

## IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Miscellaneous Application No.S-160 of 2025

Applicants : 1. Shahid Hussain son of Mir Muhammad,  
2. Muhammad Sachal son of Muhammad Moosa  
3. Gul Hassan son of Ali Gul,  
4. Muhammad Ameen son of Ali Nawaz,  
5. Irfan Ali son of Bhattai Dino  
6. Bahadur Ali Shah @ Shahid Hussain Shah  
son of Sardar Syed Khadim Hussain Shah,  
Through Mr. Qurban Ali Malano, Advocate.

Respondent : Through Mr. Aneet Kumar Advocate for  
Respondent No.4

State : Mr. Zulfiqar Ali Jatoi, Addl. PG

Date of hearing : 11.08.2025  
Date of order : 22.08.2025

### **ORDER**

**KHALID HUSSAIN SHAHANI, J:--** The applicants, who are police officials, have invoked the inherent jurisdiction of this Court for setting aside the impugned order dated 11.03.2025, passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Sukkur. Vide the impugned order, the learned Justice of Peace directed the SHO, Police Station Rohri, to register an FIR against the applicants based on the application of respondent No. 4, Muhammad Panjal.

2. The factual matrix presents a tragic sequence of events involving allegations of police high handedness culminating in an alleged fake encounter. According to respondent No. 4 (Muhammad Panjal), on 16.01.2025 at about 6:30 pm, the applicants, along with private accused persons, forcibly took away his son Jameel Ahmed from Factory Mor Rohri in a police mobile. He alleges that his son was detained at PS Sangrar, where the SHO demanded Rs. 5,00,000 as bribe for his release, threatening a fake encounter if the amount was not paid. Subsequently, during the pendency of a habeas corpus application filed on 25.01.2025, Jameel Ahmed was allegedly murdered in a fake police encounter on 26.01.2025, with FIR No. 13/2025 being registered at PS Sarhad, District Ghotki.

3. Conversely, the applicants assert that Jameel Ahmed was a notorious criminal involved in multiple cases. They contend that he was killed

in a genuine police encounter while attempting to commit dacoity. The applicants have produced documentary evidence showing 15 FIRs allegedly involving the deceased and argue that the present application is a malicious attempt to create a counter blast to the legitimate encounter case.

4. Learned counsel for the applicants has vehemently argued that the impugned order violates the settled law laid down by the Honourable Supreme Court in *Mst. Sughran Bibi v. The State* (PLD 2018 SC 595). The cornerstone of their argument is that since FIR No. 13/2025 regarding the encounter is already registered, the direction to lodge a second FIR for the same incident is legally impermissible. They particularly emphasize paragraph 27 of the *Sughran Bibi* judgment, which establishes that there can only be one FIR for one incident, and any divergent version must be recorded under Section 161 Cr.P.C. during the investigation of the original case.

5. On the other hand, learned counsel for respondent No. 4 has defended the impugned order by distinguishing the present case from routine scenarios covered by *Mst. Sughran Bibi*. He argues that this involves allegations of extrajudicial killing and fake encounter by police officials themselves, making it a case of extreme police brutality where the traditional safeguards of police investigation would be rendered illusory. He contends that expecting the complainant to record his statement under Section 161 Cr.P.C. before the very officials accused of murdering his son would be a futile exercise and a denial of justice.

6. The learned DPG has taken a neutral stance, leaving the matter to the discretion of this Court.

7. The law on the registration of multiple FIRs for the same incident has been authoritatively settled by the larger bench of the Honourable Supreme Court in *Mst. Sughran Bibi v. The State* (PLD 2018 SC 595). The fundamental principle established is crystal clear: there can be only one FIR for one incident. Paragraph 27 of this landmark judgment categorically declares that once an FIR is registered, the "case" comes into existence, and any other version must be recorded under Section 161 Cr.P.C. during the investigation of that very case.

8. However, this Court must examine whether the present case falls within the exceptional circumstances contemplated by the superior courts. The allegations here are not merely of police misconduct, but of extrajudicial killing disguised as a fake encounter. The complainant alleges that his son was illegally

detained, a bribe was demanded, and when not paid, the son was murdered in a staged encounter. These are grave allegations that strike at the heart of constitutional guarantees under Articles 9 and 10 of the Constitution.

9. The pivotal question is whether FIR No. 13/2025 (the encounter FIR) and the proposed FIR against the police officials constitute the same transaction within the meaning of Mst. Sughran Bibi. Upon careful analysis, this Court finds that while both FIRs relate to the death of Jameel Ahmed, they represent fundamentally different legal narratives:

- *FIR No. 13/2025 presents the incident as a legitimate police encounter where Jameel Ahmed was killed while resisting arrest during a dacoity attempt.*
- *The proposed FIR alleges that the same death was the result of extrajudicial killing, kidnapping, and murder in custody by police officials.*

10. These are not merely different versions of the same incident, but allegations of entirely different crimes with different legal consequences.

11. This Court draws guidance from the Supreme Court's decision in Syed Qamber Ali Shah v. Province of Sindh (2024 SCMR 1123), which, while not overruling Mst. Sughran Bibi, recognizes that exceptional circumstances may warrant special consideration. The Court in Qamber Ali Shah emphasized that the role of a Justice of Peace is to determine whether the application discloses a cognizable offense, not to evaluate evidence or credibility.

12. This Court, while remaining bound by the authoritative pronouncement in Mst. Sughran Bibi, must interpret it in light of the constitutional imperatives and the practical realities of the case at hand. The judgment in Sughran Bibi was primarily concerned with preventing the mischief of parallel investigations and vexatious litigation. However, paragraph 28 of the same judgment provides crucial guidance, noting that the petition was dismissed because the aggrieved party had already availed the efficacious remedy of a private complaint.

13. The Supreme Court in Mst. Sughran Bibi recognized that the prohibition against multiple FIRs is not absolute and must be balanced against the fundamental right to access justice. Paragraphs 28 and 29 of the judgment acknowledge the Court's concern about inordinate delays and apathy in the criminal justice system. Forcing a complainant to record his statement under Section 161 Cr.P.C. before the very police officials accused of murdering his

son would perpetuate the very injustice and delay that the Supreme Court sought to address.

14. The present case presents exceptional circumstances that distinguish it from the ordinary application of Mst. Sughran Bibi:

*(a) The allegations involve extrajudicial killing by state functionaries, which attracts constitutional scrutiny under Articles 9 and 10.*

*(b) The complainant filed a habeas corpus petition on 25.01.2025, indicating his son was alive in police custody, yet the encounter occurred the very next day during the pendency of court proceedings.*

*(c) The postmortem report reveals six gunshot wounds on the deceased, while the police party allegedly sustained no injuries, raising serious questions about the genuineness of the encounter.*

*(d) The complainant has presented CDR evidence and photographs allegedly showing the deceased in police custody before the encounter.*

*(e) The timing sequence kidnapping on 16.01.2025, habeas corpus on 25.01.2025, and encounter on 26.01.2025, creates a compelling narrative of custodial killing.*

*14. This Court cannot ignore the practical impossibility of expecting a fair investigation when the complainant is required to record his statement under Section 161 Cr.P.C. before the very officials accused of murdering his son. Such an approach would render the constitutional guarantee of access to justice meaningless and would effectively provide impunity to state functionaries accused of serious crimes.*

15. This case is distinguishable from routine criminal matters covered by Mst. Sughran Bibi on several critical grounds:

(a) This involves allegations against state functionaries who are supposed to be guardians of law and order.

(b) The nature of the offense alleged extrajudicial killing is fundamentally different from the encounter case registered.

(c) The complainant has no effective remedy within the existing FIR framework, as the investigating machinery is itself accused.

(d) Constitutional rights under Articles 9 and 10 are directly engaged.

16. While the learned counsel for applicants correctly points to the availability of a private complaint under Section 200 Cr.P.C., this Court must examine the effectiveness of such remedy in the present circumstances. A private complaint, though a valuable judicial remedy, involves lengthy proceedings and places the burden of proof entirely on the complainant. In cases involving powerful state functionaries, this remedy may prove inadequate without proper police investigation to gather evidence and record statements of witnesses who may otherwise be intimidated.

17. The Supreme Court in Mst. Sughran Bibi itself acknowledged in paragraph 28 that the petition was dismissed because an efficacious remedy was already available. Here, the complainant cannot be said to have an equally efficacious remedy if he is relegated to recording his statement before the accused officials.

18. This Court finds support in the decision of the Karachi High Court in Mrs. Ghanwa Bhutto v. Government of Sindh (PLD 1997 Karachi 119), which recognized that in exceptional circumstances involving police misconduct, separate proceedings may be warranted. While this decision predates Mst. Sughran Bibi, its underlying principle regarding constitutional rights remains valid.

19. The constitutional framework demands that this Court strike a balance between procedural efficiency (as emphasized in Mst. Sughran Bibi) and substantive justice (as guaranteed under Articles 9 and 10). The rule against multiple FIRs, while salutary, cannot be applied mechanically to defeat constitutional rights or provide impunity to state functionaries.

20. The applicants have produced extensive criminal record allegedly against the deceased. However, even if the deceased had a criminal background, it does not justify extrajudicial killing or provide license to police officials to act as judge, jury, and executioner. The rule of law demands that even criminals be dealt with according to due process.

21. The timing of events creates a compelling narrative: the filing of habeas corpus on 25.01.2025 indicating that the family was actively seeking the deceased's recovery, followed by the encounter the very next day, raises serious questions about the genuineness of the police action.

22. This Court recognizes that the present case involves serious allegations of custodial death and fake encounter, which require thorough and impartial investigation. However, such investigation cannot be expected within the framework of FIR No.13/2025, where the same police officials are both investigators and accused.

23. Following the guidance provided in the remembered case of Ali Asghar Shah v. Ali Nawaz Deepar (Cr. Misc. Application No. S-171 of 2025), this Court finds that while a separate FIR may not be permissible under

Mst.Sughran Bibi, the extraordinary nature of the allegations warrants special investigative arrangements to ensure fair and impartial investigation.

24. For the foregoing reasons, this application is partially allowed. While this Court upholds the principle laid down in Mst. Sughran Bibi v. The State (PLD 2018 SC 595) that there cannot be multiple FIRs for the same incident, the exceptional circumstances of this case involving allegations of extrajudicial killing and fake encounter by police officials require special measures to ensure fair investigation.

25. The impugned order dated 11.03.2025 is set aside in so far as it directs the registration of a separate FIR. However, to ensure that the allegations of the complainant are properly investigated and that constitutional guarantees under Articles 9 and 10 are not rendered illusory, the following directions are issued:

- (a) The Inspector General of Police, Sindh is directed to immediately withdraw the investigation of FIR No. 13/2025 from the local police and assign it to a senior independent officer not below the rank of Deputy Superintendent of Police, who shall be posted outside the Districts of Ghotki and Sukkur.
- (b) The investigation shall be entrusted to the Counter-Terrorism Department (CTD) or Special Investigation Unit (SIU) of Sindh Police to ensure specialized and unbiased handling.
- (c) The newly appointed Investigating Officer shall immediately record the detailed statement of respondent No. 4 (Muhammad Panjal) under Section 161 Cr.P.C., treating his allegations as a cross-version that must be thoroughly investigated.
- (d) The Investigating Officer shall conduct a fresh and impartial investigation into all circumstances surrounding the death of Jameel Ahmed, including but not limited to:
  - The alleged kidnapping on 16.01.2025
  - The circumstances leading to the encounter on 26.01.2025
  - The forensic analysis of the encounter scene
  - The examination of CDR records and photographs
  - Recording statements of all witnesses
- (e) The investigation shall be completed expeditiously and a comprehensive report submitted under Section 173 Cr.P.C. within 60 days.

26. The Inspector General of Police, Sindh shall ensure strict compliance with these directions and submit a report confirming the assignment of the new Investigating Officer to the Additional Registrar of this Court within fifteen (15) days.

27. It is clarified that respondent No. 4 retains the right to file a private complaint under Section 200 Cr.P.C. if dissatisfied with the police

investigation. This remedy provides direct judicial supervision and may prove more efficacious in ensuring accountability of state functionaries.

28. This Criminal Miscellaneous Application is disposed of in the above terms.

**JUDGE**