.S-138 of 2025

Present: Justice Jawad Akbar Sarwana

Applicant	:	Allah Rakhio s/o Muhammad Urs Sathio through M/s Faizan Ahmed Memon and Nabi Bux Sathio, Advocates
Respondent No.1	:	ASI Hadi Bux Behrani, Nemo, DPG
Respondent No.2	:	Muhammad Yeha Khan @ Asif s/o Lal Muhammad, through M/s Riazuddin Qureshi and Muhammad Lutufullah Arain, Advocates
Respondent No.3	:	The State, through Ms.Safa Hisbani, Assistant Prosecutor General
Date of hearing & short order	:	**31.10.2025, 17.11.2025 & 11.12.2025**
Date of reasons	:	**11.12.2025**

O R D E R

JAWAD AKBAR SARWANA, J.: The applicant/proposed accused, Allah Rakhio Sathio s/o Muhammad Urs Sathio, is aggrieved by the Order dated 18.02.2025 passed by the Ist Addl. Sessions Judge, Tando Muhammad Khan in Sessions Case No.67/2023 (*Amir Khan and Others v. The State*), taking cognizance against the applicant/proposed accused in FIR No.6/2023 registered at P.S. Bulri Shah Kareem u/s 322, 320, 337-G, 279, 427 & 114 PPC and joining him (the applicant/proposed accused) in the trial in the above-mentioned Sessions Case.

2. A brief background of the matter is that a tractor allegedly owned by the applicant/proposed accused, driven by a third person, one Mushtaque Ahmed s/o Ilyas Sathio, and a Suzuki Pickup collided/met with an accident, resulting in death and injuries to certain passengers travelling in the Suzuki Pickup. An inquiry ensued following the

registration of FIR No. 06/2023. However, when the final challan was submitted to the IVth Civil Judge and Judicial Magistrate, the applicant/proposed accused was still excluded from the list of accused, even though by Order dated 13.04.2023, the learned Magistrate found that Mushtaque Ahmed Sahtio, the accused operator of the tractor, at the time of incident of the crime, apparently had a Light Transport Vehicle (LTV) only, and allegedly did not have a license to drive a Heavy Transport Vehicle, such as the tractor. The learned Magistrate applied Section 322 PPC to the accused, Mushtaque Ahmed S/o Ilyas Sathio, holding that the offence is exclusively triable by a Sessions Court; however, the applicant/proposed accused, Allah Rakhio Sathio, the alleged owner of the tractor, the crime property, was still excluded. Thus, the complainant moved the application u/s 193 Cr.P.C. (second time) to take cognizance and insert the name of, among others, the applicant/proposed accused, Allah Rakhio Sathio s/o Muhammad Uris Sathio. The trial Court, after hearing the parties, allowed the said application vide the impugned Order dated 18.02.2025, and hence this challenge in the cr. misc. application.

3. Learned Counsel and APG, submissions in support of their contentions are set out in tabular form hereinbelow.

	Counsel for applicant/proposed accused	Counsel for respondent no.2 and APG
(i)	The complainant had filed an application under Section 193 Cr.P.C. which was withdrawn on 21.10.2023. Therefore, the complainant cannot re-agitate the same (second) application.	No case for res judicata is made out. The application was withdrawn and not decided on merits.
(ii)	Nabi Bux, the blood-brother of the applicant/accused, had filed an application for superdari of the tractor, which was allowed; therefore, the applicant/proposed accused had no nexus with the operation	The proceedings in the superdari have no basis in the trial proceedings which are to be decided on their own merit; notwithstanding that, even otherwise, Allah

	of the tractor, and there was no cause to implede him (the applicant/proposed accused) in the criminal trial.	Rakhio had given his "No Objection" in the superdari case, which was central to the grant of superdari as the tractor was admittedly registered in his name.
(iii)	No abetment or vicarious liability was made out for Allah Rakhio/Nabi Bux, as Mushtaque Ahmed had a valid licence to operate a tractor that expired in 2017, except that it had not been renewed.	It was on record that Mushtaque Ahmed s/o Haji Ilyas Sathio did not have a valid HTV licence at the time of the accident.
(iv)	The final report dated 13.04.2023 submitted by the I.O. did not mention the applicant/proposed accused, and subsequently a charge had been framed which did not mention the applicant/proposed accused, and no appeal or challenge was filed by the complainant against the final report and/or the charge; therefore, the application u/s 193 Cr. P.C. was misconceived.	The IO's report submitted to the Magistrate made no mention of either the tractor or its owner. The IO neither questioned nor properly investigated the matter; hence, the report was silent on the tractor and its owner. The Criminal Court was competent to apply its judicious mind and scrutinize the material available on record.

4. Heard Counsel and perused the record.

5. It is apparent from the record that the I.O. has entirely ignored the applicant/proposed accused in the case. The trial Court has the prerogative to scrutinize the final challan and apply its judicial mind. The matter escaped the notice of the learned Judicial Magistrate, who, by Order dated 13.04.2023, found that the crime was triable by a Sessions Court. Therefore, the Sessions Court, exercising its original jurisdiction, having power to take cognisance at any stage of the proceedings, particularly when an apparent lacuna in the investigation

comes to light, as in the instant case, passed the impugned Order in accordance with law.

6. The impugned Order takes cognizance against the applicant/proposed accused and is not a conviction. The trial is yet to start. The impugned Order does not prejudice the applicant/proposed accused, as no one can be presumed guilty before a proper trial. The applicant/proposed accused continues to enjoy all the rights of defence. Furthermore, the mere cognisance of the alleged crime does not cause prejudice. Indeed, for whatever reasons, if the applicant is aggrieved during the trial proceedings, he is at liberty to raise any such challenge in the trial subject to legal consequences.

7. Given the facts and circumstances mentioned above, I do not find any illegality or irregularity in the impugned Order. No cause is made out for making any intervention in the impugned Order. Hence, I dismissed this application/challenge to the impugned Order vide my Short Order dated 11.12.2025.

8. These (above) are the reasons for my short order dismissing the above-titled cr. misc. appln no.S-138/2025.

JUDGE

AHSAN K. ABRO