

Suffice it to say that there is hardly any improbability or infirmity in the impugned judgment of acquittal recorded by the learned trial Court, which being based on sound and cogent reasons does not warrant any interference by this Court. The case laws cited by the learned counsel for the appellant are distinguishable from the facts and circumstances of the present case hence do not support the case of appellant. This is a Criminal Acquittal Appeal and I cannot lose sight of the doctrine of double innocence, which is attached to such proceedings.

In view of the above discussion, I find no merit in this Criminal Acquittal Appeal which is dismissed along with pending applications.

JK/Z-20/Sindh

Appeal dismissed.

2024 P Cr. L J 1168

[Lahore]

Before Tariq Saleem Sheikh, J.

ZUBAIDA KHANUM---Petitioner

versus

DISTRICT POLICE OFFICER and 15 others---Respondents

Writ Petition No. 18561 of 2021, decided on 12th April, 2023.

Criminal Procedure Code (V of 1898)---

***---S. 22-A(6) (3)---Ex-officio Justice of Peace, powers of---Scope---
Petitioner preferred application under S.22-A, subsection (6) sub-clause
(3), Cr.P.C., against Police Officials with regard to action against
illegal act and for recording cross-version---Police Officials alleged that
son of petitioner was apprehended while selling narcotic's and 4180
grams of charas, scale and wattak amount of Rs. 5700/- were recovered
from his possession; that meanwhile brother of accused and others
equipped with lethal weapons arrived, opened fire on the police
officials, thus FIR under S.9(c) of Control of Narcotic Substances Act,
1997 and under Ss.324, 353, 186, 337-H(2), 148 & 149, P.P.C was
registered---Petitioner contended in her petition that Police Officials
forcibly entered her house and ransacked it; sons of petitioner tried to
stop them, but they beat them; and Police Officials stole cash amounting
to Rs. 30,000/- and gold jewellery from her house---Ex-officio Justice of
Peace issued direction to the District Police Officer to inquire into the
matter himself or through a senior Police Officer and proceed under the
law---SDPO submitted report against the version of the petitioner---
Validity---Occurrence mentioned in the petitioner's application under
S.22-A(6) Cr.P.C., was manifestly a cross-version of FIR registered by***

police---Anyhow, it could not be considered as information of a different incident regarding the commission of a cognizable offence that would warrant registering a separate FIR---Police FIR was registered under S.9(c) of the Control of Narcotic Substances Act, 1997 and Ss. 324, 353, 186, 337-H(2), 148 & 149, P.P.C---Prosecution was required to submit two challans in the case, one under the Control of Narcotic Substances Act, 1997 and the other under P.P.C, because they were triable by separate Courts---Trial Court tried accused for the offence under S.9(c) of the Control of Narcotic Substances Act, 1997 and acquitted him---If Police FIR had only been under the said offence, petition might have been dismissed right away---Court would have refused the petitioner relief even though she promptly approached the Ex-Officio Justice of Peace to register her cross-version (i.e. eighteen days after filing of Police FIR and there was also no subsequent delay on her part---However, in the present case, the FIR was partially still alive because son of petitioner and others were charged with the Penal Code offences as well, but the challan had not been submitted before the Magistrate to their extent---Petitioner claimed that her son was shot in the upper part of the right thigh---District Standing Medical Board examined the injured and its members unanimously opined that his injury seemed to be fabricated---Provincial Standing Medical Board re-examined the injured under Court orders and affirmed the findings of District Standing Medical Board---Ex-officio Justice of Peace performed quasi-judicial functions under S.22-A(6), Cr.P.C., therefore, before issuing any direction on a complaint for non-registration of a criminal case, Ex-Officio Justice of Peace must satisfy himself that there was sufficient justification for it---Ex-officio Justice of Peace must address himself to the facts of the case and where he disagreed with the police report, he should give reasons for his disagreement---Ex-officio Justice of Peace could not just ignore the report of police---In the instant case, neither the police report nor the medical evidence supported the petitioner's cross-version---Therefore, request of petitioner for registration of cross-version could not be granted---Petition was accordingly dismissed. [pp. 1181, 1182, 1183] A, B & C

Sughran Bibi v. The State PLD 2018 SC 595; Kari Choudhary v. Sita Devi and others (2002) 1 SCC 714; Upkar Singh v. Ved Prakash and others (2004) 13 SCC 292; Babubahi v. State of Gujarat and others (2010) 12 SCC 254; Surender Kaushik and others v. State of Uttar Pradesh and others (2013) 5 SCC 148; P. Sreekumar v. State of Kerala and others (2018) 4 SCC 579; Raza v. The State PLD (2020) SC 523; Nathi Lal and others v. State of U.P. (1990) SCC (Cri) 638; State of Karnataka v. Hosakeri Ningappa and another 2012 ILR Karnataka 509; Muhammad Sadiq v. The State and another PLD 1971 SC 713; Abdul Rehman Bajwa v. Sultan and others PLD 1981 SC 522; Nur Elahi v. The

State and others PLD 1966 SC 708; M. Rehman and others v. Narayanganj Company (Private) Ltd. PLD 1971 SC 1; Abid Hussain v. The State and others 2022 PCr.LJ 83; Altaf Ahmed Makhdoom v. Inspector General of Police Punjab and 2023 PCr.LJ 1; Bahadur Khan v. Muhammad Azam and others 2006 SCMR 373; Mureed Hussain v. Additional Sessions Judge/Justice of Peace Jampur and others 2014 PCr.LJ 1146; Khizar Hayat and others v. Inspector General of Police (Punjab) and others PLD 2005 Lah. 470 and Younas Abbas and others v. Additional Sessions Judge, Chakwal and others PLD 2016 SC 581 rel.

Zafar Iqbal Chohan, assisted by Rashid Amin and Qamar Abbas Duggal for Petitioner.

Mukhtar Ahmad Ranjha, Additional Advocate General and Rana Tasawar Ali Khan, Deputy Prosecutor General, with Prof. Dr. Arif Rasheed Malik, Surgeon Medico-Legal Punjab, Lahore and Farrukh/SI for Respondents Nos. 1 and 3.

Rai Bashir Ahmad assisted by Shahid Ali for Respondents Nos. 2 and 4-6.

Amicus curiae: Barrister Haider Rasul Mirza, Advocate Supreme Court.

Date of hearing: 23rd December, 2022.

JUDGMENT

TARIQ SALEEM SHEIKH, J.---This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), is directed against the order dated 5.3.2021 passed by the Ex-officio Justice of Peace, Depalpur (the "Impugned Order").

The facts

2. Faisal Hussain/SI lodged FIR No. 42/2021 dated 22.1.2021 at Police Station Baseerpur, Tehsil Depalpur, District Okara, for offences under section 9(c) of the Control of Narcotics Substances Act, 1997 (CNSA), and sections 324, 353, 186, 337-H(2), 148 and 149 P.P.C. He stated that on 22.1.2021 at 10:30 a.m., he was patrolling with other police officials when he received source information that the Petitioner's son, Muhammad Sohail alias Sahaila, was seen selling narcotics near his house. The police party hastened to that place, apprehended him, and recovered 4180 grams of *charas*, scale, and *Wattak* amount of Rs.5700/- from his possession. Meanwhile, Sohail's brother Irfan alias Fana, Naeem alias Khan Baba (also known as Khalid Iqbal alias Chuchi), Atif son of Goggi, and 8/9 other unknown persons equipped with lethal weapons arrived. They opened fire on the cops intending to murder them and attempted to liberate Sohail and snatch the contraband *charas*. Hussain/SI further stated that Irfan and his cohorts had also committed

an offence by obstructing the police from performing their duties and using criminal force against them.

3. The Petitioner has a cross-version. She alleges that on 22.1.2021 at 10:30 a.m., she was at home with Sohail alias Sohaila and another son, Irfan alias Fana. Respondents Nos. 2 and 5 to 16 (police officers and *Razakars*) forcibly entered her house and ransacked it. When Sohail and Irfan tried to stop them, they beat them. She further alleges that Respondents Nos. 5 to 16 stole cash amounting to Rs.30,000/- and gold jewellery from her house and, in the end, took Sohail and Irfan with them. Irfan managed to escape the grasp of the cops and boarded his motorcycle parked in the street to flee. Respondent No.2 (Akhtar Khan, the then SHO) shot at him, striking his right thigh. Respondents Nos.2 to 16 then left, taking Irfan's unregistered Honda CD-70 motorcycle. The Petitioner's family called 1122 for medical aid and rushed Irfan to the RHC Hospital Baseerpur.

4. On 8.2.2021, the Petitioner moved an application under section 22-A(6) of the Code of Criminal Procedure, 1898 (hereinafter referred to as the "Code" or "Cr.P.C.") before the Ex-officio Justice of Peace, Depalpur. She stated that in 2015 the officials of Baseerpur and other police stations illegally arrested her four sons, namely, Pervaiz Ahmad, Amir, Muhammad Bilal, and Muhammad Sohail alias Sohaila. She filed a habeas petition in the High Court for their recovery but, in the meantime, the police killed Pervaiz Ahmad and Amir in a fake encounter. However, her other two sons were recovered. The Petitioner further stated that her daughter Aneesa Fatima had filed a private complaint against 16 police personnel under sections 302, 364, 395, 109, 148 and 149, P.P.C. regarding the aforementioned killing. The Additional Sessions Judge summoned the accused for trial vide order dated 16.1.2020. They challenged that order in the High Court through CrI. Revision No.13328/2020, which was dismissed. Thereupon, the police began registering false cases against the Petitioner and other family members with *mala fide* intent to pressurize them to withdraw the aforesaid private complaint.

5. The Petitioner contended that Respondents Nos.2 and 5 to 16 had committed a cognizable offence and prayed that a direction be issued to the Respondent SHO to register FIR against them. The Ex-officio Justice of Peace, vide Impugned Order dated 5.3.2021, disposed of the Petitioner's application with a direction to the District Police Officer, Okara, to inquire into the matter himself or through a senior police officer not lower than the rank of Deputy Superintendent of Police and proceed under the law.

6. In a subsequent development, the Additional Sessions Judge, Depalpur, tried Muhammad Sohail for an offence under section 9(c) of

the CNSA in case FIR No. 42/2021 and acquitted him vide judgment dated 24.6.2021.

Inquiry report of the DSP/SDPO, Depalpur

7. The DPO Okara marked the inquiry to the DSP/SDPO, Depalpur. He found that FIR No. 42/2021 was correct, and the Petitioner's version regarding the incident of 22nd January 2021 was false. He confirmed that Faisal Hussain/SI genuinely arrested her son Muhammad Sohail for keeping 4180 grams of *charas*. He also found that the Petitioner's other son Irfan alias Fana, and his associates made a straight firing on the police party and tried to have Sohail released from their custody but failed. In the end, they fled by running through the narrow streets.

8. According to the DSP/SDPO, the Petitioner's family members are habitual offenders. They are engaged in the illicit drug trade and involved in several criminal cases, including murders and dacoities. On 29.12.2015, two of the Petitioner's sons, Pervaiz and Amir, were killed in a police encounter. They were proclaimed offenders in case FIR No. 37/2015 dated 20.1.2015 registered under sections 302, 364, 148, 149 P.P.C. read with section 7 of the Anti-Terrorism Act, 1997, regarding the abduction and murder of Muhammad Shoaib/ASI of Police Station Baseerpur.

The submissions

9. Mr. Zafar Iqbal Chohan, Advocate, contends that the Petitioner's application under section 22-A(6) Cr.P.C. discloses the commission of a cognizable offence. Therefore, her cross-version should be recorded in case FIR No. 42/2021 following the law laid down by the Supreme Court of Pakistan in *Sughran Bibi v. The State (PLD 2018 SC 595)*. He submits that the Petitioner applied to the Ex-officio Justice of Peace for registration of her cross-version on 8.2.2021, i.e. eighteen days after the filing of FIR No. 42/2021. Therefore, there was no delay on her part. She cannot be non-suited merely because the challan under section 9(c) of the CNSA was fast-tracked, and Muhammad Sohail's trial for that offence has concluded. Mr. Chohan further contends that denying the Petitioner relief would violate her rights under Articles 4 and 10-A of the Constitution. Article 4 categorically states that every citizen, and every other person for the time being in Pakistan, has an inalienable right to enjoy the protection of the law and to be treated according to the law. Article 10-A guarantees everyone the right to a fair trial, whether the accused or the complainant party. Mr. Chohan acknowledges that a private complaint is an adequate and effective alternative for a cross-version but states that it cannot be refused if a person has a case.

10. Mr. Mukhtar Ahmad Ranjha, Additional Advocate General, contends that the Petitioner's family members are hardened criminals. They are involved in the illicit drug trade and commit dacoities. The Petitioner's cross-version is false and concocted. The report of the DSP/SDPO also establishes this fact. Mr. Ranjha further contends that *Sughran Bibi* has settled that second FIR cannot be registered for the same occurrence. It only allows for the recording of cross-version, which cannot even be done at this stage because the trial of FIR No.42/2021 has concluded. The said FIR does not exist. The only remedy available to the Petitioner is that of a private complaint.

11. Advocate Rai Bashir Ahmad, the counsel for Respondents Nos. 2 and 4 to 6, has adopted the arguments of the Additional Advocate General with a little addition. He submits that medical evidence does not support the Petitioner's version, proving it false and concocted. Hence, this petition may be dismissed.

12. This Court appointed Barrister Haider Rasul Mirza as *amicus curiae*. He submits that Muhammad Sohail's defence in FIR No. 42/2021 was the same as his mother's narration in her application under section 22-A(6) Cr.P.C. He told the same story while recording his statement under section 342 Cr.P.C. during the trial of that case. The other accused persons in the FIR (his brothers and other sons of the Petitioner), namely, Muhammad Naeem Qamar, Irfan alias Fana, and Atif Javed, took the same stance in their pre-arrest bail application bearing CrI. Misc. No. 5256/B/2021, which this Court granted on 23.2.2021. In the circumstances, it is reasonable to believe that on 22.1.2021, when Muhammad Sohail was arrested, his version was also the same. Even though the Investigating Officer did not write it, the State committed itself to the version set out in the FIR. It believed it to be true and sought his prosecution. Mr. Mirza argues that the Petitioner's claim that her version was never considered or evaluated is incorrect. Directing the State to register a new FIR - or a cross-version - of the same occurrence, reinvestigate it and conduct a new prosecution in absolute contradiction of the earlier process would be nonsensical and imbecile. The learned *amicus curiae* further argues that the Petitioner can prosecute Respondents Nos. 2 and 4 to 6 on her cross-version through a private complaint, which is an adequate and efficacious remedy.

Opinion

13. The Petitioner's plea in her application under section 22-A(6) Cr.P.C. and FIR No. 42/2021 lodged by Faisal Hussain/SI share many similarities. Both parties agree that the occurrence took place on 21.1.2021 at 10:30 a.m. The location of the incident and the police officials involved are all the same. Both the accounts of the occurrence

mention the Petitioner's sons with the common feature that one of them, Muhammad Sohail, was arrested – which she claims constituted an abduction. The shooting incident is also mentioned in both narrations, albeit differently. The Petitioner accuses the police of inflicting firearm injuries while they allege that Irfan fired upon the raiding party. Therefore, the incident described in the Petitioner's application under section 22-A(6) Cr.P.C. is unmistakably a cross-version of FIR No. 42/2021. It is not information about a separate incident.

14. It is necessary to examine the following two legal questions before attending to the factual aspects of the case:

- (i) Can second FIR be registered on a new/different version of the same incident involving the commission of a cognizable offence?
- (ii) Can a cross-version be recorded in a case after the conclusion of the trial?

The first question

15. The courts in India distinguish between lodging two FIRs regarding the same incident and a counter FIR. In *Kari Choudhary v. Sita Devi and others* [(2002) 1 SCC 714], the Indian Supreme Court held that there could not be two FIRs against the same accused regarding the same episode. However, competing versions normally take the form of two different FIRs, and the same agency can investigate both. In *Upkar Singh v. Ved Prakash and others* [(2004) 13 SCC 292], the Supreme Court stated that filing a “counter-complaint” about the same incident is permissible, and there would be serious implications if it were disallowed. Santosh Hegde J. wrote:

“This will be clear from the hypothetical example given herein below, i.e., if in regard to a crime committed by the real accused, he takes the first opportunity to lodge a false complaint, and the same is registered by the jurisdictional police, then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question. Consequently, he will be deprived of his legitimate right to bring the real accused to the book. This cannot be the purport of the Code.”

16. In *Babubahi v. State of Gujarat and others* [(2010) 12 SCC 254], the Supreme Court held that an FIR under section 154 of the Indian Code of Criminal Procedure¹ is a very important document because it sets the machinery of criminal law in motion and marks the beginning of the

¹ Section 154 of India's Criminal Procedure Code of 1973 is similar to section 154 of Pakistan's Code of Criminal Procedure, 1898.

investigation. It is quite possible that the officer in charge of a police station may receive multiple pieces of information about an incident involving one or more cognizable offences. He does not have to file a new FIR for each such information. After the investigation into the facts stated in the FIR begins, all other information, whether oral or written, given to the officer in charge of a police station will be treated as statements under section 162 of the Indian Code of Criminal Procedure². The Supreme Court further said that when determining whether two FIRs pertain to the same incident or two or more parts of the same transaction, the judge should consider the facts and circumstances that gave rise to both FIRs and apply the test of sameness. The second FIR is liable to be quashed if the answer is affirmative. On the other hand, if it is established that the version in the second FIR is different or they relate to two separate incidents/crimes, the second FIR is permissible. If the accused in the first FIR presents a different version or counter-claim regarding the same occurrence, both FIRs must be investigated. In Surender Kaushik and others v. State of Uttar Pradesh and others [(2013) 5 SCC 148], the Supreme Court concluded as follows after thoroughly examining the case law:-

“From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced, and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh³, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes, and in that event, lodgment of two FIRs is permissible.”

17. In P. Sreekumar v. State of Kerala and others [(2018) 4 SCC 579], the Supreme Court ruled that there is no legal bar on filing a second FIR where it is in the nature of a counter-complaint. Such FIR can be entertained and tried on merits according to the law.

² Section 162 of India's Criminal Procedure Code of 1793 is similar to section 162 of Pakistan's Code of Criminal Procedure, 1898.

³ Upkar Singh v. Ved Prakash and others [(2004) 13 SCC 292].

18. In Pakistan, there was a lack of judicial consensus on registering a second FIR. Finally, in *Sughran Bibi v. The State* (PLD 2018 SC 595), a 7-member Bench of the Supreme Court rendered an authoritative decision which also addressed the ancillary question of how the police should record and investigate new/different versions of the same incident if a second FIR cannot be registered. The apex Court held that the FIR is essentially an "incident report" because it informs the police for the first time that an occurrence involving the commission of a cognizable offence has taken place. Once the FIR is registered, the occurrence is regarded as a "case", and every step in the ensuing investigation under sections 156, 157, and 159 Cr.P.C. is a step taken in that case. The Investigating Officer should not be swayed by the contents of the FIR, and he is under no obligation to establish that version. He must instead find out the truth. He should gather information from those who appear to be familiar with the details of the incident. A fresh FIR is not required for each new piece of information he obtains during the process or the discovery of a new circumstance relevant to the commission of the offence. Such further information or knowledge is part of the ongoing investigation into the same case, which began with the registration of the FIR. After completing the investigation, the Investigating Officer should file a report under section 173 Cr.P.C. on the real facts that he discovers, regardless of the version of the incident advanced by the first informant or any other version brought to his notice by any other person.

19. In *Sughran Bibi*, the Supreme Court iterated that the power to investigate is related to the offence and is not limited to the facts mentioned in the FIR. If the information received by the police about the commission of a cognizable offence also includes details of how and by whom it was committed, or anything regarding its background, that is only the informant's version of the incident. The Investigating Officer should not accept it unqualifiedly as the whole truth. Moreover, all versions of the incident are recorded under section 161 Cr.P.C., whether supplemental or divergent, and all of them are part of the same "case" that originated with the registration of the FIR as aforesaid.

20. It is pertinent to mention that the accused's version of the events also comes under section 161 Cr.P.C. In *Raza v. The State* (PLD 2020 SC 523), the apex Court held:

"18. The expression 'any person' has to be understood in the context of section 161 Cr.P.C. It requires a police officer making an investigation to examine any person supposed to be acquainted with the facts and circumstances of the case. This expression is extensive and, in its plain and ordinary meaning, includes all persons who are supposed to be acquainted with the facts and circumstances of the case and not only the witnesses

but also those who are alleged to have committed the offence under investigation in a case ...”

“19. It is common that in most cases, a version of the same occurrence different from the one recorded in FIR is given by the accused, as it happened in the present case. And, in view of the law declared in *Sughran Bibi*, it can be said with certainty that such version of an accused is to be, and is, recorded under section 161 Cr.P.C.”

21. The restriction under section 154 Cr.P.C. that FIRs can be registered only regarding cognizable offences does not apply to cross-versions. It is for the obvious reason that they are recorded under section 161 Cr.P.C., as mandated by *Sughran Bibi*. However, registration of a cross-version does not obligate the Investigating Officer to arrest the accused immediately. There must be sufficient justification for it. The following excerpt from *Sughran Bibi* is relevant:

“Ordinarily, no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898, and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules, a suspect is not to be arrested straight away or as a matter of course, and unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation *prima facie* satisfying the investigating officer regarding the correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue.”

22. The Code is silent on the procedure for the trial of counter-cases. Nonetheless, the general practice is that they are tried concurrently by the same court, which renders judgment in each case simultaneously. The logic behind this practice is that there is a high risk of conflicting decisions if two cases involving different versions of the same incident are not tried together. In *Nathi Lal and others v. State of U.P.* [1990 SCC (Cri) 638], the Supreme Court of India ruled as follows on the issue of the trial of cross cases:

“We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he

must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each case, he can rely only on the evidence recorded in that case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross-case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

23. In State of Karnataka v. Hosakeri Ningappa and another (2012 ILR Karnataka 509), two counter-cases arising from the same incident were tried separately by the same Sessions Judge, and both ended in acquittal. The judgment of acquittal in one of them attained finality while the State preferred an appeal in the second before the High Court. The question arose as to whether the entire trial gets vitiated or whether it is only an irregularity which does not vitiate the trial process or the order of acquittal. A Full Bench of the Karnataka High Court held that if the counter-cases are not tried simultaneously, the proceedings do not get ipso facto vitiated. But, where the irregular procedure adopted by the trial court has caused prejudice to the accused and has occasioned a failure of justice, the proceedings and the trial vitiates. Otherwise, the defect is curable. The Andhra High Court followed this dictum in The State of A.P. v. Mittapalli Sudhakar Reddy and others⁴.

24. In Muhammad Sadiq v. The State and another (PLD 1971 SC 713), the trial of a challan case under sections 148, 302, 307, 149, P.P.C. had concluded, and the Sessions Judge had set a date for delivering his judgment. A Magistrate of the First Class was holding the trial of a counter-complaint case filed by one of the accused in the challan case and stemming from the same occurrence. In this backdrop, the accused in the challan case applied under section 561-A Cr.P.C. for restraining the Court of Sessions from announcing judgment in the challan case until the hearing of the complaint case was complete. The High Court acceded to this prayer and stayed the announcement of the judgment by the Sessions Judge. The Supreme Court of Pakistan held that the Code is silent about the procedure for the trial of counter-cases arising out of the same occurrence. While it is the general practice to try the counter-cases side by side by the same court till their conclusion and

⁴ Available at: <http://indiankanoon.org/doc/124035740/>

to pronounce the judgment in each case simultaneously, it is not an absolute rule that must always be followed. The facts and circumstances of a particular case may warrant a different procedure for the ends of justice. The Supreme Court accepted the appeal, set aside the High Court's order and directed the Sessions Judge to pronounce the judgment. In Abdul Rehman Bajwa v. Sultan and others (PLD 1981 SC 522), the Supreme Court reaffirmed the above view, distinguishing Nur Elahi v. The State and others (PLD 1966 SC 708) and M. Rehman and others v. Narayanganj Company (Private) Ltd. (PLD 1971 SC 1)⁵.

25. I would conclude the discussion on the first issue by stating that after the Hon'ble Supreme Court's ruling in Sughran Bibi, there is no scope for recording a second FIR for the same incident, even for a cross-version.

The second question

26. Registration of a cross-version necessitates reinvestigation or further investigation. Whether a case can be reinvestigated or further investigated after the submission of the final report under section 173 Cr.P.C. (particularly after the accused is/are indicted) is quite contentious. There are two seemingly irreconcilable streams of decisions on this point. In Abid Hussain v. The State and others (2022 PCr.LJ 83) and Altaf Ahmed Makhdoom v. Inspector General of Police Punjab and others (2023 PCr.LJ 1), this Court thoroughly examined the case-law and ruled that the Supreme Court's dictum laid down in Muhammad Akbar v. The State and another (1972 SCMR 335) is the binding authority because a 4-member Bench handed down that decision while all others have come from the Benches of low numerical strength. In Muhammad Akbar, the apex Court held that "there is nothing in the Code of Criminal Procedure to prevent the Investigating Officer from submitting a subsequent report in supersession of his earlier one, either on his own initiative or on the direction of the superior police officer."

27. Although reinvestigation or further investigation is permissible, it cannot be done routinely. There are several limitations, one of which is that it cannot be when the trial is over. Bahadur Khan v. Muhammad Azam and others (2006 SCMR 373) is a case in point. According to the facts, Dilawar Khan was driving a Datsun pickup when he hit Raza and killed him. Raza's family alleged that it was a murder rather than an accident. Consequently, they shot Dilawar in retaliation a few months later. Bahadar Khan lodged FIR in respect of that occurrence. The trial court convicted accused Muhammad Arif and sentenced him to death but acquitted co-accused Muhammad Akram and Mir Hassan of the charge.

⁵ Also see: Abdul Shakoor v. The State and another (2012 PCr.LJ 231); Sanobar and 2 others v. The State and others (PLD 2018 Peshawar 144); and Muhammad Arif and others v. the State (2022 MLD 1589).

The High Court acquitted Arif and convicted Akram and Mir Hassan, and sentenced them to life. The Supreme Court set aside Mir Hassan's conviction but upheld Akram's conviction and sentence. Subsequently, the prosecution submitted challan under sections 212, 120-B/34, P.P.C. against two more persons, Muhammad Azam and Abdullah Khan, in the court which conducted the previous trial. The Additional Sessions Judge convicted Muhammad Azam under section 212, P.P.C. and acquitted Abdullah, his co-accused. Bahadur Khan contended before the Supreme Court that the facts constituting the offence under sections 212 and 120-B/34 P.P.C. came to light during the investigation of another case having nexus with the murder case of Dilawar Khan. Therefore, on completion of the investigation, a challan, which was in continuation of the one filed earlier, was submitted to the trial court that decided the murder case. Bahadur argued that the subsequent challan was competent and the Additional Sessions Judge had rightly convicted Muhammad Azam. There was no prohibition on the police to reinvestigate or further investigate the lateral aspects of the case which came to light subsequently. They could submit a new report under section 173 Cr.P.C. The apex Court nixed the argument holding as follows:

"[There is no legal bar on] reinvestigation of a criminal case even after submission of the final report under section 173 Cr.P.C., and the police can carry out the fresh investigation and submit its report to the court. But this would not mean that in a case in which earlier, after completion of the investigation, challan was submitted for the trial of an offence on which an accused/accused persons have been tried, and the case finally decided up to the level of the High Court and by this Court, as the case may be, to entertain the subsequent challan submitted as the result of reinvestigation/further investigation of the case by the police on the happening of a subsequent incident and to proceed with the trial of the case in the normal course oblivious of the facts of the case decided earlier by such court, and, the facts and circumstances including incriminating material necessitated submission of the subsequent challan in the case already having been decided and attained finality."

28. No law allows recording a statement under section 161 Cr.P.C. once a case is decided. After the Supreme Court's ruling in *Sughran Bibi* that all versions after filing the FIR are recorded under section 161 Cr.P.C., reinvestigation or further investigation in a concluded case is impossible.

29. I would sum up the law on the issue as follows: *Sughran Bibi* merely prohibits the registration of a second FIR, not a cross-version. Therefore, so long as the trial has not concluded, it can be permitted, even at a belated stage, to prevent a miscarriage of justice. If the

(original) FIR has been taken to its logical end, the only option for the individual who wishes to prosecute another on his cross-version is to file a private complaint. Here, I agree with Mr Mirza, the *amicus curiae*, (challan), the State commits itself to the version set out therein and, believing it to be true, seeks the accused's trial. It would be ludicrous to direct the State to register a new FIR - or a cross-version - of the same occurrence, reinvestigate it and launch another prosecution in absolute contradiction of the earlier process.

30. I may emphasize that a private complaint is an adequate and efficacious remedy. The following excerpt from *Sughran Bibi* is quite instructive:

"By virtue of the provisions of section 202(1), Cr.P.C. a court seized of a private complaint can 'direct an inquiry or investigation to be made by any Justice of Peace or by a police officer or by such other person as it thinks fit.' If, in a given case, the court seized of a private complaint deems it appropriate to direct an investigation to be carried out in respect of the allegations made, then the powers available during an investigation, enumerated in Part V, Chapter XIV of the Code of Criminal Procedure, 1898 read with section 4(1)(1) of the same Code, including the powers to arrest an accused person and to effect recovery from his possession or at his instance. Such powers of the investigating officer recognize no distinction between an investigation in a State case and an investigation in a complaint case."

31. Of course, there may be instances where the police refuse to take a person's cross-version, and he seeks legal redress against them, such as moving the Ex-officio Justice of Peace under section 22-A(6) Cr.P.C. However, due to procedural delays, the trial in the FIR case concludes before the decision on his cross-version request. In that scenario, although the individual is not to blame for the delays, a combined application of the principles settled in *Sughran Bibi* and *Bahadur Khan* would preclude recording his cross-version. His only recourse would be a private complaint.

The case at hand

32. The occurrence mentioned in the Petitioner's application under section 22-A(6) Cr.P.C. is manifestly a cross-version of FIR No. 42/2021. It cannot be considered as information of a different incident regarding the commission of a cognizable offence that would warrant registering a separate FIR. A

33. First Information Report No. 42/2021 was registered under section 9(c) of the CNSA and sections 324, 353, 186, 337-H(2), 148 and 149, P.P.C. The prosecution was required to submit two challans in this case – one under the CNSA and the other under P.P.C.–because they are triable by separate courts. The Additional Sessions Judge tried Muhammad Sohail for the offence under section 9(c) of the CNSA and acquitted him vide judgment dated 24.6.2021. If FIR No. 42/2021 had only been under this offence, this petition might have been dismissed right away for the reasons given in paragraph 31 above. This Court would have refused the Petitioner relief even though she promptly approached the Ex-officio Justice of Peace to register her cross-version (i.e. eighteen days after filing FIR No. 42/2021), and there was also no subsequent delay on her part. However, in the present case, the aforesaid FIR is partially still alive because Irfan alias Fana and others were charged with the Penal Code offences, but the challan has not been submitted before the Magistrate to their extent. In the circumstances, one may argue that the principle settled in Bahadur Khan is inapplicable. A

34. The DPO Okara marked the inquiry to the DSP/SDPO, Depalpur, who has not supported the Petitioner's version. She claims that Irfan was shot in the upper part of the right thigh. On 10.2.2021, the District Standing Medical Board examined him, and its members unanimously opined that his injury seemed to be fabricated for the following reasons: B

i) According to the injured, he was hit by SMG from a distance of 25-30 feet, but the effective range of SMG, according to Encyclopaedia Britannica, is 180 metres. So, SMG bullet fired from 30 feet is unlikely to stop in superficial soft tissue.

ii) Bullet is lying parallel to the bone without hitting the bone or any hard surface. It is unlikely to be deflected.

iii) Clothes are not produced before DSMB even after repeated reminders.

iv) Placement of the bullet in the right thigh (soft tissue) does not correspond to have been inflicted/during a spontaneous scuffle.

35. On 22.8.2022, the Provincial Standing Medical Board re-examined Irfan under court orders and reaffirmed the above findings of the District Board.

36. A Single Judge of this Court held in Mureed Hussain v. Additional Sessions Judge/Justice of Peace Jampur and others (2014 PCr.LJ 1146) that the Ex-officio Justice of Peace was not bound to seek

a report from the police in every case. He was competent to decide an application under Section 22-A(6) Cr.P.C. without it. In an earlier case, Khizar Hayat and others v. Inspector General of Police (Punjab) and others (PLD 2005 Lah. 470), a Full Bench of this Court observed that it was appropriate for him to call for a report to understand why the police refused to register a case. The Court said:

"It is prudent and advisable for an Ex-officio Justice of Peace to call for comments of the officer in charge of the relevant police station in respect of complaints of this nature before taking any decision of his own in that regard so that he may be apprised of the reasons why the local police have not registered a criminal case in respect of the complainant's allegations. It may well be that the complainant has been economizing with the truth, and the comments of the local police may help in completing the picture and making the situation clearer for the Ex-officio Justice of Peace, facilitating him in issuing a just and correct direction, if any."

37. The Supreme Court has authoritatively ruled in the case of Younas Abbas and others v. Additional Sessions Judge, Chakwal and others (PLD 2016 SC 581) that the Ex-officio Justice of Peace performs quasi-judicial functions under section 22-A(6) Cr.P.C. Therefore, before issuing any direction on a complaint for non-registration of a criminal case, he must satisfy himself that there is sufficient justification for it. He must address himself to the facts of the case, and where he disagrees with the police report, he should give reasons for his disagreement. He can't just ignore it.

38. In the instant case, neither the police report nor the medical evidence supports the Petitioner's cross-version. Therefore, her request for its registration cannot be granted. This petition is dismissed.

JK/Z-8/L

Petition dismissed.

2024 P Cr. L J 1183

[Sindh (Sukkur Bench)]

Before Yousuf Ali Sayeed and Zulfiqar Ali Sangi, JJ.

ARSHAD ALI and another---Appellants

versus

The STATE---Respondent

Special Criminal Jail Appeal No. D-15 of 2023, decided on 29th March, 2024.