

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Rev. Application No.S-56 of 2024

Applicant: Fida Hussain *through* Ameenuddin Khaskheli, Advocate
Respondent: The State *through* Mr. Mansoor Ahmed Shaikh, Deputy
Prosecutor General, Sindh
Date of hearing: 24.7.2025
Date of decision: 24.7.2025

J U D G M E N T

Muhammad Jaffer Raza, J. - Instant Criminal Revision Application, has been preferred by the Applicant under Sections 435 and 439 Cr.P.C impugning the order dated 08.8.2024 passed by the learned Additional Sessions Judge, Moro in Direct Complaint No.05/2022¹ whereby the Direct Complaint U/S 200 Cr.P.C filed by the Applicant was dismissed.

2. The Direct Complaint preferred by the Applicant reflects that the alleged incident occurred between the night of 28.02.2023 and in the morning of 01.03.2023. The details of alleged incident are aptly recorded in paragraph No.2 of the impugned order dated 08.08.2024, and the same may not be reiterated for the sake of brevity. However, it is pertinent to point out that earlier in the compliant preferred by the Applicant cognizance was taken by the learned Court of Sessions Judge-III, Naushahro Feroze², however, the said order dated 23.09.2023 was set aside by this Court vide order dated 16.04.2024, passed in Revision Application bearing No.S-85 of 2023. Vide the said order all the counsels were satisfied and the matter was disposed of and direction was given to the learned Court to hear the parties afresh. Thereafter, all the respective parties were heard in compliance of the

¹ The complaint number has been incorrectly noted by the learned Additional Sessions Judge as 05/2022. The alleged incident took place in 2023. Record reflects that it was presented in court on August 2023. The reference to the number in the instant judgment only reflects the record as available and the instant error may be corrected by the concerned/trial court.

² It is clarified that the first order dated 23.09.2023 was passed by Additional Sessions Judge-III, Naushahro Feroze. After disposal of the revision application noted in the said paragraph the case was transferred to Additional Sessions Judge Moro vide order dated 14.11.2023 passed by District and Sessions Judge Naushahro Feroze.

above noted order and subsequently vide impugned order dated 08.8.2024 the Direct Complaint of the Applicant was dismissed.

3. In order to adjudicate the present Revision Application, the following question is framed: -

Whether the learned Additional Sessions Judge, Moro correctly exercised his discretion under Section 203 Cr.P.C in dismissing the complaint preferred by the Applicant?

4. Prior to adjudicating on the question above it will be convenient to reproduce section 203 Cr.P.C. The same reads as under:-

“203. Dismissal of complaint. The Court before whom a complaint is made or to whom it has been transferred or (sent) may dismiss the complaint, if, after considering the statement on oath (if any) of the complaint and the result of the investigation or inquiry if any under section 202 there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing. (Emphasis added)

5. It is contended by the learned counsel for the Applicant that he had made out the case for cognizance to be taken and the complaint filed by the Applicant was erroneously dismissed by the court below. He has contended that there were sufficient grounds available for the learned court below to take cognizance in the matter. He has further averred that there is no prohibition under the scheme of the Cr.P.C for multiple trials to be held for the same offence. In this regard he has placed reliance on the case of **Mushtaq Ahmad v. Muhammad Saleem and 2 others³**. He has further averred that no cogent reason has been assigned for dismissing his Direct Complaint and no prejudice will be caused to any party if the cognizance is taken on the Direct Complaint preferred by him. Both trials, according to the learned counsel, can run simultaneously and the respective trial

³ 1995 P Cr. L J 1900

court/s after recording the evidence of the parties, can decide the fate of the proceedings.

6. Conversely, learned DPG has argued that cogent reasons have been assigned for the dismissal of the above noted Direct Complaint and has stated that if the cognizance is taken and the Impugned Order is set aside, there is possibility that the case of the State will become “redundant”.

7. I have heard both the learned counsels and perused the record. Prior to rendering my finding on the question posed above I would like to note that Respondents No.4 and 5 were served repeatedly, as reflected in various orders. However, no one affected appearance on their behalf. Hence, the instant adjudication is being made with the able assistance of the learned counsels present.

8. At this juncture I have examined the Impugned Order dated 08.08.2024. Further, I have also perused the order of this Court passed in Criminal Revision No.S-85 of 2023 dated 16-04-2024. It has already been noted above that earlier cognizance was taken in the Direct Complaint preferred by the present Applicant. The said order was impugned before this court in the above-noted Criminal Revision application and the matter was remanded back to the learned trial court for decision afresh. However, the learned Additional Sessions Judge Moro declined to take cognizance, after all the respective parties were heard in compliance of the above noted order passed in the Revision Application. Without deliberating on the said order, which has attained finality, suffice it to say that the consent of the learned parties was recorded, and thereafter, their respective contentions were heard and deliberated upon by the learned Additional Sessions Judge, Moro.

9. It is trite law that under Section 203 Cr.P.C cognizance can only be refused if “*no sufficient ground*” has been pleaded by the Applicant in the Direct Complaint.

Perusal of the record and the Impugned Order, more particularly paragraph No. 07 of the said Order, indicates that the learned Additional Sessions Judge, Moro has primarily dismissed the Direct Complaint for the reasons reproduced herein under:-

“For the sake of argument if both version of parties is accepted as true and correct, then this act would be deemed as potential inconsistent in the application of the law when different evidence is presented for the same event. As above mentioned, the victim of present case if Dildar Ali who used to reside with complainant of FIR No:06/2023 namely Asif which means present complainant seems to be least concerned with the daily affairs of deceased Dildar Ali and deceased was also not under the care of present complainant. Even otherwise, for sake of arguments, if Dildar Ali was actually not killed in a manner as described in FIR 06/2023, then in such position, the most relevant person could have been the legal heirs of the deceased but no one from the legal heir of the deceased has supported the version of present complainant but contrary, they have supported the version of complainant of FIR No: 06/2023”.

10. It is apparent from the bare reading of the above noted observation that the learned Additional Sessions Judge, Moro was under the impression, at this stage, to definitively determine the truth and veracity of the Direct Complaint before it. The grounds on which a Direct Complaint can be dismissed were elaborately laid down by a larger bench of the Hon’ble Lahore High Court in the case of **Muhammad Jawad Hamid and another Versus Mian Muhammad Nawaz Sharif and others⁴** wherein it was held as under:-

“29. After examining the dictionary meanings of the above phrases and the judgments on the proposition, I am of the view that in order to hold a complaint as frivolous, malicious or vexatious, following elements must exist:-

- I) Where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.*
- II) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- III) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- IV) Where there is an express legal bar engrafted in any of the provisions of the Code or any other law (under which a criminal proceeding is instituted) to the*

⁴ 2019 P Cr. L J 665

institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

V) Where a criminal proceeding manifestly tainted with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge and also having no sufficient material in support of allegations.

VI) If the acts of accused or person complained against are protected by the Constitution or any other relevant law for the time being in force.

VII) If the accused or person complained against discharges his legal duties and also obeys the direction, command or order of his superior or any court, legal authority or tribunal.

VIII) Where the concerned court has fully satisfied after examining all material aspects that in all probability the complainant may not succeed in bringing charge home against the accused.

IX) Where the averments/ contents of the complaints/ allegations from any angle are reflecting to the abuse of process of law.”

11. It is apparent that the reasons assigned for the dismissal of the Direct Compliant (reproduced above) are beyond the parameters set out in the case of **Muhammad Jawad Hamid** (supra). Further, it is held that when a Direct Complaint is initiated under Section 200 Cr.P.C, the burden of the Applicant is **only** to establish a *prima facie* case. The truth and veracity of any statement made by any party can only be thrashed out at trial and in this respect it is held the learned Additional Sessions Judge, Moro erred in its finding. This, with respect, was not the forum or the stage to make a determination of the truth and veracity of the respective statements of the parties. The burden, as mentioned above, was only for the Applicant to satisfy that a *prima facie* case has been made out. The Hon’ble Supreme Court in the case of **Noor Muhammad v. The State and others**⁵, whilst outlining the scheme of Direct Complaint under the Cr.P.C, expounded the principle noted above in the following words:-

“The proceeding under section 204 or 203 depends upon the existence or non-existence of sufficient ground which have been taken by the Courts as the existence of prima facie case, the two expressions i.e., the existence of sufficient ground and prima-facie case have been construed by the Courts interchangeably. In the case of "Sher Singh v. Jatendranath Sen" (AIR 1931 Cal. 607), it was held "a prima facie case only means that there is ground for proceeding. It

⁵ (PLD 2007 Supreme Court 9)

is not the same thing as proof which comes later when the Court has to find whether the accused is guilty or not guilty". There is a marked distinction as to the approach of appraisal of material on record i.e. averments made in the complaint and the statement made on oath by the complainant, at the time of holding of a preliminary inquiry for determining as to whether the process to be issued against the accused or not and at the regular hearing of the criminal case leading to determining the guilt or innocence of the accused. The Court is not expected to examine the material minutely whereas at the stage of trial it appraise the evidence thoroughly and record its findings on the basis of such appraisal and that any benefit of doubt arising out of such inquiry should be given to the accused. It is not the stage where a material available on the record is assessed in depth but a prima facie case has to be made out to proceed further with the matter for issuance of the process. The burden of proof in a preliminary inquiry for the issuance of process is quite lighter on the complainant as compared to the burden of proof on prosecution at the trial of an offence as the prosecution is to prove the case beyond reasonable doubt and at the preliminary stage the complainant is not required to discharge above heavy burden of proof. The Court cannot overstretch the proceedings as to convert the preliminary inquiry or the averments made in the complaint to a stage of full-fledged trial of the case. It is quite an initial stage whereafter the accused is having the opportunity, apart from showing his innocence in the case at the final stage, to have a recourse of an intermediary remedy by moving the Court showing the complaint to be false and frivolous one and requesting the Court for his acquittal under section 249-A or 265-K, Cr.P.C. prior to further proceeding in the case to be taken. Mere summoning of an accused by the Court to answer the charges levelled against him does not tantamount to any infringement of any right of a person but rather an opportunity afforded to him to explain his position. During the investigation of a F.I.R. case, where the police is empowered to arrest without warrant i.e., in cognizable case, such a process i.e., arrest etc. is resorted to by the police, even in a case where the person accused of the charge pleads innocence before the police and he succeeds in his efforts to some extent and the police agrees with him, yet before any recommendation by the police for his discharge an insistence is made on his surrender before the authorities/Courts. The possibility of accusation turning out to be false or frivolous at the trial should not overbear the Court from issuing the process if the material available, prima facie discloses the case against the accused. At this stage a protracted inquiry or full dress rehearsal of trial is not required. (Emphasis added)

12. It is apparent from the bare perusal of the Impugned Order that the learned Additional Sessions Judge, Moro has examined the evidence presented minutely and placed a burden on the Applicant which is beyond the scope of Sections 200 and 203 Cr.P.C. I have purposely withheld any deliberation on the factual aspects of the matter, as the same may impact the case of the respective parties at trial.

13. I would like to deliberate on another aspect to avoid any confusion in the interpretation of the present judgement. It appears to me, upon perusal of the Impugned Order that the Learned Additional Sessions Judge Moro, without making any reference, was perhaps swayed by the judgement of the Hon'ble Supreme Court in the case of **Mst. Sughran Bibi v The State**⁶. A careful reading of the noted judgment would reveal that a Direct Complaint under Section 200 Cr.P.C was filed **after** lodging of an FIR on the **same** incident. A Human Rights Case was preferred by the mother of the deceased before the Hon'ble Supreme Court, seeking registration of **another** FIR due to the lack of progress in the earlier criminal proceedings. Perusal of Paragraph No.2 and 28 of the judgement are relevant in this regard and the same are reproduced below:-

"2. On 21.03.2008, more than a decade ago, one Mohsin Ali had lost his life through the hands of the police and FIR No. 177 was lodged by Zulfiqar, SI in respect of the said incident on the same day at Police Station Shabdara Town, District Lahore for offences under sections 324, 353 and 186, P.P.C. read with section 34, P.P.C. and section 13 of the Pakistan Arms Ordinance, 1965. It was alleged in that FIR that Mohsin Ali and others had launched a murderous assault upon a police party and in exercise of its right of private defence the police party had fired back resulting in death of Mohsin Ali. After completion of the investigation a Challan was submitted in that case before the Court of Session, Lahore for trial of the accused persons implicated therein. On 12.01.2010 the present petitioner namely Mst. Sughran Bibi (mother of Mohsin Ali deceased) instituted a private complaint in respect of the self same incident alleging that as a matter of fact Mohsin Ali had cold bloodedly been murdered by the local police by managing and staging a fake encounter. On 19.05.2010 a learned Additional Sessions Judge, Lahore seized of the case summoned 16 accused persons to face a trial in connection with the said private complaint. As per the legal norms the private complaint filed by the petitioner was taken up first for trial and on 18.06.2015 a Charge was framed against the summoned accused persons and, we have been informed, no progress has so far been made in that trial of the complaint case. Now through the present petition filed as a Human Rights Case under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 Mst. Sughran Bibi petitioner has sought issuance of a direction to the local police to register a separate FIR containing the different version of the same incident being advanced by her.

28. As an FIR had been registered in the present case regarding the same occurrence and the offences allegedly committed therein and upon completion of

⁶ PLD 2018 SC 595

the investigation of the case a Challan had been submitted before the trial court and as the present petitioner had instituted a private complaint depicting her version of the same incident and after summoning of the accused persons nominated there in a trial is already in progress in connection with that private complaint, therefore, ordering registration of another FIR based upon the petitioner's version of that very incident is not legally warranted. This petition is, thus, dismissed." (Emphasis added)

14. It is abundantly clear that the facts in the **Mst. Sughran Bibi** (supra) are distinct from the present revision application. The Hon'ble Supreme Court in the above noted judgement did not render an adverse finding in respect of an FIR and Direct Complaint being lodged on the same incident. The Hon'ble Court only declined the plea of the Petitioner to lodge another FIR on the same incident, by the same Petitioner, who had earlier successfully made out a case for cognizance to be taken on a Direct Complaint initiated by her.

15. In light of what has been held above, the Impugned Order is hereby set aside. It is further held that the Applicant has succeeded to make out a *prima facie* case. Resultantly, the learned Additional Sessions Judge, Moro is directed to take cognizance in the matter and proceed in accordance with law.

16. The instant Criminal Revision Application is allowed in the above terms.

JUDGE