

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. App. No. S – 319 of 2026

[Abdul Hameed Malik and 05 others v. Mst. Saima Malik and 02 others]

Applicant by : Mr. Abdul Qadeer Khoso, Advocate

Respondent No.1 by : Mr. Muhammad Farooque Ahmed Gujar, Advocate

Respondents No.2 & 3 by Mr. Khalil Ahmed Maitlo, Deputy Prosecutor General

Date of Hearing : 05.10.2026

Date of Decision : 05.10.2026

ORDER

ARBAB ALI HAKRO, J.- The applicants have filed this application under Section 561-A Cr.P.C. against the order dated 12.03.2026 of the learned Judicial Magistrate-I, Ubauro (hereinafter referred to as “**the impugned order**”)¹. By that order, the learned Judicial Magistrate took cognizance against them, although the Investigating Officer (“I.O.”) had declared them innocent and placed their names in Column No.2 of the challan.

2. The FIR bearing Crime No.154 of 2024 at Police Station Ubauro, District Ghotki, for offences punishable under Sections 324, 337-A(i), 337-F(i), 147, 148, 149 and 504, P.P.C., was lodged on 20.06.2024 by applicant No.3, Basheer Ahmed, against Wazir Ahmed and others. It states that on 17.06.2024, at about 08:20 a.m., near Wazir Ahmed’s house in Village Langho, the complainant party was beaten with lathis and iron rods due to a dispute over a matrimonial engagement. Respondent No.1, Mst. Saima, gave a different version. She said that on the same day the other side entered her house, injured Wazir Ahmed, Imtiaz Ahmed, Manzoor Ahmed, Ghulam Asghar, Mumtaz Ali and Mst. Jeeal, and fired at her. The registration of a second FIR was refused, but vide order dated 18.07.2024, the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Ubauro, directed the

¹ Order dated 12.03.2026 passed by the learned Judicial Magistrate-I, Ubauro, in Crime No.154 of 2024 of Police Station Ubauro.

I.O. to record her version in the same FIR. The applicants were named in that version. Vide order dated 30.07.2024, passed by the learned Additional Sessions Judge/MCTC, Ubauro, pre-arrest bail was confirmed for the accused of both sides, and the Court noted the delay of three days, the enmity between the parties, injuries on both sides, and that the aggressor would be decided at trial.

3. After investigation the I.O. sent four accused for trial and placed the applicants in Column No.2. The learned Judicial Magistrate accepted this report, observed that the complainant may approach the learned trial Court for implicating them, and, as the offence under Section 324 P.P.C. is triable by the Court of Sessions, sent up the matter. The trial Court (learned Additional Sessions Judge/MCTC, Ubauro) took cognizance against the applicants vide order dated 25.08.2025. This Court set aside both orders on 21.10.2025 in Criminal Revision Application No. S-78 of 2025² and directed the concerned Magistrate to pass a speaking order after hearing the parties. The learned Judicial Magistrate did so. Vide the impugned order dated 12.03.2026, he held that the I.O.'s opinion does not bind the Court and that the statements under Section 161, Cr.P.C. and the medical evidence *prima facie* connect the Column No.2 accused with the offence, and he took cognizance against them.

4. The case is now pending as Sessions Case No.131/2025 before the learned Additional Sessions Judge/MCTC, Ubauro. The diary sheets show that applicants Nos.1, 2, 5 and 6 are appearing on bail and that on 24.08.2026 they filed an application under Section 265-K, Cr.P.C. for acquittal, which was last fixed for hearing on 03.10.2026. Applicants Nos.3 and 4 have not yet appeared; the diary calls them absconding in its heading and "not yet served" in its entries.

5. Learned counsel for the applicants argued that the learned Judicial Magistrate failed to apply his mind. The order states that the complainant

² Order dated 21.10.2025 passed by this Court in Criminal Revision Application No. S-78 of 2025.

named the applicants in the FIR, but applicant No.3 is the complainant himself and named none of them. The order also ignores the Special Medical Board's decision dated 03.12.2025, which suspended the medical certificates of the injured on the other side.³ In his submission, persons found innocent by the I.O. cannot be summoned without fresh incriminating material. He relied on **Ghulam Hussain alias Nangar; Zahoor Ahmed; Bahadur; and Amin Ali**⁴.

6. Learned counsel for respondent No.1 contended that cognizance has been taken, the trial has begun, and the applicants have already filed an application under Section 265-K, Cr.P.C. before the learned trial Court on the same grounds.

7. Learned Deputy Prosecutor General relied on **Muhammad Akram Khan**⁵, under which, once cognizance is taken, the trial Court decides the fate of the case and an accused may seek acquittal under sections 249-A/265-K Cr.P.C.

8. I have heard the learned counsel for the parties as well as learned DPG and gone through the record.

9. The learned Judicial Magistrate heard the parties and took cognizance as a Court, so this application is maintainable. The question is whether this Court should now interfere.

10. The law is settled that the opinion of the I.O. does not bind the Magistrate, who may take cognizance against persons listed in Column No.2 by the police. This power must be exercised with care and on incriminating material, not at will.

³ Decision of the Special Medical Board dated 03.12.2025.

⁴ *Ghulam Hussain alias Nangar and 2 others v. The State* 2001 YLR 387; *Zahoor Ahmed and 4 others v. The State and another* 2025 YLR 71; *Bahadur and another v. The State and another* PLD 1985 Supreme Court 62; *Amin Ali and 5 others v. Senior Superintendent of Police Dadu and 2 others* PLD 2026 Sindh 304.

⁵ *Director General, Anti-Corruption Establishment, Lahore and others v. Muhammad Akram Khan and others* PLD 2013 SC 401.

11. The impugned order is not free from criticism. It erroneously records that the complainant named the applicants in the FIR, whereas they were implicated only through the version of respondent No.1. It does not state which witness attributes what role to each applicant, nor does it say what the I.O. overlooked. It refers to medical evidence without specifying whose injuries are meant, and it says nothing about the Medical Board's decision or the fact that two competing versions exist.

12. At the same time, the learned Judicial Magistrate heard the parties, re-examined the record, and formed a prima facie view. At this stage, that is all the law requires. Whether the statements of respondent No.1's side are reliable, whether the I.O.'s inquiry and the independent witnesses outweigh them, and how far the suspension of the medical certificates (which followed the injured's non-appearance before the Board) affects proof of the injuries can be decided only by examining the evidence. This Court cannot do so under Section 561-A, Cr.P.C. The order cannot be called wholly without material or jurisdiction.

13. The trial has also progressed. The accused have appeared, and the Sessions case is pending. Applicants Nos.1, 2, 5 and 6 have already sought acquittal under Section 265-K, Cr.P.C., on grounds similar to those raised here: late implication, the suspended medical certificates and false implication. That Court is the proper forum to examine these points on the record. Hearing the same matter here at the same time could produce conflicting findings and further delay a case that has already undergone several rounds of litigation on cognizance.

14. Applicants Nos.3 and 4 have not appeared before the learned trial Court and are not shown to be on bail. A person who has not submitted to the process of the Court cannot ordinarily ask this Court for discretionary relief from this Court in the same proceedings. They may appear before the learned trial Court and seek their remedies, including bail and Section 265-K, Cr.P.C.

15. In the circumstances, the objections of the applicants can best be examined by the learned trial Court. The impugned order is not interfered with, and the trial shall continue. The learned Additional Sessions Judge/MCTC, Ubauro, shall, if not already decided, decide the application under Section 265-K, Cr.P.C., within thirty (30) days of receipt of this order, after hearing all sides, by a reasoned order in accordance with law.

16. These observations are tentative and shall not prejudice either side at that stage or at trial. The applicants on bail shall attend regularly.

17. The criminal miscellaneous application stands **disposed of** in these terms *to the extent of Applicants Nos.1, 2, 5 and 6*; however, *for Applicants No.3 and 4*, the same stands **dismissed**. The office shall send a copy of this order to the learned Additional Sessions Judge/MCTC, Ubauro, and the learned Judicial Magistrate-I, Ubauro, for information and compliance.

J U D G E

Abdul Basit