

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitutional Petition No.D-63 of 2025
Constitutional Petition No.D-64 of 2025
Constitutional Petition No.D-65 of 2025
Constitutional Petition No.D-66 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

- 1. For order on office objection.
- 2. For hearing of main case.

14.04.2025

Petitioner Wali Muhammad in person.
=

Dr. Syed Fiaz ul Hasan Shah, J: Through these constitutional petitions the petitioner impugned Order dated 07.01.2025 whereby complaint under section 133 Cr.P.C was dismissed for non-prosecution. We have examined the impugned Order which is not passed either in terms of Section 203 Cr.P.C or 247 Cr.P.C. It is settled law that if a complaint is dismissed after consideration of complaint, statement on oath and material available on record being based on the investigation or inquiry under section 202 Cr.P.C, then such order in its very nature can be challenged under Section 203 Cr.P.C. The complaint cases, which are governed under Chapter VXi of Code of Criminal Procedure, wherein dismissal of complaint is provided by section 203 Cr. P.C., which is reproduced below for sake of ready reference and convenience:

“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 complainant 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 cases he shall briefly record his reasons for so doing.”

Similarly, Section 247 Cr.P.C. provides procedure for acquittal of accused, when complainant fails to appear before the Court. The same is reproduced below for sake of convenience:

“247. Non-appearance of complainant. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything herein before contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day:

Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case:

Provided further that nothing in this section shall apply where the offence of which the accused is charged is either cognizable or non-compoundable.

On the other hand, if a complaint is dismissed after framing the charge, the said order terminated under section 247 Cr. P.C. which provides acquittal of the accused and said order is appealable under section 417(2) Cr.P.C because the charge is framed under

section 265 Cr.P.C and the law provide any one of the situation that is either an accused is acquitted or convicted. There is no other alternative way is available with the Trial Court except the above legal situation. It is settled Law that once charge is framed in complaint, the complaint cannot discharge by the Court after taking cognizance. Reliance is place on ***Muhammad Ibrahim Vs The State in Petition No.1251 of 2015 of Peshawar High Court.***

We are also conscious with the legal principles that dismissal Order passed for non-prosecution of an appeal or revision is not a Judgment within the meaning of Section 369 Cr.P.C. Therefore, to bar the Revisional jurisdiction of this Court, to restore a revision under inherent jurisdiction of this Court does not exist and it can be restored. Undoubtedly, even a revision dismissed in default, can be resorted by this Court while exercising inherent jurisdiction under Section 561-A Cr.P.C. but such jurisdiction cannot be invoked as a matter of routine and must be exercised sparingly and in deserving cases only. Reliance can be placed on the case of ***Abdullah vs. Din Muhammad Shah (PLD 1976 Karachi 1184)*** and of Lahore High Court in the case of ***Muhammad Ishaque vs. the State (1970 P.Cr.L.J. 412).***

However, in the present case, the learned trial Court while dismissing the complaint has neither discharge the Accused nor acquitted. In the present case neither Order passed under section 247 Cr.P.C. On confrontation, the petitioner states that he will not press the petition and will approach the Trial Court by filing new complaint. We are conscious that filing of second complaint after

dismissal of earlier under section 203 Cr.PC, being on same facts and against same accused, is permissible only in exceptions. For guidance reliance can be placed on the case “**Zahoor & another v. Said-ul-Ibrar & another**” (2003 SCMR 59). The relevant portion is re-produced hereunder:

“9. Before arriving at a definite conclusion, we first refer to the contents of section 200 to 203 Cr.PC that exclusively deal with the matter of private complaints. Section 203 Cr.P.C clearly lays down that a Court which is seized of a matter under section 200 Cr.P.C. may dismiss the complaint, if, after considering the statement on oath of the complainant and the result of investigation or inquiry under section 202 Cr.P.C., there is in its judgment no sufficient ground for proceeding further. The Court, in these circumstances, is bound to give reasons as well for such dismissal. The section categorically provides the application of mind by the Court to the statement on oath of the complainant as well as to the result of the investigation or inquiry ordered to be conducted under section 202 Cr.P.C. Meaning thereby, that the dismissal is not in routine but with the positive application of mind to the facts and circumstances of the case. This is further highlighted by the words “in his judgment” appearing at the end of section 203 Cr.P.C. The Court is required to evaluate the evidence and to make a judgment thereon in order to hold whether or not sufficient grounds exist for proceeding further. We hold a tentative view that when once a matter is dismissed after appreciation of statement on oath and the result of inquiries etc, the complainant should not be allowed to vex, the respondent time and again particularly when such judgment of the trial Court contains the narration of sufficient

grounds for not proceeding further. . “10. On the other hand, we are also alive to the fact that at times extremely perverse orders are passed by the trial Courts which are apparently without jurisdiction. In such rare and extraordinary circumstances, strictly adhered to by the Courts below, the complainant should be allowed to file a fresh complaint after dismissal of one under section 203 Cr.P.C. Such circumstances are aptly laid down by the Indian Supreme Court as reproduced above. We feel that in the given circumstances, the filing of fresh complaint should not be a bar for the complainant. This is particularly so because in the sections concerned there is no specific bar as observed by the Indian Supreme Court also. It is also pertinent to note that upto the state of section Cr.P.C, the accused is not yet summoned. Taking analogy from such section as well as from observations with reference to section 203 Cr.P.C, we hold that in the extraordinary circumstances referred to above a fresh complaint should not be barred if the one already filed is dismissed under section 247 Cr.P.C.

In view of the facts and circumstances, the petition is dismissed in limine with liberty to the petitioner to file afresh criminal complaint before the trial Court.

JUDGE

JUDGE

****Adnan Ashraf Nizamani****

