ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,LARKANA

Cr. Revn. Appln No.S-12 of 2025

1. For orders on office objection.
2. For hearing of Main Case.

M/s Habibullah G. Ghouri and Zafar Ali Malghani, advocates for the applicant.
Mr. Riaz Hussain Khoso, advocate for respondent No.1.
Mr. Muhammad Afzal Jagirani, advocate for respondents No.2 to 8.
Mr. Nazeer Ahmed Bhangwar, Deputy Prosecutor General.

Date of hearing : **30.10.2026.**
Date of Decision : **30-10-2026.**

O R D E R.

Arbab Ali Hakro, J.- Through the instant Criminal Revision Application, the applicant/complainant Khuda Bux Junejo has called in question the order dated 01.02.2025 passed by the learned 3rd Additional Sessions Judge, Larkana, whereby the Direct Complaint No.8/2024 *re-Khuda Bux v. SHO/SIP Rehmatullah Solangi & others*, was dismissed under Section 203 Cr.P.C.

2. The case set out in the complaint is that on 07.05.2024, at about 3:00 a.m., the applicant's son, Waseem Ali, aged about 24 years, was taken from his house by a police party from P.S. Lashari, led by respondent No.1 and respondents No.3 to 8. He was beaten at the police station and then shot dead at about 5:00 a.m. near Banguldero, the fatal shots being attributed to respondent No.1 and respondent No.3. The applicant claims to have witnessed the incident with his son, Saleem, and his nephew, Ali Gohar. The dead body was removed to Civil Hospital, Ratodero, and the police registered FIR No.22/2024 at P.S. Lashari under Sections 324, 353, 399, 402, 148 and 149, P.P.C., portraying the death as the result of an encounter in which the deceased was shot by his own companions.[1]

3. Learned trial court recorded the applicant's statement under Section 200, Cr.P.C., and instead of conducting the inquiry itself, directed the SSP Larkana to have a preliminary inquiry conducted by an officer not below the rank of DSP. The SDPO Hyderi reported that the allegation "could not be

[1] Direct complaint, paper-book pp.11-17; statement under Section 200, Cr.P.C. dated 07.09.2024, pp.23-25; FIR No.22/2024, registered at 0630 hours on 07.05.2024.

proved". Learned trial court then dismissed the complaint, holding that the deceased was a notorious and hardened criminal involved in 25 FIRs, that the statements of the police officials, Roznamcha entry No.25, and FIR No.22/2024 established the encounter, and that the applicant had "tried to falsely implicate the police officials".[2]

4. Learned counsel for the applicant contends that an inquiry into an allegation of killing by the police could not have been entrusted to the police themselves; that the trial court failed to examine the applicant's witnesses; and that the complaint has been thrown out on the strength of the version of the accused.

5. Learned counsel for respondent No. 1 submits that Section 202 Cr.P.C. places no bar on an inquiry conducted by a police officer, that the applicant raised no objection to it before the trial court, and that the complaint was rightly dismissed once the inquiry negated the allegation.

6. Learned counsel for respondents No.2 to 8 adopts these submissions and states that respondent No.2 has since expired.

7. Learned Deputy Prosecutor General concedes that the impugned order is not properly founded.

8. I have heard learned counsel and have gone through the record with their assistance.

9. The scheme of Chapter XVI of the Code is simple. On a complaint, the court examines the complainant on oath (Section 200); it may postpone the issue of process and either inquire into the matter itself or direct an inquiry or investigation for the purpose of ascertaining the truth or falsehood of the complaint (Section 202); it dismisses the complaint if, after considering the complainant's statement and the result of the inquiry, there is, in its judgment, no sufficient ground for proceeding (Section 203); otherwise it issues process (Section 204). The words "sufficient ground for proceeding" set the standard. At this stage, the court is not to examine the material minutely or in depth; it has only to see whether a *prima facie* case is made out for issuing process. The burden on a complainant in a preliminary inquiry is far

[2] Impugned order, paper-book pp.19-21.

lighter than the burden on the prosecution at the trial.[3] The inquiry under Section 202 is not a futile exercise, and its result must be weighed by the court, but it is weighed for that limited purpose and not as a substitute for the trial.[4]

10. On this touchstone, the impugned order does not survive. It fails to record what the applicant and the eyewitnesses named by him stated on oath, or whether they were examined by the inquiry officer at all. It makes no reference to the post-mortem report, which was annexed to the complaint and which describes four firearm injuries, one of them with its entry wound on the back of the chest, besides a fractured jaw and fractured cervical vertebrae.[5] The order relies on the accused's own material: their FIR, their Roznamcha entry, and their unsworn statements before the inquiry officer. On that footing, it finds the complaint false. That is a finding on the merits, reached on the defence version, at a stage when the law asks only whether there is sufficient ground to proceed. The criminal record of the deceased, which weighed heavily with the trial court, is no answer to an allegation that he was killed in police custody; in any event, the judgments placed on record show that the bulk of those cases ended in acquittal or in bail.[6]

11. The second infirmity lies in the manner of the inquiry. Section 202(1) permits an inquiry through a police officer, and respondents' counsel is right that there is no bar in terms. But the choice of agency is a judicial act, to be exercised with regard to the object of the inquiry, which is to ascertain, *prima facie*, whether the complaint is authentic; it is not a mechanical step.[7] Where the accused are officials of the district police and the allegation is that they killed a man taken from his home, the object is not served by asking an officer of the same force to report on his colleagues. The Supreme Court has said in plain words that, in a case of police encounter, the police cannot be investigators of their own cause and that such cases call for an independent agency; it has also held that an encounter does not, by itself, license a police party to kill, the right of private defence of police personnel being confined to Sections 96 to 106 P.P.C. and subject to Article 9 of the Constitution.[8] The

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[3] *Muhammad Farooq v. Ahmed Nawaz Jagirani* PLD 2016 SC 55; *Anwar Ali Khan v. Wahid Bux* 1991 SCMR 1608.

[4] *Muhammad Rajar v. State* PLD 2025 SC 40.

[5] Post-mortem report dated 07.05.2024, paper-book pp.101-107.

[6] Paper-book pp.27-99.

[7] *Waqar Ali v. State* PLD 2011 SC 181.

[8] *Zeeshan @ Shani v. State* 2012 SCMR 428; *Muhammad Yaqoob v. State* 1992 SCMR 1983.

applicant's failure to object before the trial court does not cure the defect, for the duty to apply the correct test and to hold a meaningful inquiry rests on the court and not on the complainant.

12. It is not for this Court, in revision, to say whether the version in the complaint or the version in FIR No.22/2024 is true. Both versions are before the trial court and the complaint has yet to be examined in the manner the law requires. Nothing said here is to be taken as an expression of opinion on the merits of either.

13. The upshot is that the revision application is **allowed**. The impugned order dated 01.02.2025 is set aside, and Direct Complaint No.8/2024 is remanded to the learned trial court, which shall proceed afresh under Section 202 Cr.P.C. by examining the applicant's witnesses on oath, or, if it considers an inquiry through another agency necessary, by directing the inquiry through a Judicial Magistrate of the district, not through the police. The trial court shall consider the post-mortem report and the other material annexed to the complaint, and shall then pass a reasoned order under Section 203 or Section 204 Cr.P.C., as the case may be, preferably within sixty days of receipt of this order. The death of respondent No.2 shall be verified by the trial court, and the complaint shall stand abated to his extent upon such verification.

14. The revision application stands disposed of in the above terms. Office is directed to communicate a copy of this order to the learned trial court forthwith for compliance.

JUDGE

Qazi Tahir PA/*