

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.124 of 2023

Applicant : Nadir Hussain Advocate
Through Mr. Muhammad Arif, Advocate

Respondents 1 to 4 : Dr. M. Ali Zaidi & others
Through Mr. Farooq Hashmat, Advocate

Respondent : The State
Through Mr. M. Mohsin Mangi, APG.

Date of hearing : 23.05.2025

Date of order : 30.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. The applicant has invoked the revisional jurisdiction of this court calling in question the legality and propriety of the impugned order dated 29.05.2023, passed by the learned Special Judge Anti-Corruption (Provincial) Karachi in Direct Complaint No.12/2023. By the said order, the learned Special Judge declined to take cognizance of the offence and consequently dismissed the applicant's direct complaint under Section 203 Cr.P.C.

2. The applicant, Nadir Hussain Advocate, lodged a direct complaint under Section 200 Cr.P.C. before the learned Special Judge Anti-Corruption (Provincial) Karachi. The essence of the complaint revolved around allegations of corruption, harassment, illegal gratification, and unlawful demolition of property against various Government officials (Respondents No. 1 to 6) and other private individuals. The applicant asserted that despite possessing legitimate title documents for his two plots (No.194-G & 194-H) in Qayoomabad, Karachi, and having obtained approved building plans, the respondents, particularly Deputy Commissioner Korangi (Respondent No.1), Mukhtiarkar Mumtaz Channa (Respondent No.4), P.A. Ahmed (Respondent No.2), and Karim Incharge Domicile (Respondent No.3), along with police officials, forcibly entered his plots, demanded illegal gratification, demolished a boundary wall, and took away construction material. Further allegations were leveled against Respondents No.5 and 6, Jahanzaib Iqbal and

Ramzan @ Ramzani, for demanding substantial bribes through blackmail for not cancelling the lease of the plots.

3. Upon receipt of the direct complaint, the learned Special Judge, exercising powers under Section 202 Cr.P.C., directed the Anti-Corruption Establishment, Korangi, to conduct a preliminary inquiry. The Circle Officer, Anti-Corruption Establishment, Korangi, submitted a Final Enquiry Report. The findings of this inquiry report are crucial to the present revision. It detailed the statements of the complainant, Nadir Hussain, who fully supported his complaint, and several witnesses. Significantly, the inquiry report recorded the statement of witness Jahanzaib Khan, who explicitly corroborated the demand and acceptance of Rs. 50,000/- as illegal gratification by Mumtaz Channa Mukhtiarkar Korangi and "above named officials" from the complainant in his presence. Other witnesses, Tariq Khan and Muhammad Tariq, while not explicitly mentioning the bribe amount, corroborated the presence of the officials, including the Deputy Commissioner Korangi, and the act of demolition. Witness Mohammad Ashraf's statement further supported the allegations of bribe demands by Jahanzaib Iqbal (Respondent No.5) and Ramzani Land Surveyor (Respondent No.6). Most importantly, the "FINDINGS" section of the "Final Enquiry Report" categorically concluded that: "The allegations regarding demanding and acceptance of illegal gratification and broken boundary wall have been established against the nominated defaulters as supported the version of complainant by witnesses."

4. During the arguments before the learned Special Judge, a pivotal moment occurred. The learned counsel for the applicant placed on record a statement, declaring that the complainant did not wish to press the instant criminal complaint against Respondent No. 1, Dr. Muhammad Ali Zaidi (Deputy Commissioner Korangi), but intended to proceed against the remaining Respondents No. 2 to 6 in accordance with law.

5. The learned Special Judge, in the impugned order dated 29-05-2023, found this development "astonishing." The learned Judge reasoned that since the complainant had levelled specific allegations against all respondents, including the Deputy Commissioner, regarding bribe

money, the complainant could not be allowed to "pick and choose" the accused, invoking the principle of "cognizance of the offence and not of the person." The learned Judge further noted what he perceived as a "difference" in the statements of the complainant and his witnesses, specifically pointing out that witnesses Tariq Khan and Muhammad Tariq "have not uttered the words that official witnesses demanded and received Rs. 50,000/- from the complainant." Based on these observations, the learned Special Judge concluded that "the case of the complainant is not free from doubt" and that allowing selective prosecution "would be an inappropriate course which shall not meet the ends of justice." Consequently, cognizance was declined, and the entire direct complaint was dismissed under Section 203 Cr.P.C.

6. Learned counsel for the applicant, strenuously contended that the impugned order suffers from patent illegality and non-application of judicial mind. He argued that the learned Special Judge failed to appreciate that the "Final Enquiry Report," directed by the court itself under Section 202 Cr.P.C., unequivocally found that the allegations of demanding and accepting illegal gratification and breaking the boundary wall "have been established against the nominated defaulters as supported the version of complainant by witnesses." This positive finding, he submitted, furnished sufficient grounds for taking cognizance, not for dismissal. The learned Special Judge selectively read the witness statements. While acknowledging that Tariq Khan and Muhammad Tariq may not have specifically mentioned the Rs. 50,000/- bribe, the learned counsel emphasized that witness Jahanzaib Khan unequivocally corroborated the demand and acceptance of Rs. 50,000/- by Mumtaz Channa Mukhtiarkar and other officials in his presence. This crucial piece of evidence, along with the overall positive finding of the inquiry officer, was overlooked or misappreciated. The learned counsel submitted that the statement made before the trial court, expressing the complainant's desire not to press the complaint against Respondent No.1, was made under the direct or indirect directives/guidance of the learned Presiding Officer himself, who had asked the applicant to withdraw the complaint against Respondent No. 1 and file a fresh complaint after deleting his name. The applicant, adhering to this suggestion, submitted

the statement before the court. It was argued that the complainant should not be penalized for complying with a suggestion from the court. In a crucial deviation from the earlier stance, learned advocate submitted that the complainant now wishes to pursue the claim against all the accused, including Respondent No.1, and does not wish to withdraw the complaint against Respondent No.1 anymore. He clarified that the earlier statement was made under specific circumstances and that the complainant now desires that the entire complaint be proceeded with as per law, given the strong findings of the inquiry report. The observation of the learned Special Judge that the case is "not free from doubt" is wholly unsubstantiated, as the inquiry officer's report stands in direct contradiction to this conclusion. An opinion of the inquiry officer, when positive, should not be brushed aside lightly, even if it is not binding, as it guides the court's discretion under Section 203 Cr.P.C. The learned Judge's invocation of the "cognizance of offence, not person" principle was misapplied. This principle does not obligate a complainant to prosecute an individual they no longer wish to pursue, especially at the pre-cognizance stage. The court's duty was to assess the sufficiency of evidence against the remaining accused, not to dismiss the entire case as a punitive measure.

7. Conversely, learned counsel appearing for Respondents No.3 & 4, vehemently defended the impugned order. He contended that the learned Special Judge was well within his powers to dismiss the complaint under Section 203 Cr.P.C. if he found no sufficient ground for proceeding. The impugned order, by stating "This direct complaint fails" and "taking of cognizance is declined," clearly indicates that the dismissal was on merits, after due consideration of the record, not merely on a technicality. The very last three lines of the operative part of the order, "taking of cognizance is declined. Thereby, this direct complaint is dismissed u/s 203 Cr.P.C.", imply a decision based on the merits of the evidence presented during the inquiry. The opinion of the inquiry officer, while helpful, is not binding on the learned Special Judge. The learned Judge is required to apply his own independent judicial mind to the material collected during the inquiry. The alleged "contradiction" in witness statements regarding the Rs. 50,000/- bribe was a valid ground

for the learned Judge to entertain doubt about the veracity of the complaint. The complainant's initial attempt to withdraw against Respondent No.1, followed by a change of stance, further casts doubt on the credibility and bona fides of the complaint.

8. I have given anxious consideration to the arguments advanced by the learned counsel for both sides and have thoroughly examined the record, including the direct complaint, the "Final Enquiry Report," and the impugned order.

9. At the outset, it is pertinent to reiterate the purpose of an inquiry under Section 202 Cr.P.C. It is a preliminary step designed to assist the Magistrate in determining whether there exist sufficient grounds for proceeding against the accused, thereby distinguishing between genuine and frivolous complaints. It is not a trial, nor can it result in a finding of guilt or innocence. The most striking aspect of this case is the glaring disconnect between the explicit "FINDINGS" of the inquiry report and the ultimate conclusion reached by the learned Special Judge. The inquiry officer, having recorded the statements and collected evidence, unequivocally concluded that the allegations of demanding and accepting illegal gratification and breaking the boundary wall "have been established against the nominated defaulters as supported the version of complainant by witnesses." This clear finding, emanating from an inquiry specifically directed by the court, prima facie points towards the existence of "sufficient grounds for proceeding" the very antithesis of grounds for dismissal under Section 203 Cr.P.C. A dismissal under Section 203 Cr.P.C. is warranted only when the Magistrate finds no sufficient ground for proceeding. In the face of a positive inquiry report, such a dismissal requires robust and cogent reasons that squarely negate the inquiry's findings.

10. The learned Special Judge's reliance on a "difference" in witness statements concerning the Rs. 50,000/- payment is also problematic. While witnesses Tariq Khan and Muhammad Tariq did not explicitly mention the bribe amount, the inquiry report clearly highlights the direct corroboration by witness Jahanzaib Khan regarding the Rs. 50,000/- payment. A comprehensive assessment of the inquiry report necessitates

considering all the evidence collected, not just isolated statements. The court's focus on the absence of a specific detail in two statements while overlooking its presence in another and the overall positive finding of the inquiry officer demonstrates a selective and, thus, flawed appreciation of the evidence. Furthermore, the allegations of bribe demands by Respondents No.5 and 6, supported by witness Mohammad Ashraf, appear to have been largely overlooked in the dismissal order's reasoning.

11. The learned Special Judge's concern regarding the complainant's initial desire to withdraw against Respondent No.1, and the invocation of the "cognizance of offence and not of the person" principle, also requires careful re-evaluation. While the court must indeed take cognizance of the offence, the complainant's right to pursue or not pursue a particular individual, especially at the pre-cognizance stage, cannot be outright denied to the extent of dismissing the entire complaint. If the complainant, for legitimate reasons, chooses not to prosecute one accused, it does not automatically dilute the evidence against others, particularly when the inquiry report itself supports the allegations. The subsequent submission by the learned counsel for the applicant before this Court that the complainant now wishes to proceed against all accused, including Respondent No. 1, further underscores the fluid nature of the complainant's stance which should not be held against the entire complaint, particularly when the inquiry itself indicated merit. The learned Special Judge's stated ground that the case was "not free from doubt" stands directly contradicted by the inquiry officer's conclusion that the allegations "have been established."

12. While the opinion of the inquiry officer is not binding on the learned Special Judge, it serves as a valuable aid to the court in reaching a decision on taking cognizance. When the inquiry report is positive and clearly establishes grounds for proceeding, the learned Judge must provide compelling and judicially sound reasons for dissenting from such a finding and dismissing the complaint. The reasons articulated in the impugned order do not adequately rebut the strong findings of the inquiry report. The argument that the dismissal was on "merits" does not

hold water, as the learned Special Judge's "merits" assessment appears to be based on a misreading of the inquiry report and a rigid application of principles that were not conducive to the ends of justice at that preliminary stage.

13. The cumulative effect of the above defects leads this Court to the inescapable conclusion that the impugned order, declining cognizance and dismissing the entire direct complaint, is legally unsustainable. It has resulted in a miscarriage of justice by prematurely closing a complaint that, on the face of the inquiry report, warranted further proceedings.

14. In light of the foregoing discussion, this Court is satisfied that the learned Special Judge Anti-Corruption (Provincial) Karachi failed to exercise his judicial discretion appropriately and misappreciated the evidence brought forth through the Section 202 Cr.P.C. inquiry. Accordingly, this Criminal Revision Application is allowed. The impugned order dated 29.05.2023 passed by the learned Special Judge Anti-Corruption (Provincial) Karachi in Direct Complaint No.12/2023 is set aside. The matter is remanded back to the learned Special Judge Anti-Corruption (Provincial) Karachi with the following directions:

- a) The learned Special Judge shall re-examine the "Final Enquiry Report" comprehensively, giving due weight to its "FINDINGS" and a holistic consideration to all witness statements, including that of Jahanzaib Khan.
- b) The learned Special Judge shall proceed to determine afresh whether there are sufficient grounds for taking cognizance and issuing process against all the respondents, based on the entire material on record, without being swayed by the complainant's prior, changed stance regarding Respondent No.1.
- c) The learned Special Judge shall pass a speaking order, clearly articulating the reasons for his decision on cognizance, addressing the evidence against each accused in light of the inquiry report.

J U D G E