

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Cr. Misc. Application No.S-759 of 2021**

Applicants: Jahangir Khan and others  
Through Mehfooz Ahmed Awan,  
Advocate

**Cr. Misc. Application No.S-764 of 2021**

Applicants: Khalil Ahmed and others, through  
Mr. Qurban Ali Malano, Advocate

State: Through Syed Sardr Ali Shah Rizvi,  
Additional Prosecutor General

Date of hearing: 07.03.2022.

Date of decision: 15.04.2022.

**ORDER**

**Zulfiqar Ali Sangi, J:** Through captioned two applications, the applicants have assailed the order dated 30.10.2021, passed by learned Civil Judge and Judicial Magistrate-II, Sukkur, whereby the learned Magistrate by dis-approving the summary submitted by the I.O for disposal of the case / FIR No.126/2021 of Police Station Airport Sukkur, under "A" class, took cognizance u/s 190 Cr.P.C against all the applicants/police officials who allegedly have participated in the encounter.

2. Briefly the facts of the case for disposal of these applications are that on 05.12.2020 at about 0120 hours allegedly an encounter took place between police officials / applicants and seven culprits in which two culprits namely Ali Bux Teghani and Muhammad Haneef Mirani died with the bullets of their own companions, such FIR was registered by complainant Inspector Jahangir Khan Mahar. After conducting investigation the I.O recommended the case to be disposed of under "A" class but the learned Civil Judge & Judicial Magistrate/Judge of Consumer Protection Court, Sukkur, vide order dated 12.06.2021 disapproved the summary and directed the SSP Sukkur to get conducted further investigation through an impartial police official not below the rank of DSP, therefore further investigation was conducted and final report under "A" class was submitted before

the concerned Magistrate on which the impugned order was passed, hence these applications.

3. Mr. Mehfooz Ahmed Awan learned counsel for the applicants in Cr. Misc. Application No. S-759/2021, has contended that learned Magistrate without applying his judicious mind passed the impugned order in hasty manner, which is not tenable under the law. He next contended that the learned Magistrate wrongly assessing the material and documents available in police file declared the police encounter fake and caused gross miscarriage of justice. He also contended that the learned Magistrate has not considered the first investigation report as well a further investigation report but has only given the preference to an application u/s 491 Cr.P.C which was even not pressed and treated the same as second version. He further contended that even the criminal record of deceased Ali Bux Teghani which was comprising of about 10 FIRs, was not considered by the learned Magistrate. He further contended that the learned Magistrate has committed illegalities and irregularities while passing the impugned order as such the same is liable to be set-aside.

4. Mr. Qurban Ali Malano learned counsel for the applicants in Cr.M.A.No.S-764/2021 has adopted the arguments advanced by Mr. Awan and has further contended that the impugned order passed by the learned Magistrate is much against the law, facts and equity as the police officials/applicants are innocent who have committed no offence.

5. Learned APG has also not supported the impugned order by submitting that in case the police officials/applicants are prosecuted in such like cases then in such situation no police official will work honestly and diligently and the crime will increase in the society as the persons against whom case was registered are hardened criminals.

6. I have heard learned Counsel for both the parties as well as learned APG and have gone through the material available on record.

7. Record reflects that on 10-08-2020 one Allah Dad s/o Muhammad Murad the brother of deceased Ali Bux had

filed an application under section 491 Cr.P.C alleging that he and his brother were going to Pano Akil on their motorcycle, they were intercepted by the police of P.S Sadhuja, after their personal search police arrested his brother by stating that he is required to SSP Sukkur for some inquiry. As per the contents of application police demanded some illegal gratification for release but was not paid. The application was not pressed on 15-08-2020 on the ground of filing a fresh but neither it was filed till the police has shown an encounter on 05-12-2020 nor any complaint was made in this respect that the said deceased was in the custody of police. The FIR was registered by the police on 05-12-2020 bearing crime No. 126/2020 at Police Station Airport. After withdrawal of application under section 491 Cr.P.C till the FIR there was no any claim of the relatives of the deceased Ali Bux that he was in custody of police of P.S Airport. After the FIR was registered the mother of said deceased had filed an application under section 22-A, B Cr.P.C on 26-01-2021 before Ex-officio Justice of Peace Sukkur after the period of one month and 20 days of the said encounter wherein some new facts were included. The names of the police officials are not mentioned in the application under section 491 Cr.P.C filed by the brother of the deceased who stated to be the eye-witness of the arrest of deceased but in application under section 22-A,B Cr.P.C filed by mother of the deceased the names of police officials were mentioned without any explanation as to wherefrom she came to know about those names of the police officials who first arrested the deceased Ali Bux. The application filed by the mother of deceased Ali Bux was dismissed vide order dated: 08-04-2021 and the same has not been challenged hence attained finality.

8. Record further reflects that the FIR bearing Crime No. 126/2020 was firstly investigated by SIP Badaruddin Soomro who submitted report under section 173 Cr.P.C before the Magistrate for disposal of case under "A" class having support of the opinion of District Public Prosecutor, however learned Magistrate being not agreeing with the same opinion passed order dated: 12-06-2021 for further investigation by holding that the investigation officer is subordinate to the complainant of the FIR of the encounter. After the order of learned Magistrate the SSP

Sukkur appointed Mr. Abdul Sattar Phul the DSP/SDPO SITE Sukkur as investigation officer who thoroughly conducted the investigation and during investigation collected following criminal record of the deceased Ali Bux and his relatives.

**CRIMINAL RECORD IN RESPECT OF DACOIT ALI BUX S/O MUHAMMAD MURAD TEGHANI R/O GARHI TEGHANI DISTRICT SHIKARPUR.**

1. FIR No.05/2004 u/s 302, 148 PPC of PS Sadhuja (PO)
2. FIR No.16/2007 u/s 302, 148 PPC of Sadhuja (PO)
3. FIR No.06/2009 u/s 148, 149 PPC of Katcho Ket-i, District Kashmore (PO)
4. FIR No.33/2011 under Section 353 PPC of Pano Akil (Abs)
5. FIR No.34/2011 under Section 13-DAO PPC of Pano Akil (Abs)
6. FIR No. 18/2020 u/s 353,324 PPC of PS Qadirpur (Abs:)
7. FIR No. 19/2020 u/s 353,324 PPC of PS Oadirpur (Abs:)
8. FIR No. 102/2020 u/s 365-A PPC of PS New Pind Sukkur (Abs)
9. FIR No. 206/2020 u/s 395 PPC of PS Kazi Ahmed, District SBA (Abs)
10. FIR No126/2020 u/s 353,324,399,402,148,149 PPC of PS Airport Sukkur (killed).

**CRIMINAL RECORD IN RESPECT OF NOTIFIED DACOTT S/O MUHAMMAD BUX TEGHANI R/O GHRHI TEGHANI DISTRICT SHIKARPUR (CARRYING 05 LAC HEAD MONEY REWARD) VIDE NO.POL-H-D/12-26/2021 KARACHI DATED.01.11.2010 (COUSIN OF DECEASED ALI BUX TEGHANI).**

1. FIR No.10/1999 u/s 324,435,148,437 PPC of PS Gudpur
2. FIR No.11/1999 u/s 17/3 EHO, 324 PPC of PS Gudpur.
3. FIR No.12/1999 u/s 353, 324, 148 PPC of PS Gudpur.
4. FIR No.15/1999 u/s 353,324,148 PPC of PS Gudpur.
5. FIR No.21/2001 u/s 324,353,148 PPC of PS Gudpur.
6. FIR No. 21/2003 u/s 302 PPC of PS Sadhuja.
7. FIR No.07/2004 u/s 302 PPC of PS Sadhuja.
8. FIR No.08/2004 u/s 399,401 PPC of PS Sadhuja.
9. FIR No.03/2006 u/s 302 PPC of PS Sadhuja.
10. FIR No.06/2014 u/s 353,324 PPC of PS Gudpur.
11. FIR No.07/2014 u/s 353,324 PPC of PS Gudpur.
12. FIR No.08/2014 u/s 353,324 PPC of PS Gudpur.
13. FIR No.06/2014 u/s 353,324 PPC of PS Gudpur.

**CRIMINAL RECORD IN RESPECT OF DACOIT SAJAWAL S/o MUHAMMAD MURAD TEGHANI RO GARHI TEGHANI DISTRICT SHIKARPUR (BROTHER OF DECEASED ALI BUX TEGHAN).**

1. FIR No. 06/2009 U/s 17/4 HO, 148,149 PPC of PS Katcho Ket-i-1, District Kashmore (PO).

**CRIMINAL RECORD IN RESPECT OF DACOIT GUL HASSAN S/O MUHAMMAD MURAD TEGHANI R/O GARHI TEGHANI DISTRICT SHIKARPUR (BROTHER OF DECEASED ALI BUX TEGHANI).**

1. FIR No.06/2009 U/s 17/4 HO, 148,149 PPC of PS Katcho Ket-i-1, District Kashmore (PO).
2. FIR No.04/1999 u/s 379 PPC of PS Gudpur.

**CRIMINAL RECORD IN RESPECT OF DACOIT ABDULLAH S/O JOGI TEGHANI R/O GARHI TEGHANI DISTRICT SHIKARPUR (UNCLE OF DECEASED ALI BUX TEGHANI).**

1. FIR No.01/1999 u/s 353,324 PPC of PS Sadhuja.
2. FIR No.21/2003 u/s 302 PPC of PS Sadhuja.
3. FIR No.03/2006 u/s 302 PPC of PS Sadhuja.
4. FIR No.05/2007 u/s 302 PPC of PS Sadhuja.

**CRIMINAL RECORD IN RESPECT OF DACOIT SOHNO S/O ALLAH BUX TEGHANI R/O GAHRI TEGHANI DISTRICT SHIKARPUR (UNCLE OF DECEASED ALI BUX TEGHANI).**

1. FIR No.03/2006 U/s 302 PPC of PS Sadhuja.
2. FIR No.21/2003 U/s 302 PPC of PS Sadhuja.

**CRIMINAL RECORD IN RESPECT OF DACOIT MUHAMMAD MURAD S/O ALLAH BUX TEGHANI R/O GARHI TEGHANI DISTRICT SHIKARPUR (FATHER OF DECEASED ALI BUX TEGHANI).**

1. FIR No.03/2006 /s 302 PPC of PS Sadhuja.
2. FIR No.21/2003 u/s 302 P Cof PS Sadhuja.

**CRIMINAL RECORD IN RESPECT OF DACOT IMAMUDDIN S/O KARIM BUX TEGHANI R/O GAHRI TEGHANI DISTRICT SHIKARPUR (COUSIN OF DECEASED ALI BUX TEGHANI).**

1. FIR No.07/2004 u/s 302 PPC of PS Sadhuja.
2. FIR No.08/2004 u/s 399,401 PPC of PS Sadhuja.
3. FIR No.03/2006 u/s 302 PPC of PS Sadhuja.
4. FIR No.05/2007 u/s 302 PPC of PS Sadhuja.

**CRIMINAL RECORD IN RESPECT OF DACOIT SHAHNAWAZ S/O KARIM BUX TEGHANI R/O GARHI TRGHANI DISTRICT SHIKARPUR (COUSIN OF DECEASED ALI BUX TEGHANI).**

1. FIR No.21/2003 u/s 302 PPC of PS Sadhuja.
2. FIR No.03/2006 u/s 302 PPC of PS Sadhuja.
3. FIR No.05/2007 u/s 302 PPC of PS Sadhuja.
4. FIR No. 16/2007 u/s 302 PPC of PS Sadhuja.

**CRIMINAL RECORD IN RESPECT OF DACOT KARIM DAD S/O SHER KHAN TEGHANI R/O GARHI TEGHANI DISTRICT SHIKARPUR (COUSIN OF DECEASED ALI BUX TEGHANI).**

1. FIR No.21/2003 U/s 302 PPC of PS Sadhuja (PO).
2. FIR No.07/2004 u/s 302 PPC of PS Sadhuja (PO).
3. FIR No.03/2006 u/s 302 PPC of PS Sadhuja (PO).
4. FIR No.16/2007 u/s 302 PPC of PS Sadhuja (PO).

**CRIMINAL RECORD IN RESPECT OF DACOT SADORO S/O JOGI TEGHANI R/O GARHITEGHANI DISTRICT SHIKARPUR (UNCLE OF DECEASED ALI BUX TEGHANI).**

1. FIR No.01/1999 u/s 353,324 PPC of PS Sadhuja (PO)
2. FIR No.21/2003 u/s 302 PPC of PS Sadhuja (PO).
3. FIR No.07/2004 u/s 302 PPC of PS Sadhuja (PO).
4. FIR No.03/2006 u/s 302 PPC of PS Sadhuja (PO).
5. FIR No.05/2007 u/s 302 PPC of PS Sadhuja (PO).
6. FIR No.16/2007 u/s 302 PPC of PS Sadhuja (PO).
7. FIR No.06/2009 u/s 17/4 HO, 148,149 PPC of PS Katcho Ket-1, District Kashmore (PO).

**CRIMINAL RECORD IN RESPECT OF DACOIT ALLAH DAD S/O MUHAMMAD MURAD TEGHANI R/O GARHI TEGHANI DISTRICT SHIKARPUR (BROTHER OF DECEASED ALI BUX TEGHANI).**

1. FIR No.11/2005 u/s 302 PPC of PS Sadhuja (PO).
2. FIR No.04/2017 u/s 353,324 PPC of PSs Baiji Sharif.
3. FIR No.05/2017 u/s 23(i) (a) SAA of PS Baiji Sharif.

**CRIMINAL RECORD IN RESPECT OF NOTIFIED DACOIT MOHARRAM S/O HAKEEM TEGHANI R/O GAHRI TEGHANI DISTRICT SHIKARPUR (CARRYING 05 LAC HEAD MONEY REWARD) VIDE NO. POL-H -D/12-26 2010 KARACHI DATED.01.11.2010 COUSIN OF DECEASED ALI BUX TEGHANI).**

1. FIR No.21/2003 ws 302 PPC of PS Sadhuja.

2. FIR No.08/2004 Ws 399,401 PPC of PS Sadhuja.
3. FIR No.11/2005 ws 302 PPC of PS Sadhuja.
4. FIR No.03/2006 ws 302 PPC of PS Sadhuja.
5. FIR No.21/2001 u/s 324,353,148 PPC of PS Gudpur.
6. FIR No.10/2002 Ws 302,324 PPC of Ps Gudpur.
7. FIR No.14/2002 ws 24,148,149 PPC of PS Gudpur.
8. FIR No.05/2003 ws 302,324 PPC of PS Gudpur.
9. FIR No.02/2016 Ws 353,324 PPC of PS Sadhuja.

**CRIMINAL RECORD IN RESPECT OF NOTIFIED DACOIT WAHID BUX S/O HAKEEM TEGHANI R/O GAHRI TEGHANI DISTRICT SHIKARPUR (CARRYING 05 LAC HEAD MONEY REWARD) VIDE NO, POL-II-HD/12-26 2008 DATED.08.09.2008 (COUSIN OF DECEASED ALI BUX TEGHANI).**

1. FIR No.21/2003 u/s 302 PPC of PS Sadhuja.
2. FIR No.11/2001 u/s 324,353 PPC of PS Sadhuja.
3. FIR No.05/2007 u/s 302 PPC of PS Sadhuja.
4. FIR No.16/2007 u/s 302 PPC of PS Sadhuja.
5. FIR No.09/1998 u/s 365-A PPC of PS C-Section Sukkur.
6. FIR No.75/1998 u/s 17/3 EHO of PS P/Akil.
7. FIR No.06/1998 u/s 353,224 PPC of PS Qadirpur.
8. FIR No.05/2003 u/s 302 PPC of PS Gudpur.
9. FIR No.06/2016 u/s 353,324 PPC of PS Sadhuja to be verified.

**CRIMINAL RECORD IN RESPECT OF DACOIT PANDHI S/O WALIYO TEGHANI R/O GAHRI TEGHANI DISTRICT SHIKARPUR (COUSIN OF DECEASED ALI BUX TEGHANI).**

1. FIR No.21/2003 s 302 PPC of PS Sadhuja.
2. FIR No.03/2006 uws 302 PPC of PS Sadhuja.
3. FIR No.05/2007 u/s 302 PPC of PS Sadhuja.
4. FIR No.16/2007 u/s 302 PPC of PS Sadhuja.

**CRIMINAL RECORD IN RESPECT OF MEHRAB S/O HAYAT @ GHAMNO TEGHANI R/O GHIR TEGHANI DISTRICT SHIKARPUR (CARRYING 10 LACS HEAD MONEY REWARD).**

1. FIR No.12/01 u/s 302,353,324 PPC of PS Gudpur.
2. FIR No.21/01 u/s 353,324 PPC of PS Gudpur.
3. FIR No.25/01 u/s 353,324 PPC of PS Gudpur.
4. FIR No.01/02 u/s 353:324 PPC of PS Gudpur.
5. FIR No.10/02 ws 353,324 PPC of PS Gudpur.
6. FIR No.14/02 /s 324 PPC of PS Gudpur.
7. FIR No.05/03 /s 353,324 PPC of PS Gudpur.
8. FIR No.19/01 u/s 302,353,324,395 PPC of PS Gudpur.
9. FIR No.01/01 ws 17/3 EHO & 353,324 PPC of PS Gudpur.
- 10.FIR No.10/00 /s 324 PPC of PS Gudpur.

9. Record further reveals that learned Magistrate has not considered the report of investigation officer including the above criminal record in proper manner as discussed above. No doubt the opinion of police officer is not binding upon the court (s); however the court (s) must not override its jurisdiction while passing the orders on report under section 173 Cr.P.C. The Magistrate can take cognizance of offence if report submitted by the investigating officer in negative that accusation is baseless and also no case is made out against the accused as has been held by Honourable Supreme Court in case of **Safdar Ali v. Zafar Iqbal (2002 SCMR 63)**, and the ipse dixit (opinion of the

I.O.) cannot be accepted to exonerate the accused from the commission of the alleged offence as has been held by the Honourable Supreme Court in case of **Mst. Qudrat Bibi v. Muhammad Iqbal and another (2003 SCMR 68)**.

10. In the case in hand the first investigating officer who recorded the statements under section 161 Cr.P.C and visited the place of vardat was of the opinion that the case is liable to be disposed of under "A" class and such report was concurred by the DDPP however while assigning the reasons, Learned Magistrate ordered for further investigation which too was conducted and result was the same. Honourable Supreme Court in case of **Sughran Bibi (PLD 2018 S.C 595)**, has held that during the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person." Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue. It was further held in the judgment (**supra**) that upon conclusion of the investigation the report to be submitted under section 173, Cr.P.C is to be based

upon the actual facts discovered during the investigation irrespective of the version of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person. In the case in hand it was second investigation officer who conducted the investigation of the present case and after the investigation he too recommended the case to be disposed of under "A" class. **However on perusal of entire investigation reports it reflects that only applications filed by the brother and the mother of the deceased were considered as second version and nobody including Mst. Moley Dini the mother of deceased was examined by second investigation officer (Abdul Sattar Phul) though she was not an eye-witness of arrest of the deceased Ali Bux but in application under section 22-A and B Cr.P.C brought some facts in respect the encounter and the brother of the deceased namely Allah Dad claiming to be an eye-witness and filed application under section 491 Cr.P.C before the encounter was also not examined during second investigation.** The investigation officer claimed that they are not traceable which also reflects from the order of learned Magistrate wherein it is mentioned that ***"Second party could not be served despite issuance of notice"***. Before this court position is same as the respondents were not served and thereafter publication was made in the newspapers for their service in spite of that they not turned up.

11. In view of the above I am of the opinion that no proper investigation of second version is conducted by the police nor the Learned Magistrate passed order after considering the above facts, therefore the order dated: 30-10-2021 passed by the Civil Judge & Judicial Magistrate-II Sukkur is set-aside. Since the police officials of Sukkur District are allegedly involved in the case of fake encounter therefore it is appropriate that investigation be handed over to the officer not bellow the rank of SSP of another district. Keeping in view of the above fact the SSP Kashmore @ Kandhkot **(Mr. Amjad Ali Shaikh)** is directed to investigate the second version of the case by taking all efforts for recording statements of Mst. Moley Dini and Allah Dad and other persons which he feels necessary and furnish such report before



the court within the period of one month from the date of this order with compliance report through Additional Registrar of this court. The District and Session Judge Sukkur is also directed to withdraw the case from Civil Judge & Judicial Magistrate-II Sukkur and assign the same to another Magistrate for passing appropriate order on the report of SSP Kashmore @ Kandhkot.

J U D G E