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## IN THE HIGH COURT OF SINDH, KARACHI

Before Mr. Justice Ahmed Ali M. Shaikh, Acting CJ  
Mr. Justice Muhammad Karim Khan Agha

C.P. No. D-6974 of 2015.

Ghulam Mustafa

V.

Province of Sindh & others.

Date of hearing	23-02-2016
Date of Judgment	07-03-2016
Petitioner:	Through Mr. Qayum Nawaz Kundi Advocate
Respondents:	Through Mr. Abdullah Rajput A.P.G.

### JUDGMENT

**Muhammad Karim Khan Agha, J.** The brief facts of the case are that the brother of the petitioner was killed in an incident of firing which took place on 25.01.2014, regarding which the petitioner tried to lodge an FIR. However, the FIR No.2/2014 dated 27.01.2014 U/Ss 302, 324, 147, 148, and 149 P.P.C. P.S. Bano, Mirpur Bathoro, District Sajawal had already been registered regarding the incident at the instance of the respondent No.4 (the first FIR) who was also involved in the firing incident and took the opposite stance to the Petitioner. Namely, he blamed the Petitioner for causing the firing and the loss of life and injuries which followed.

2. In presence of the first FIR No.2/2014 the police declined to lodge a second F.I.R. arising out of the same incident. This lead to the petitioner moving an application under section 22-A Cr.P.C. seeking directions for the registration of another F.I.R. from the Court of District & Sessions Judge, Thatta. On 07.03.2014, the Court of District & Sessions Judge, Thatta, was pleased to pass such directions and in pursuance thereto, the second F.I.R. 6/2014 dated 10.03.2014 arising out of the same incident as the first FIR was registered against the respondent No.4, 5 and 6 U/S 302, 324, 147, 148, and 149 P.P.C. P.S. Bano, Mirpur Bathoro, District Sajawal.

3. In essence each party blamed the other for the firing incident which lead to the deaths and injuries to persons on both sides.

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4. The police carried out the investigation and being unable to collect any incriminating evidence the IO filed a Final Report before District Magistrate Mirpur Bathoro for the disposal of the second FIR 6/14 as filed by the Petitioner in "C" class which was approved by the District Magistrate Mirpur Bathoro on 1-4-14.
5. The Petitioner was dissatisfied with the investigation and the report filed by the IO and the aforesaid order of the magistrate which lead to the competing parties who had filed the aforesaid contrary FIR's agreeing to have the matter re investigated.
6. However the Petitioner lost faith in the re investigation team and its arbitrary manner of working. In the event after completion of the re investigation the police filed its report for the cancellation of the FIR 6/14 which was again cancelled by the District Magistrate Mirpur Bathoro on 1-6-15.
7. The Petitioner being dissatisfied with the orders of District Magistrate Mirpur Bathoro dated 1-4-14 and 1-6-15 (the Impugned Orders) respectively has moved this Court in its Constitutional jurisdiction under A.199 to set aside the Impugned Orders and direct District Magistrate Mirpur Bathoro to take cognizance over the matter under S.190 Cr.PC.
8. Learned Counsel for the Petitioner submitted that the other party was influential and that the police was acting at their behest and as such it was not possible for him to get his FIR fairly investigated. According to him the only way that justice could be done in this case was either for the District Magistrate Mirpur Bathoro to take cognizance over the matter under S.190 Cr.PC or for a further reinvestigation by honest and independent police officers.
9. On the other hand learned counsel for the State has submitted neither would it be appropriate for this Court to direct the District Magistrate Mirpur Bathoro to take cognizance over the matter under S.190 Cr.PC or for a further reinvestigation by the police. He supported the police investigation and orders passed by the District Magistrate Mirpur Bathoro
10. At the outset we would observe that it is not the place of this Court to examine the evidence collected by the police in its constitutional jurisdiction and then if satisfied with the same direct the concerned Magistrate Mirpur Bathoro to take cognizance of the case. It is for the police once an FIR is lodged to carry out an independent investigation without fear or favor and after collecting all the relevant evidence put up a report to the magistrate who may or may not agree with it.

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11. We would not wish to usurp the role of the police or the Magistrate in this respect especially as in this case there has already been one re investigation and the magistrate has come to the same conclusion after each investigation. Ordering yet another re investigation in our view is unlikely to serve any useful purpose

12. In such cases where the complainant party is dissatisfied with the investigation carried out by the police the Cr.PC has left a safety valve through S.200 Cr.PC which may be invoked by a dissatisfied party if he so chooses. Based on the facts and circumstances of this case we are of the view that this would be an alternate course open to the Petitioner if he so choose which would be an alternate remedy as to debar the Petitioner from approaching this Court under A.199 and would in our view be preferable to this Court giving directions to the Judicial Magistrate Mirpur Bathoro to take cognizance of the case or order yet another investigation by the Police.

13. As such the Petition is dismissed

14. These are the reasons for our short order dated 23-02-2016 dismissing the Petition.

Dated: 07-03-2016