

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Revision Application No.S-137 of 2024.

Cr. Revision Application No.S-141 of 2024.

Cr. Revision Application No.S-142 of 2024.

Cr. Revision Application No.S- 86 of 2025.

Applicants : Muhammad Alam @ Alam & another **through**
(In Cr. Rev No.137/24 and Mr. Mahmood A.Qureshi, Advocate.
In Cr. Rev No.86/25).

Applicants : Muhammad Nawaz & another **through** Mr.
(In Cr. Rev No.141/24). Zaffar Ali Laghari, Advocate.

Applicants : Mst. Gulshan & another **through** Mr. Rasool
(In Cr. Rev No.142/24). Bakhsh A.Soomro, Advocate.

Respondents : Saddam Hussain & others **through** Syed Tariq
(In all Cr. Rev Appls). Ahmed Shah, Advocate.

The State : Through Mr. Altaf Hussain Khokhar, Deputy
Prosecutor General, Sindh.

Date of Hearing : 11.05.2026.

Date of Decision : 21 .05.2026.

ORDER

Syed Fiaz ul Hassan Shah, J :- The Applicants have impugned the Orders dated 05.08.2024, 09.12.2024 & 22.02.2025 (**impugned Order**) passed by the learned 1st Additional Sessions Judge, Tando Muhammad Khan (**Trial Court**) in Sessions Case No.04 of 2023 whereby a Supplementary Charge Sheet No.47 filed by the Police Officer in compliance of Order passed by Hon'ble Supreme Court of Pakistan, was accepted and subsequently Second Charge was framed against the Applicant.

2. The facts of case are that FIR No.93/2022 lodged by Mohammad Nawaz son of Gul Mohammad Leghari at Police Station Shaikh Bhirkio, District Tando Mohammad Khan, under Sections 302, 324, 147, 148, 149, 337-A(i) and 337-F(i) PPC. The allegation was that the accused party caused the death of Ali Raza by firing upon him during an altercation. After investigation, the Investigation Officer submitted a final challan under Section 173 Cr.P.C. against the accused party. The Judicial Magistrate

transmitted the case to the Sessions Judge, TMK, under Section 190(3) Cr.P.C., and on 19.09.2023 charges were framed under Sections 147, 148, 149, 302, 324, 337-A(i), 337-f(i) and 34 PPC, thereby directing trial of the accused.

3. During trial, a major turn occurred when Respondent Saddam Hussain introduced a counter version through a complaint filed via the Jail Superintendent, Hyderabad, alleging that the fatal shot was fired by Aqeel Ahmed and struck Ali Raza. An application under Section 22-A Cr.P.C. was then filed before the Sessions Judge, TMK, acting as ex-officio Justice of Peace, which was allowed on 02.12.2022 with directions for registration of another FIR. The complainant Mohammad Nawaz challenged this order through Cr. Misc. Application No.S-843/2022, and this Court on 21.09.2023 set aside the order in light of the dictum laid down in *Sugra Bibi Vs. The State* (PLD 2018 S.C 595) though directed constitution of a JIT.
4. Being aggrieved with, the complainant filed Crl. Petition No.166-K of 2023 before the Hon'ble Supreme Court of Pakistan. The Supreme Court, vide order dated 10.05.2024, held that the JIT constituted by the High Court was illegal and set it aside, further observing that the investigation had not been properly conducted. The Court directed the Investigation Officer to collect all relevant evidence and place it before the trial court, and directed the SHO to appoint an officer to investigate the counter version and submit a supplementary challan.
5. In compliance, a newly appointed officer submitted Supplementary Challan No.47 before the trial court. The trial court, through the impugned order, framed two separate charges: one against the original accused party, and another against the complainant Mohammad Nawaz and some members of the accused party.
6. Mr. Mahmood A. Qureshi, Advocate appearing in Cr. Rev Application No.137 of 2024 and Cr. Rev Application No.86 of 2025 contends that the trial court has passed an illegal order and wrongly framed the second charge while transposition the complainant as one of the accused without any substance or incrementing material. The learned counsel further argued that the trial Court has directly accepted the supplementary challan in violation of section 190(3) CrPC. He further contents that the defense introduced a counter version with a considerable delay and cannot be

equated to prosecute the complainant by giving benefit to the accused on his word of mouth without any corroboration. He further asked contends that the respondent failed to produce letter of the police with regard to the injury allegedly sustained by the respondent Saddam Hussain or even any police entry that may demonstrate that at the time of occurrence the Accused/ respondent was reportedly injured. He further contents that it has not taken into consideration that the complainant was the eyewitness and victim of injuries and the fact that the crime was the personal land of the complainant and these are the respondents who have come and attacked on the complainant and deceased victim Ali Raza. He further contends that the accused Respondent(s) was examined on 4.11.2022 and his statement was recorded under Section 161 CrPC. He further contends that it is settled law that a reinvestigation to record the counter version through statement of any person as a witness from defense side, it can be at best become a defense plea cannot find basis to reframe charge or to frame a second charge and will not advancement of justice but mutiny. In support of his contention, he relied upon case laws reported as 2022 SCMR 356, 2007 PLD SC 31, AIR 1945 PC 18, PLD 1971 SC 677, 2011 SCMR 1430, PLD 2018 SC 595, 2003 MLD 1797, 2013 PCr.LJ 805 & 2005 PCr.LJ 1496.

7. Learned counsel appearing in Cr. Revision Application No.141/2024 and in Cr. Rev Application No.142 of 2024 adopted the arguments advanced by Mr. Mahmood A. Qureshi, Advocate.
8. Conversely the learned counsel for the respondents argued that the impugned order passed with the consent of the parties and therefore the applicants are not entitled to agitate before this Court. He further argued that the counter version of the respondents was not recorded by the investigation officer and he has failed to bring the truth during investigation therefore respondent Saddam Hussein through Jail Suptt; Hyderabad moved the complaint and subsequently filed an application under section 22(A) Cr.P.C before Justice of Peace who passed an order for registration of separate FIR. However, the Honorable High Court of Sindh in compliance of the dictum passed in the ***Sugaran Bibi vs. State (PLD 2018 SC 595)*** set aside the said order and directed to constitute a JIT. The applicant himself approached the Honorable Supreme Court and the Honorable Supreme Court although set aside the order to the extent of JIT but further order that the investigation was not carried out in a transparent

manner and investigation officer failed to collect the material record and failed to place before the trial court for its logical. The Honorable Supreme Court of Pakistan directed the SHO concerned to submit supplementary Challan on the counter version. The further argued that the language of section 190(3) Cr.P.C provides that it was not necessary that Chalan in every case must be rotated through judicial magistrate of the area and the provision itself provides that supplementary challan can be accepted by the trial court if otherwise ordered by any court therefore in the light of the order passed by the Honorable Supreme Court of Pakistan there was no need that the supplementary challan in the present case must be through the judicial magistrate of the area. He lastly argued that in the light of the principles in the *Sughra BiBi* (supra), new set of culprits can be joined or replaced by framing separate charge therefore the revision applications are not maintainable and then is a well-reasoned order passed in compliance of the Honorable Supreme Court directions.

9. Heard the counsels and perused the record.

10. It is observed that on the question whether further investigation, reinvestigation or transfer of investigation can legally be ordered after submission of report under section 173, Cr.P.C., framing of charge and commencement of trial, there exist two apparently conflicting lines of judicial precedent. The first and comparatively **permissive line**¹, wherein it

¹ **Permissive Line of Authorities**—holding that further investigation / reinvestigation / transfer of investigation is legally permissible even after submission of challan, framing of charge or during trial:

1. *Muhammad Akbar v. The State and another* — 1972 SCMR 335
2. *Aftab Ahmad v. Hassan Arshad and 10 others* — PLD 1987 Supreme Court 13
3. *Muhammad Yousaf v. The State and others* — 2000 SCMR 453
4. *Muhammad Ashfaq v. Amir Zaman and others* — 2004 SCMR 1924
5. *Bahadur Khan v. Muhammad Azam and 2 others* — 2006 SCMR 373
6. *Raja Khurshid Ahmed v. Muhammad Bilal and others* — 2014 SCMR 474
7. *Sohail Jiwani v. Ghulam Qadir Thebo* — 2016 PCr.LJ 107 (Sindh)
8. *Aswad Iqbal v. R.P.O. and others* — PLD 2020 Lahore 434
9. *Muhammad Nawaz v. Crown* — 48 Cr.L.J. 774
10. *Noor Nabi Agha v. The State* — PLD 1972 Karachi 292
11. *Muhammad Hayat v. The Chief Settlement and Rehabilitation Commissioner and another* — PLD 1970 Lahore 679
12. *Alam Din v. The State* — PLD 1973 Lahore 304
13. *Muhammad Khan and others v. Inspector-General, Police, Punjab etc.* — PLD 1976 Lahore 574
14. *Muhammad Khan v. Inspector-General of Police, Punjab, Civil Secretariat, Lahore and 2 others* — PLD 1978 Lahore 731
15. PLD 1997 Lahore 24 — PLD 1997 Lahore 24
16. PLD 2008 Lahore 394 — PLD 2008 Lahore 394
17. PLD 2009 Lahore 101 — PLD 2009 Lahore 101
18. PLD 2012 Lahore 315 — PLD 2012 Lahore 315

has consistently been held that there is no statutory prohibition contained in the Code of Criminal Procedure against re-investigation, further investigation or submission of supplementary challan even after *cognizance* of the case, framing of *charge* or during *pendency of trial*, the only recognized limitation being that such exercise should not ordinarily be undertaken after final disposal of the case. In the said line of precedent, the superior Courts have emphasized that the object of investigation is discovery of truth and proper administration of criminal justice, and that Article 18-A of the Police Order, 2002 cannot be rendered redundant by reading into the law an embargo which the legislature itself has not imposed.

11. Conversely, the second and comparatively **restrictive line**², wherein it has been observed that once *challan* has been submitted and *trial has commenced* after framing of *charge*, transfer of investigation or re-investigation or further investigation at such belated stage is ordinarily unsustainable in law, as the proper course for the accused or complainant is to avail remedies before the trial Court through cross-examination, production of defence evidence and other lawful means available under the Code. The rationale underlying the said line of precedent is that repeated or belated investigations may cause undue delay in trial, prejudice the parties, encourage abuse of process and facilitate mala fide or politically motivated interference in criminal proceedings.

12. Notably, the earlier larger bench judgment *Muhammad Akbar case (supra)* was rendered by four-member bench and subsequent three-member bench judgments in *Muhammad Ashfaq v. Amir Zaman and others* and *Bahadur*

19. 2013 PCrLJ 920 Lahore — 2013 PCr.LJ 920 (Lahore)

20. 2016 YLR Note 37 — 2016 YLR Note 37

21. 2018 PCrLJ Note 105 — 2018 PCr.LJ Note 105

² **Restrictive Line of Authorities**—holding that reinvestigation / transfer of investigation after framing of charge or commencement of trial is ordinarily impermissible:

1. *Riaz Hussain and others v. The State* — 1986 SCMR 1934

2. *Muhammad Nasir Cheema v. Mazhar Javaid and others* — PLD 2007 Supreme Court 31

3. *Qari Muhammad Rafique v. Additional Inspector General of Police (Inv.), Punjab and others* — 2014 SCMR 1499

4. *Asif Ali v. Province of Sindh through Chief Secretary Government of Sindh Secretariat Karachi and 10 others* — 2016 PCr.LJ 1484

5. *Munir Ahmad v. Additional Inspector General of Police, Punjab and 6 others* — 2016 MLD 2039

6. 2016 YLR 495 — 2016 YLR 495

7. *Muhammad Idrees v. Regional Police Officer, Sheikhpura etc.* — PLJ 2019 Lahore 502

8. *Muhammad Naveed v. I.G. of Police, Punjab etc.* — PLJ 2019 Lahore 531

9. PLD 2019 Baluchistan 101 — PLD 2019 Baluchistan 101

Khan v. Muhammad Azam and 2 others, do not appear to have been brought to the notice while deciding the restrictive line of cases. It is by now a settled principle of *stare decisis* that where there exists conflict between judgments of the Hon'ble Supreme Court, the judgment delivered by a larger bench prevails.

13. Consequently, the legal position emerging from the authoritative pronouncements of the superior Courts is that there exists no absolute legal bar against further investigation, re-investigation or transfer of investigation after framing of charge or during trial; nevertheless, such power is extraordinary in nature and cannot be exercised mechanically or as a matter of course. Rather, the same may only be invoked where compelling circumstances exist, such as discovery of fresh evidence, patent defects in the earlier investigation, mala fide or incomplete investigation, exclusion of actual culprits, suppression of material evidence or where such exercise becomes indispensable for securing the ends of justice and enabling the Court to arrive at the truth.
14. Adverting to the present case, **Section 235** provides an exception where multiple acts form part of the same transaction. Court(s) apply the test of *proximity of time* and *unity of purpose*. If different acts (e.g., breaking a lock followed by committing theft) are connected by a single thread of intent, they constitute one transaction. In such cases, the court is permitted—but not compelled—to try them together.
15. **Section 233** embodies the principle of precision in criminal trials. It mandates that every trial must begin with a *specific charge* for a *specific act or offence*. The purpose is to prevent embarrassment to the accused in preparing their defense. Any deviation from this requirement, unless covered by an express statutory exception, is treated as a procedural irregularity that may vitiate the trial if it causes prejudice to the accused.
16. **Section 221** cannot be invoked where the *versions of facts* are conflicting—for example, where the prosecution alleges “he stabbed him” while the accused asserts “he was not present” or where court is uncertain whether those facts constitute one offence or another (e.g., whether the act amounts to “theft” or “criminal breach of trust”).
17. **Section 342 Cr.P.C** relates to "defense version" is tested through cross-examination of witnesses and the statement. The defense version under Section 342 is a **denial** or **justification** of an offense, not a distinct

offense in itself. Where two versions of the same incident exist, the court must not remain a **silent spectator**. Both versions must be weighed. However, the framing of charge remains the prerogative of the prosecution's prima facie case.

18. Another angle is the scheme of penal statutes. **Sections 34 and 109 PPC** provide sufficient flexibility to address liability without resorting to contradictory charges. **Section 34 PPC** allows the court to hold several persons collectively liable under common intention, so that the court need not be trapped in a “who fired first” narrative but can assess collective participation in the act of killing. **Section 109 PPC** addresses abetment, enabling the court to deal with situations where one party instigated or facilitated the offence committed by another.
19. A cumulative effect of scheme of law is that charges must be framed on the basis of the prosecution's prima facie case as provided in Sections 233 and 235 Cr.P.C. A charge is an accusation by the State, not a statement of defense, and the accused's version is preserved only under Section 342 Cr.P.C. as a plea of defense. Section 233 Cr.P.C. is guardrail requires that every charge relate to a “*distinct offence*”, while Section 221 Cr.P.C. applies only to “*legal uncertainty*”, not extend to “*factual doubt*”. The framework of Section 342 Cr.P.C. further provides the accused with the “*ultimate shield*” to present their defense during trial. These provisions collectively empower court to assess liability during trial and to record reasons where a distinct offence is genuinely made out for framing a separate charge. Alternatively, such material may be accepted as part of the defense plea, thereby preserving the accused's right to raise their defense.
20. The submission of a Supplementary Charge Sheet pursuant to the Hon'ble Supreme Court's Order dated 10.05.2024 that too within Permissive line of larger bench pronouncement in *Muhammad Akbar (Supra)* obliges the trial Court to accept the Supplementary Charge Sheet in the case. However, still the trial Court has to apply **dual** threshold test; **one** that to exercise judicial scrutiny of subsequent investigation—whether termed “re-investigation” or “further investigation”—it must be evaluated on its own merits, and cannot be brushed aside or accepted mechanically without application of mind and **second** to undertake a comparative analysis of the original and supplementary charge sheets, carefully examining the collected material and statements recorded therein, and thereafter to form a specific, reasoned

opinion as to whether adherence to the earlier charge sheet suffices, or whether framing of additional or alternative charges is warranted or even to cancel or withdraw earlier charge sheet.

21. The supplementary challan when relied only on **Section 161 Cr.P.C.** statements, are mere investigatory notes and not substantive incrementing evidence unless corroborate with or have a probative piece of evidence. Therefore, conflicting charges of dual-structured or mechanical declaration of guilt or innocence are impermissible.
22. Re-investigation or further investigation under the criminal legal framework cannot be undertaken to create a new and unfounded version within the original prosecution case, nor can it be used to overcome the legal limitations imposed by the Supreme Court of Pakistan in *Sugra Bibi case (Supra)*. A counter-version, apart from a defence plea, may be considered only for a limited purpose where the investigation has failed to collect relevant material, has deliberately ignored evidence, or has otherwise failed to ascertain the truth. Therefore, second charge transposing parties can only be considered with utmost care if the supplementary investigation clearly establishes that the complainant was the actual culprit and demonstrates through collected material the complete innocence of the accused by Investigation Officer coupled with prosecution's recommendation to withdraw earlier charge sheet.
23. Reinvestigation or further investigation scope is narrow and must adhere strictly to procedural rules. It cannot be approached with a ***broad or liberal*** view to collect incremental material or record additional statements without necessity and cannot be employed to introduce contradictions regarding a single transaction, a series of transactions, or offences arising out of the same occurrence forming part of the prosecution case. Any such attempt may give rise to an adverse inference and may operate as an impediment to the proper administration and advancement of justice.
24. In the present case, the trial court did not record cogent reasons for framing a second charge. This omission violates **Section 24-A** of the General Clauses Act, 1897, which requires that every order conferring power must state reasons. Accordingly, the second charge framed is unsustainable, therefore, impugned orders are set aside and case is remand to the trial court to pass a fresh Order on supplementary Charge Sheet No.47 in the light of above observations and in accordance with law.

25. Listed Cr. Revision Applications stand disposed of in above terms alongwith pending application(s), if any.

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