

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Revision Application No.S-78 of 2024

Applicant : Abdul Jabbar through Mr. Muhammad Ali Napar, Advocate, on whose behalf, brief was held by Mr.Shabbir Ali Bozdar, Advocate.

Respondent No.2 : Mst. Bibi Rizwana through Mr. Deedar Ali M. Chohan, Advocate.

Respondent No.1. : The State through Mr. Imran Mobeen Khan, Assistant Prosecutor General.

Date of Hearing : 07-09-2026
Date of Order : 18-09-2026

ORDER

TASNEEM SULTANA, J.- Through the instant Criminal Revision Application, filed under Sections 435 and 439 read with Section 561-A, Cr.P.C., the applicant Abdul Jabbar Mangi has called in question the order dated 21.10.2024 passed by the learned II-Additional Sessions Judge, Naushahro Feroze, in Direct Complaint No.10 of 2024, P.E. No.39 of 2024, whereby the direct complaint filed by respondent No.2, Mst. Bibi Rizwana was brought on regular file, cognizance was taken for offences under Sections 302, 220, 337-F(v), 147, 148 and 149, PPC, and bailable warrants in the sum of Rs.50,000/- each were issued against the proposed accused.

2. Brief facts, as disclosed from the direct complaint, are that respondent No.2, Mst. Bibi Rizwana is the sister of deceased Syed Amjad Ali Shah, who was a tailor by profession at Bhiria City. The complaint traces the origin of the matter to the murder of police constable Rafail Ahmed Jalbani on 10th Muharram-ul-Haram, whereafter Crime No.143 of 2024 was registered at Police Station Bhiria City. Respondent No.2 alleged that, during the course of investigation of the said crime, her brother Amjad Shah, along with Sanaullah Naich, Saeed Ahmed Naich and Shoaib Naich, was implicated and that Amjad Shah was thereafter kept in illegal detention. According to her, on 21st Muharram-ul-Haram at about 9:30 p.m., her cousin Qurban Shah informed her that armed police officials were taking Amjad Shah towards Jalbani Shakh with the intention of killing him. On receiving such information, she, accompanied by her mother Bibi Sameena, Bibi Sakeena and other villagers, proceeded towards Jalbani Shakh, where she allegedly found Amjad Shah in handcuffs,

with PC Azeem Mallah and the present applicant Abdul Jabbar Mangi holding him. It was further alleged that Basheer Ahmed Chandio and Abdul Nabi Khichi directed that Amjad Shah be shot, whereupon PC Rahib Kalhorro and Basheer Ahmed Chandio fired upon him, as a result whereof he fell down and died. His dead body was thereafter taken away in a police mobile and subsequently handed over to the family. Respondent No.2 further alleged that, when the body was being washed for burial, several injuries were noticed thereon and that, despite approaching the police for registration of a case, her version was not recorded as an FIR.

3. Before instituting the direct complaint, respondent No.2 had approached the learned Ex-Officio Justice of Peace by filing Criminal Miscellaneous Application No.2995 of 2024 under Sections 22-A and 22-B, Cr.P.C. During those proceedings, reference was made to Crime No.143 of 2024, registered at Police Station Bhiria City in respect of the earlier occurrence involving the murder of police constable Rafail Ahmed Jalbani, as well as Crime No.151 of 2024, registered at the same Police Station in respect of the subsequent occurrence concerning Amjad Shah. The latter case was then under investigation. The said application was disposed of vide order dated 12.08.2024, while observing, inter alia, that respondent No.2 could approach the Investigating Officer of Crime No.151 of 2024 for recording of her version and could also avail herself of the alternate remedy of filing a direct complaint under Section 200, Cr.P.C. She thereafter instituted the present direct complaint.

4. The statement of respondent No.2 was recorded under Section 200, Cr.P.C. and the learned trial Court thereafter entrusted a preliminary inquiry under Section 202, Cr.P.C. to the learned Civil Judge & Judicial Magistrate-I, Bhiria City. During the inquiry, statements of Bibi Sakeena and Syed Qurban Ali Shah were recorded. The learned Magistrate submitted his report dated 14.10.2024 and noticed, amongst other aspects, variation regarding the date of occurrence, the presence of witness Qurban Ali Shah and the circumstance whether the dead body had been handed over before or after postmortem. The inquiry report also took notice of the proceedings arising out of Crimes Nos.143 and 151 of 2024 and ultimately expressed the view that sufficient material was not available for taking parallel cognizance. The learned II-Additional Sessions Judge, however, did not agree with the conclusion reached in the preliminary

inquiry and, through the impugned order dated 21.10.2024, brought the complaint on regular file and issued process against the proposed accused.

5. Learned counsel for the applicant filed written synopsis taking the stance that learned trial Court failed to appreciate the material collected during the inquiry under Section 202, Cr.P.C. in its proper perspective; that material contradictions between the complainant and her witnesses had specifically been noticed by the learned Civil Judge & Judicial Magistrate-I, Bhiria City, who conducted the preliminary inquiry; that the complainant alleged that the dead body had been handed over without medical examination, whereas the material available on record showed that postmortem had in fact been conducted; that the presence of Qurban Ali Shah at the place of occurrence was also questioned during the inquiry; and that proceedings arising out of Crimes Nos.143 and 151 of 2024 were already pending; that no firearm injury has been attributed to the present applicant, whose alleged role is confined to holding the deceased, and that once the preliminary inquiry had resulted in an adverse report, the learned trial Court was not justified in issuing process without sufficient reasons for differing from such report and accordingly prayed for setting aside the impugned order.

6. Conversely, learned counsel for respondent No.2 supported the impugned order and contended that the applicant has been specifically named with a definite role; that the complainant's version concerning his participation finds support from the material produced during the preliminary inquiry; that the postmortem report confirms death on account of firearm injuries; and that the opinion expressed by the learned Magistrate conducting the inquiry under Section 202, Cr.P.C. was not binding upon the learned trial Court. It was further submitted that the discrepancies relied upon by the applicant relate to appreciation of evidence and can appropriately be examined after recording evidence. Learned Assistant Prosecutor General was also heard.

7. Heard. Record perused.

8. The principal question requiring consideration is whether the learned trial Court, while differing from the conclusion reached in the preliminary inquiry and issuing process against the proposed accused, committed any material illegality or impropriety warranting interference in revisional jurisdiction.

9. The revisional jurisdiction of this Court is supervisory in nature and is not intended for reappraisal of the material as in an appeal; however, interference is warranted where the impugned order suffers from material illegality or irregularity in the exercise of jurisdiction. In that context, the scheme contained in Sections 200 to 204, Cr.P.C. shows that, after examining the complainant on oath, the Court may, before issuance of process, resort to the procedure contemplated under Section 202, Cr.P.C. for ascertaining the truth or falsehood of the complaint. Where the complaint is before a Court of Session, subsection (2) of Section 202 permits such exercise to be conducted through a Magistrate subordinate to it. The object of such preliminary exercise is not to hold a trial or finally determine the guilt or innocence of the persons complained against, but to assist the Court in determining whether sufficient ground exists for proceeding further.

10. The scope and object of an inquiry under Section 202, Cr.P.C. have been examined by the Honourable Supreme Court in *Muhammad Rajar v. The State through Prosecutor General Sindh and others* (PLD 2025 SC 40). It has been held that the inquiry or investigation contemplated under Section 202, Cr.P.C. is not a futile exercise and must be considered by the Court while determining whether process is to be issued. The purpose of such exercise is to enable the Court to scrutinize the allegations and form an opinion whether sufficient ground exists for proceeding further.

11. In the present case, the preliminary inquiry did not merely result in an adverse conclusion. The learned Civil Judge & Judicial Magistrate-I, Bhiria City, noticed specific discrepancies regarding the date of occurrence, the presence of Qurban Ali Shah and the circumstance whether the dead body had been handed over before or after postmortem, besides taking notice of the proceedings arising out of Crimes Nos.143 and 151 of 2024 before expressing the view that sufficient material was not available for taking parallel cognizance. Although the impugned order refers to the inquiry report and reproduces the conclusion reached therein, mere reference to the report was not sufficient. The material and circumstances noticed during the inquiry required due consideration while determining whether sufficient ground existed for issuance of process. It is also significant that, while differing from the inquiry report, the learned trial Court observed that declining cognizance would close the avenues available to the complainant and used the expression that “at least

one door” should remain open to her. The availability of a legal remedy to an aggrieved person cannot be disputed; however, that consideration could not substitute the statutory requirement of determining whether sufficient ground existed for proceeding against the persons complained against.

12. At the same time, the learned trial Court was not bound to accept the conclusion reached in the preliminary inquiry merely because the report was adverse to the complainant. The ultimate determination whether sufficient ground exists for proceeding under Section 204, Cr.P.C. is a judicial function to be performed by the Court seized of the complaint after considering the material available before it. The defect, therefore, lies not in differing from the inquiry report, but in the manner in which the material emerging from such inquiry was dealt with before issuance of process. In that context, the respective roles attributed to the proposed accused also required consideration. So far as the present applicant is concerned, the allegation is that he, along with PC Azeem Mallah, was holding the handcuffed deceased, whereas the firing is attributed to other proposed accused. The complaint has also invoked Sections 147, 148 and 149, PPC. The effect of the respective roles was, therefore, required to be examined along with the remaining material while determining whether sufficient ground existed for proceeding further.

13. In Muhammad Farooq v. Ahmed Nawaz Jagirani and others (PLD 2016 SC 55), the Honourable Supreme Court observed:

“In complaint case, trial Court is not required to examine material minutely and or in depth, but has merely see that prima facie a case has been made out to proceed further with the matter for issuance of process or summons; the High Court in exercise of inherent jurisdiction cannot strangle the trial by overstretching its jurisdiction under Section 561-A, Cr.PC ... and embark upon to examine adequacy and or inadequacy of evidence, which stage will only reach after charge is framed and complainant is given an opportunity to prove his case beyond reasonable doubt.”

The above principle makes it clear that neither the learned trial Court at the stage of issuance of process nor this Court in revisional jurisdiction is required to undertake a minute appraisal of the evidence. What was required, however, was due consideration of the material collected during the preliminary inquiry before forming the opinion contemplated under Sections 203 and 204, Cr.P.C.

14. Another material circumstance is that Crime No.151 of 2024 concerns the occurrence in which Amjad Shah lost his life. That case contains the police version of the occurrence, whereas respondent No.2 has put forward a divergent version alleging that her brother was killed in a false encounter. In Mst. Sughran Bibi v. The State (PLD 2018 SC 595), the Honourable Supreme Court observed:

“All subsequent or divergent versions of the same occurrence or the persons involved therein are to be received, recorded and investigated by the investigating officer in the same ‘case’ which is based upon the one and only FIR registered in respect of the relevant ‘offence’ in the prescribed book kept at the local police station.”

15. The principle laid down in Mst. Sughran Bibi does not, by itself, bar the remedy of a direct complaint under Section 200, Cr.P.C. Nevertheless, the existence of Crime No.151 of 2024 concerning the same occurrence was a relevant circumstance which required consideration. It is also relevant that, while disposing of Criminal Miscellaneous Application No.2995 of 2024, the learned Ex-Officio Justice of Peace had left respondent No.2 with the option of approaching the Investigating Officer of Crime No.151 of 2024 for recording of her version, besides noticing the alternate remedy of a direct complaint.

16. The learned trial Court was competent to differ from the conclusion reached in the preliminary inquiry; however, while doing so, it was required to give due consideration to the material emerging from such inquiry before forming an opinion that sufficient ground existed for proceeding further. The impugned order does not adequately reflect such consideration. It, therefore, suffers from material illegality and impropriety warranting interference in revisional jurisdiction.

17. In view of the above facts and circumstances, the instant Criminal Revision Application is allowed and the impugned order dated 21.10.2024 is set aside. The matter is remanded to the learned trial Court for passing an appropriate order in accordance with law. The learned trial Court shall determine the matter independently based on the material available before it, without being influenced by any observation made herein.

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