

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.191 of 2025

Zia-ul-Islam S/o Muhammad Islamuddin

Versus

Syed Shujaat Hussain Shah and 8 others

APPLICANT : Through Mr. Shaikh Jawaid Mir, Ms. Samreen Ehtesham and Agha Atta Muhammad Khan, Advocates.

RESPONDENT NO.3 : Through Mr. Malik Altaf Hussain alongwith M/s. Abdul Shakoor, Moin Khan and Hameed Khan, Advocates.

THE STATE : Through Mr. Tahir Hussain Mangi, Asst. Prosecutor General, Sindh.

Dates of Hearing : 02.01.2026, 19.01.2026 & 26.01.2026

Date of Decision : 16.02.2026

ORDER

Syed Fiaz ul Hassan Shah, J :-- This order will dispose of the appeal / revision filed by the complainant assailing the Order dated 18.07.2025 (“**Impugned Order**”) passed by the learned Special Judge, Anti-Corruption (Provincial), Karachi (“**Trial Court**”) whereby the application for summoning of additional accused in a complaint under section 200 of Criminal Procedure Code, 1898 (“**Cr.P.C.**”) was declined.

2. Briefly, the complaint was instituted under Section 200 Cr.P.C. The statement of the complainant was recorded and cognizance of the offence was taken by the trial Court. Subsequently, the complainant moved an application seeking summoning of additional accused. The

learned Magistrate, after considering the material available on record, dismissed the said application on the ground that power of summoning is a discretionary power vested in court and cannot invoke independently and second that the complainant has not deposed anything against the additional accused to prima facie connect with the alleged offence.

3. Learned counsel for the complainant contended that once cognizance has been taken, the Magistrate was competent to summon additional accused and that refusal has caused miscarriage of justice. He placed reliance on *Zahoor Ahmed and 4 others v. The State* (2025 YLR 71) and *Adeel Haneef v. The State* (2022 YLR 30). Conversely, learned counsel for the respondents supported the impugned order and argued that summoning is a serious matter, requiring strict judicial satisfaction based on material on record.

4. I have heard the learned counsel for the parties and the learned Asst. Prosecutor General Sindh and perused the record with due care.

5. Section 4(2) of Criminal Law (Amendment) Act, 1958 stipulates that all provisions of Code of Criminal Procedure, 1898 apply to proceedings before a Special Judge unless expressly barred. The Anti-Corruption Judge is a statutory hybrid and act as a Magistrate at the pre-trial stage and as a Court of Sessions at the trial stage. Present issue relates to pre-trial stage.

6. In the present case, the learned trial Court recorded reasons that the power under section 190 Cr.P.C cannot be invoked independently by a complainant of case but it solely rests with the Court while mis-

applying principle laid down in *Choudhary Muhammad Bashir v. Mirza Wahid Muhammad Baig* (PLD 2008 Kar. 280 mistyped 366).

The trial Court misconstrued this principle, which primarily held that a police officer is not final arbiter and it was the court to decide finally who should or should not be tried and a Magistrate is not bound by the original array of accused made by the police or investigation officer. It is settled principle that if the Magistrate is not satisfied with the police report, he may disagree with it and take cognizance of the offence, or refuse to do so, as the circumstances may require. However, such discretion must be exercised judiciously, upon proper consideration of the relevant material or incriminating record collected during investigation, or other evidence available on record which either ignored or may not have been properly appreciated by the Investigation Officer. This analogy based on settled principle that cognizance is of the **offence** and not of the **offender**.

7. The Court must ensure that findings are not based on conjecture or personal whims but on proper assessment and legal reason. In the absence of such material, it does not lie within the competence of a Magistrate to proceed against any accused who has been declared innocent by the Investigation Officer. The principle laid down in *Zahoor Ahmed & Four Others v. The State* (2025 YLR 71) reinforces this position. In that case, while one set of accused was sent up for trial, another set was let off by the Investigation Officer. The Magistrate, disagreeing with the police report, took cognizance against both sets of accused. However, the Hon'ble High Court, exercising its inherent jurisdiction conferred under section 561-A Cr.P.C, set aside the

Magistrate's order on the ground that no incriminating material had been discussed or evaluated against the second set of accused. The Court held that although a Magistrate may summon additional accused, such power cannot be exercised in the absence of incriminating evidence.

8. The principle to examine judiciously overwhelmingly arising from FIRs registered by the police and followed through police reports under section 173 Cr.P.C., which primarily serves to safeguard the rights of the complainant or victim against negligence, mala fides, or lack of skill on the part of the Investigating Officer which may cause defective investigation.

9. Conversely, cases based on private complaints stand on a different footing. A complainant has the full opportunity to draft a proper complaint supported by material evidence, and is further at liberty to produce additional material or facts at the stage of recording his statement on oath before the Trial Court or it may also warrant consideration for summoning additional accused not originally arrayed in complaint and brought subsequently through investigation report under Section 202 Cr.P.C by way of incremental material, however, in the case of a complainant strict approach must be applied for summoning proposed Accused, as complainant had ample opportunities at multiple level, therefore, dealing with discretionary power under section 190, Cr.P.C. in a complaint, the Court must primarily satisfy that such omission of names by the complainant was bonafide and not by deliberate suppression or malafide intent or hit by doctrine of

improvement and reasonable ground exists to entertain application on emerging evidence.

10. In the present case, although the learned Trial Court refused to exercise power under section 190, Cr.P.C. while holding that power to summon additional accused is solely dependent upon the discretion of trial Court and did not discuss as per settled principle to summon or not to summon the additional proposed Accused, however, since both the learned Counsels have strongly relied upon the investigation report, therefore, with their assistance I have examined the investigation report.

The Findings of investigation officer is reproduced as under:

FINDINGS:

The Enquiry Committee, after thoroughly examining the statements and records obtained from various Government Offices, has reached the following definitive conclusions regarding the allegations presented by the complainant:

- I. The complainant asserts that it is a fundamental principle that contracts for any scheme or work must be awarded in strict adherence to the SPPRA Rules, 2010. The alleged actions of the proposed accused Nos. 1, 2, and 3 in awarding the 30 District ADP schemes stand in violation of these established rules.**
- II. The proposed accused No. 3, Mr. Muhammad Abdul Qadeer, who was the custodian of records pertaining to the thirty Annual Development Plan (ADP) schemes. It is with regret that we note Mr. Qadeer has since passed away. His office clerk, Mr. Aumb Ali, son of Moula Bux Lashari, from the Highways Division of Road & Transport, has presented all relevant documentation concerning these development schemes, the documentation confirms that administrative approval for the thirty ADP schemes under the Karachi Metropolitan Corporation (KMC) was granted by the Metropolitan Commissioner during a District Development Committee (DDC) meeting held on 18.12.2017. This approval was issued by the Financial Advisor of KMC, Further clarifications**

indicate that the Second Running Bill payments for the thirty development schemes in the financial year 2022-23 were released by the Finance Department of Karachi and KMC to the Highways Division. These payments were authorized solely by Mr. Muhammad Abdul Qadeer, who served as Drawing & Disbursement Officer (DDO) / Assistant Engineer for Highways Sub-Division No. II, Karachi, and concurrently held the position of Executive Engineer for the Highways Division/Road & Transport, Karachi. Mr. Abdul Qadeer was responsible for supervising the works as per the work orders and had signed off on the First Running Bills for each scheme, as clearly documented, It is important to note that Mr. Muhammad Abdul Qadeer, who held critical responsibilities regarding these schemes, regrettably passed away on 10.09.2024, due to severe health complications. Attached to this correspondence are his death certificate and an obituary notification issued by the Secretary of the Works & Services Department, Government of Sindh, Karachi.

III. The received record reveals that the Executive Engineer of the Education Works, District West School Education Department, Government of Sindh, Karachi, served as the procuring agency, the Executive Engineer of Education Works served as the procuring agency for the procurement activities in question. As per S.P.P-2010 Rule-7 & 8. the procurement process was executed by a committee chaired by Syed Rizwan Haider (Executive Engineer), along 2/with members Syed Nazir Haider and Jahangir Bhatti. This committee utilized the method of procuring Single Stage - One Envelope bidding procedure, ensuring transparency and efficiency throughout the process, To inform potential bidders, the relevant Notice Inviting Tenders (No. EE/EWDW/NIT/2017-18/588) was effectively uploaded on the SPPRA (Sindh Public Procurement Regulatory Authority) website. Confirmation of the tender's listing was duly received from the Legal Coordinator of SPPRA on 18-11-2024, verifying its status under Serial No. 36675, the received record further reveals that throughout the entire tendering process, the complainant did not submit a complaint through the Complaint Redressal Mechanism as mandated by SPPRA. Furthermore, there was no adherence to SPPRA Rule No. 31 (3), which outlines the appropriate procedures to address grievances.

- IV. According to the records and statement recorded by the contractors, it is found that they were followed the SPPRA (Sindh Public Procurement Regulatory Authority) Rules 2010 throughout the entire bidding process & their evidence report the multiple contractors participated in the bidding, with attendance sheets verifying their presence. The Procurement Committee officially opened the bids on 28.02.2018. Subsequent evaluation reports were meticulously prepared, ensuring alignment with Rule 42 (Evaluation of Bids) of the SPPRA-2010 guidelines. Each contractor's bids were ranked based on their bid amounts, with the lowest bidder for each tender receiving a recommendation for contract award. Further, after securing the necessary approval from the Chief Engineer for Education Works in Hyderabad, the contracts were formally awarded to the lowest bidders, as recommended by Syed Rizwan Haider, Chairman of the Procurement Committee.**
- V. The 30-Nos. scheme supervised by Muhammad Abdul Qadeer, Assistant Engineer of the Highways Division, Road & Transport, Sub-Division-II, Karachi, during the financial year 2022-2023, Muhammad Abdul Qadeer concurrently served as the Executive Engineer/DDO of the Highways Division/R&T in Karachi. He was responsible for overseeing all aspects of these schemes, including accurately recording measurements in the measurement book in official rules and policies, it is schemes were processed through the Finance Department / KMC of the Government of Sindh for the fiscal years 2017-2018 and 2022-2023. These payments were duly received by the respective firms involved in the projects.**
- VI. The record reveals that the onset of the COVID-19 pandemic prompted the Finance Department to halt all district budget allocations for the fiscal year 2021-2022, which adversely affected the progress and financial disbursement of these schemes. Although the physical work has been completed, remaining allocations have yet to be disbursed.**
- VII. Proposed accused Nos. 1 and 2 explicitly deny all allegations asserted by the complainant. They maintain that they have acted in accordance with the established procedures and regulations, Additionally, it is important to note that proposed accused No. 3, Muhammad Abdul Qadeer, has sadly passed away. He had been responsible for supervising the schemes since their inception and**

served as the designated site engineer. Furthermore, during the financial year 2022-23 in question, he also acted as the Drawing and Disbursing Officer, for processing payments related to the schemes.

VIII. Evidence and contractor statements reveal that while 366 million out of 600 million has been disbursed to the contractors based on the work done at site & recorded in the measurement books, the remaining amount remains unreleased by the Finance Department of the Government of Sindh. The liability of the work done for outstanding payments lies with the Government / KMC, despite the completion of physical work, a fact acknowledged by the contractors in their statements.

11. While applying the test laid down in *Zahoor Ahmad* (supra)—a case where the Magistrate took cognizance by adopting a view contrary to the police report submitted by the Investigating Officer, in the present case, the investigation report does not support the complainant's version and he could not find out any incriminating material against the proposed accused as suggested in said report. Therefore, the Trial Court accepted investigation report and took cognizance against original arrayed Accused while refused to summon the proposed Accused in the line with principle that a Magistrate or trial Court cannot summon persons merely on the basis of assertion.

12. It is well settled that summoning of an accused is not a mechanical exercise merely at the asking of the complainant. In *Nisar Ahmad v. State* (**PLD 2014 SC 241**), the Supreme Court of Pakistan emphasized that the Magistrate must reach a prima facie satisfaction based on material available on record and cannot summon accused persons mechanically. In *Mehmood Ul Hassan v. The State* (**2010 SCMR 1467**), it was reiterated that the exercise of powers under

Sections 200–202 Cr.P.C. is a safeguard against frivolous complaints and ensures that criminal law is not set in motion lightly. In *S.W. Palanitkar v. State of Bihar* [(2002) 1 SCC 241], the Court clarified that summoning additional accused after cognizance, without fresh material of probative value, amounts to abuse of process.

13. A complainant may file such application even at subsequent stage if he finds cogent evidence and essentially show his bonafide for withholding names of proposed accused at the time of filing complaint or thereafter when statement under section 200, Cr.P.C. was recorded and cognizance took place. However, judicial discretion must rest upon evidence, not conjecture. Unless incriminating material is not brought on record, an application under Section 190 Cr.P.C. is not maintainable and serves no beneficial purpose for either the parties or the trial and, therefore, to Summon additional accused would amount to an arbitrary exercise of jurisdiction, detrimental to the fairness of proceedings.

14. It is equally settled principle that **appellate or revisional jurisdiction** is supervisory in nature and does not permit substitution of its own satisfaction for that of the Magistrate, particularly at the pre-trial stage of summoning, unless the order impugned is shown to be illegal or perverse. Mere possibility of another view does not justify interference.

15. Consequently, the instant Crl. Revision Application is **dismissed**.

J U D G E