IN THE HIGH COURT OF SINDH BENCH AT SUKKUR.
Criminal Miscellaneous Application No.S-506 of 2025.

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE

Applicants: 1. Manzoor Ahmed S/O Manjhi
2. Ghulam Yaseen S/O Manjhi
Both by caste Mahar.
3. Barkat Ali S/O Baradi Mahar
4. Muhammad Bux S/O Kouro Mahar
Through Mr.Anwar Ali Lohar Advocate

The State: **Through Mr.Gulzar Ali Malano A. P.G**.

Respondent No.5: Allah Jiwayo S/O Wali Muhammad Mirbahar
Through Yameen Ali Khoso Advocate.

Date of hearing: **24.09.2026.**

Date of order: **01.10.2026.**

Suresh Kumar J:- Through this Criminal Miscellaneous Application under Section 561-A of the Code of Criminal Procedure (Cr.P.C), the applicants/accused have impugned the order dated August 15, 2025, passed by the learned 2nd Civil Judge & Judicial Magistrate, Ghotki, upon final report under section 173 Cr.P.C, submitted by SHO /IO Police Station Adilpur, in Crime No. 80/2023 under Sections 395, 396, 324, 353, and 34 of the Pakistan Penal Code (PPC), whereby he took cognizance against the applicants/accused whose names were placed in column No.II of the challan and joined them in the case as accused so also issued NBWs against the applicants/accused.

2. The facts leading to this Criminal Miscellaneous Application are as follows: On June 17, 2023, the complainant, ASI Mehmood Chachar, lodged an FIR stating that he, along with his staff, left Roznamcha entry No. 15 at 1600 hours. During patrolling, they received intelligence regarding individuals from the Mahar community committing robbery and firing. Upon reaching the specified location at 1700 hours, they encountered the scene where the body of one individual was lying on the ground, and a motorcycle was present.

Two unknown individuals, armed with KKs and a pistol, were also at the scene. Upon noticing the police party, these individuals opened fire, attempting to murder them, and after approximately ten minutes of firing, they fled into the bushes. The individuals identified themselves as Karamullah Mahar, Farooque Mahar, and Ali Gul Mahar, and they named the deceased as Faqeer Muhammad Mahar, who had resisted the accused and was subsequently murdered. The accused had robbed the deceased of a mobile phone and Rs. 10,000. It was reported that two dacoits were killed in the crossfire with their accomplices. The police collected the KKs and pistol along with the bodies of the deceased dacoits and transported all three bodies to the hospital. Subsequently, the complainant returned to the police station and lodged the FIR on behalf of the State.

3. After lodging the FIR, respondent No. 5 filed a Criminal Miscellaneous Application before the learned Sessions Judge, Ghotki, which was allowed by the learned 2nd Additional Sessions Judge/Ex-officio Justice of Peace, Ghotki. The court directed the Investigating Officer (I/O) to record the version of the applicant party, which was duly recorded by the I/O, as well as the version of respondent No. 5. Subsequently, the I/O included the names of the applicants along with other co-accused in column No. 2 of the challan and submitted a report under Section 173 of the Code of Criminal Procedure (Cr.P.C) before the learned 2nd Civil Judge & Judicial Magistrate, Ghotki. However, the learned Magistrate did not agree with the report of the I/O and took cognizance, as per the order dated August 15, 2025. The applicants/accused, being aggrieved, have approached this Court. Hence, this Criminal Miscellaneous Application.

4. I have heard learned counsel appearing on behalf of applicants, learned DPG, and learned counsel for respondent No.5.

5. Learned counsel appearing on behalf of the applicants contended that the impugned order dated August 15, 2025, passed by the learned 2nd Civil Judge & Judicial Magistrate, Ghotki, is not a speaking order. He argued that

the learned Magistrate has failed to discuss the material as well as the version of the applicant. Furthermore, he contended that the Investigating Officer (I/O) collected material supporting the innocence of the applicants; however, this material has neither been discussed nor has the Magistrate provided reasons for ignoring it. Lastly, he asserted that the impugned order passed by the learned Magistrate is not warranted under the law and is liable to be set aside. He cited the cases of Mushtaque Rajj v. The Magistrate 1st Class and others **(1994 P.Cr.L.J 497)** and Farooque Sumar and others v. The State and others **(2004 P.Cr.L.J 1023)**.

6. Learned Additional Prosecutor General (APG) appearing on behalf of the State has supported the impugned order and contended that sufficient material has been brought on record in the form of statements from respondent No. 5 and his witnesses, as well as video recordings in the shape of a USB, which are available on record to connect the applicants with the commission of this offence. He further contended that the defense plea of alibi raised by the applicants is to be determined after the recording of evidence. Lastly, he asserted that the application may be dismissed.

7. Learned counsel for respondent No. 5 has adopted the same arguments made by the learned APG for the State and has further contended that the learned Magistrate committed no illegality while passing the impugned order dated August 15, 2025. Therefore, the instant Criminal Miscellaneous Application may be dismissed.

8. Having given due consideration to the arguments advanced by learned counsel for the respective parties and having perused the relevant material, it is revealed from the record that the applicants/accused are not named in the FIR. However, they have been nominated by the complainant, Allah Jiwayo, and his witnesses, Niaz Ahmed and Nazir Ahmed, in their counter version recorded as per the order passed by the learned Justice of

Peace on the application submitted by respondent No.5. The Respondent No. 5 and his witnesses have fully implicated the applicants/accused, and they have also produced video recordings in the form of a USB during the investigation. Therefore, *prima facie* sufficient material is available on record against the applicants to connect them with the alleged offence. The applicants have relied upon the defense plea of alibi and defense witnesses, which can be considered after the recording of evidence. In the present case applicants have been shown in column No.II of the challan on the basis of plea of *alibi* and defense witnesses, but I/O has recommended their innocence which is not binding upon the Magistrate. In the case of **Safdar Ali V. Zafar Iqbal and others (2002 PLJ 304)** in which Honorable Supreme Court has held that magistrate is not bound by the Investigating Officers report under section 173 Cr.P.C and is not bound to accept the placing of accused in column No.II of the challan. In the case of **Waqar-ul Haque @ Nitho v. The State (1998 SCMR 1408)** where the Honorable Supreme Court has ruled that the accused whose name was placed in column No.II of the challan can be summoned.

9. The honorable Supreme Court again re-iterated the settled principle of law in the case of **Allah Dewayo v. The State through Prosecutor General Sind (2023 SCMR 1724)** that findings and reports of investigating officer placing an accused in column No.2 carry no conclusive legal weight amounting only to ipse dixit, and the Magistrate possesses the lawful authority to disregard such findings and summon the accused.

10. The Honorable Supreme Court of Pakistan in the case of **Khushbatur Rehman v. The State (1985 SCMR 1314)** laid down principle that once a Magistrate takes cognizance of an offence the case cannot be artificially bifurcated based on police columns the court is not confined to the accused placed in column No.3.

11. In view of the above dictum laid down by the Honorable Supreme Court in the referenced judgments, the opinion of the Investigating Officer (I/O) placing the accused in column No. II based on the plea of alibi is arbitrarily recorded and is not binding upon the Magistrate, as the learned Magistrate is fully competent to take cognizance under Section 190 of the Code of Criminal Procedure (Cr.P.C) against the same persons placed in column No. II of the challan. In the present matter, respondent No. 5/complainant Allah Jiwayo and his witnesses have implicated the applicants/accused, as well as in the video recording available in the form of a USB and other material on record, which prima facie connects the applicants/accused with the commission of this crime. The plea of alibi taken by the applicants/accused cannot be considered without the recording of evidence.

12. With due respect and regard, the case law referred to by learned counsel for the applicants is quite distinguishable from the facts and circumstances of the present case; hence, it is not applicable to this case.

13. For the reasons discussed above and the guidance taken from the cited case law, I am of the considered view that the learned Magistrate has rightly joined the applicants/accused in the case. Consequently, the impugned order dated August 15, 2026, passed by the learned 2nd Civil Judge & Judicial Magistrate, Ghotki, is maintained, and the instant Criminal Miscellaneous Application is dismissed accordingly.

J U D G E