

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Syed Hasan Azhar Rizvi  
Mr. Justice Aqeel Ahmed Abbasi

**Criminal Petition No. 165-K/2022**

[Against the Order dated 06.10.2022 passed by High Court of Sindh, Circuit Court,  
Hyderabad in Criminal Revision Application No.S-77 of 2022]

***Muhammad Rajar***

*...Petitioner(s)*

***Versus***

***The State***

*...Respondent(s)*

***through Prosecutor General Sindh and others***

For the Petitioner(s) : Mr. Muhammad Yousuf Laghari, Sr.  
ASC  
Mr. Ghulam Rasool Mangi, AOR

For the Respondent(s) : Mr. Saleem Akhtar Buriro, Additional  
Prosecutor General Sindh

Date of Hearing : 14.10.2024

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.** Through this petition, the petitioner has called in question the order dated 06.10.2022 passed by the High Court of Sindh, Circuit Court, Hyderabad whereby Criminal Revision Application (No. S-77 of 2022) filed by the respondents was allowed and order dated 13.05.2022 passed by the learned Additional Sessions Judge, Khipro was set aside.

2. Facts in brief are that, petitioner filed a Direct Complaint (No. 01/2022) under Section 200 of the Code of Criminal Procedure, 1898 (Cr.P.C), before the Additional Sessions Judge, Khipro against 30 nominated persons (*namely Zafar Iqbal, SSP, Khairpur, Manzoor Hussain Rind, Sub-Inspector, Ali Murad ASI, Gul Hassan Sodhar, WHC, Ghulam Qadir Shar, police Jamadar, Pir Allah Rakhio, Ex.DSP, Khipro, Gulazr Ali Mari, SHO, Muhammad Saleh Penjaro, Ex.ASI, Pervez Ahmed, Javed, Rashid Ali, Ashique Ali, Hanif, Ali Gul Kunbhar, Shoukar Kunbhar, Khan Muhammad Kunbhar, Phull Khan Kunbhar, Allah Bux Kunbhar, Khano Rind, Ali Nawaz*

*Kunbhar, All police constables, Mushtaque Shar, Muhammad Ali Saheto, Asad Shar, Sher Afzal Driver, Mehal Rajar, Soomer Rajar, Shahnawaz Nizamani, Deedar Bhagat, Employee of wild life Sukkur, Kashir Solangi, Employee of wild life Sukkur, Ayaz Gudhari, Employee of wild life Sukkur)* and 25/26 unknown persons. The petitioner alleged in the complaint that on 18.01.2022, around 9:30 PM, he was present at the Otaque of Haji Ali Muhammad Rajar, accompanied by his relatives (*Haji Abbas, Ali Nawaz, Wahid, Muharram, and Haji, son of Haji Ameer Rajar*). At that time, the accused persons mentioned above allegedly arrived in police mobiles and five unregistered Land Cruisers; that all the accused persons were armed with weapons and dressed in civilian clothes and trespassed on the property, used abusive language, damaged house articles, forcibly abducted the petitioner's 4 relatives (namely Haji Abbas, Ali Nawaz, Wahid and Muharram) and unlawfully snatched Rs. 70,000/-, a jeep (No. BC-1255), a stabilizer, furniture, and a UPS and went away towards Sanghar Road.

3. After the incident, petitioner approached PS khairpur for lodging an FIR but SHO refused to lodge the same therefore petitioner moved an application (Crl.M.A.No.08 of 2022) under section 22(A)(6)(i) Cr.P.C. before the Court of Additional Sessions Judge, Khipro which was dismissed vide order dated 28.02.2022. Thereafter, petitioner filed the Direct Complaint (No.1 of 2022) before the Additional Sessions Judge, Khipro, whereby through order dated 13.05.2022 the complaint was brought on record and Bailable warrants amounting to Rs. 50,000/- each against the accused persons were issued. This order was challenged before the High Court Sindh, Hyderabad, and through impugned order it was set aside. Hence this petition.

4. The learned counsel for the petitioner submits that the impugned order suffers from illegality and infirmity; that filing a direct complaint is a right of every individual; and that the order of the Additional Sessions Judge was legally correct and required no interference. Therefore, the counsel prays to set aside the impugned order.

5. On the contrary, learned Law Officer supports the impugned order and contends that the direct complaint was filed by the petitioner with *malafide* intent as a retaliatory measure to FIR No. 03 of 2022, dated 16.01.2022, registered under Sections 395, 353, 337-H(ii), and 342 of the Pakistan Penal Code (PPC) against the petitioner and other accused persons. Further contends that the impugned order is well-reasoned and warrants no interference.

6. We have heard the learned counsel for the parties and perused the material available on the record.

7. Perusal of the record demonstrates that prior to filing a direct complaint by the petitioner, an FIR No.03/2022 dated 16.01.2022 was registered against the present petitioner and other accused persons under sections 395, 353, 337-H (ii), 342 PPC with the allegations that on 16.01.2022 at about 05:00 pm accused Ghulam Nabi Rajar and 39 others attacked upon the police and security persons deputed by UAE foreigners and robbed government ammunitions. Thus, the direct complaint appears to be a deliberate and calculated retaliatory measure in response to the earlier FIR, indicating that it may have been filed with clear *malafide* intentions and ulterior motives.

8. At this juncture, it is pertinent to note that, prior to filing direct complaint petitioner moved an application under section 22(A)(6)(i) of the Cr.P.C for the registration of FIR. Perusal of said application demonstrates that petitioner had nominated four official respondents and proposed accused persons namely Zafar Iqbal, Pervez Imran, Javed, 50 police officers and their subordinate staff(unknown), and 5 private unknown persons.

9. However in his direct complaint filed on the basis of same facts and circumstances he has nominated 56 accused persons out of whom 30 are specifically named and 25/26 are unknown. Moreover, in direct complaint he has nominated 56 police officials and private persons by name. The petitioner has, however, failed to explain in his complaint how and when he became aware of these additional names, as they were not identified in his initial application under Section 22(A)(6)(i) Cr.P.C. This action of petitioner to subsequently implicate other accused persons speaks volume about his *malafide* and ulterior motives.

10. The preliminary inquiry report submitted by the learned Civil Judge and Judicial Magistrate, Khipro, indicates that, at the inquiry stage, only two witnesses Haji Abbas and Abdul Wahid were produced. The inquiry report states that the complainant failed to provide receipts for the alleged theft items, including the UPS, stabilizer, air conditioner, furniture, and other household articles, nor did he present any documents related to the stolen jeep. Both witnesses did not support the complainant's version; they neither identified the accused as named in the direct complaint nor specified their roles. Haji Abbas did not assert that the accused damaged furniture or stole mobile phones, while

Abdul Wahid claimed that mobile phones were stolen. However, the complainant did not provide any description of the mobile phones in his complaint.

11. Another significant aspect that was overlooked by the learned Trial Court is the petitioner's allegation of the abduction of four individuals from the place of incident. There is a clear contradiction between the statements of two witnesses (who were abducted) regarding this aspect of the case. For the ease of reference relevant parts of statements of both witnesses namely are reproduced below.

**Abdul Wahid:-**

“... and thereafter they all accused persons above named kidnapped us and illegally detained us in District Khairpur. Whereas Muhammad filed CrI.Misc.Application ..”

**Haji Abbas:-**

“... and thereafter they all accused arrested us, and thereafter, we remained under the custody of above named accused.Whereas Muhammad filed CrI.Misc.Application...”

The statements of both these witnesses contradict the stance taken by the complainant in his complaint and in his statement on oath. Furthermore, neither complaint nor the examination under Section 200 Cr.P.C., or the witnesses statements under Section 202 Cr.P.C., provide any details regarding their release. There is no mention of when or how the accused allegedly released these individuals.

12. The provisions of Sections 202, 203, and 204 of the Cr.P.C. require trial courts to conduct a thorough examination of the evidence supporting allegations made against individuals. In this context, the trial court must consider not only the factual basis for the accusations but also the underlying purpose of

bringing those charges forward. This includes evaluating whether there is a legitimate objective behind the allegations or if they serve to unjustly target or harass the accused. Moreover, the trial court should assess the possibility of victimization, ensuring that individuals are not subjected to legal actions that could lead to unnecessary distress or humiliation.

13. A careful analysis of the provisions of Sections 201 and 202 of the Cr.P.C. reveals that the purpose of inquiry or investigation under Section 202 Cr.P.C. is to enable the Court to scrutinize allegations thoroughly, with the aim of protecting a person complained against from being summoned to face frivolous accusations. Section 202 of the Cr.P.C is, in fact, an enabling provision that empowers the Court to conduct an effective inquiry into the truthfulness or otherwise of the allegations presented in the complaint. This inquiry serves to help the Court form an opinion as to whether there are sufficient grounds to proceed further. Therefore, the inquiry or investigation under Section 202 of the Cr.P.C is not a futile exercise and must be considered by the Court when deciding whether or not to issue process.

In the present case, however, the learned Trial Court failed to consider the preliminary inquiry report. In this report, the learned Civil Judge and Judicial Magistrate, Khipro, concluded as follows:

“Further, the record shows that, Evidence produced in P.E is oral and no any documentary evidence come on the record. The PWs produced by the complainant did not support the version of complainant but the story unfolded does not appeal common sense and appears to be imaginary, because the complainant who is peasant by profession could possess such huge assets/property and that too keep in their Otaq. After perusal of CrI. Misc. Application No.08 of 2022 filed by the complainant it is also came on the record that SHO PS Sorah has lodged FIR No.03 of 2022 U/S 395, 353, 337-H(i), 342 PPC against the applicant party and it is also came on the record that, on 16-01-2022 at 1700 hours accused Ghulam Nabi Rajjar and 39 other persons attacked upon

police and security persons deputed by UAE foreigners and they robbed government ammunition and FIR was lodged against the applicant party It is also necessary to mention here that, Witness Haji Abbas is former of Ghullam Nabi Rajjar.

Keeping in view of the above discussion I am of the view that, applicant has filed this direct complaint just to make a case against the police officials and no any incident happened, the complainant has filed this direct complaint with malafide intention and ulterior motives.”

14. In the case of Abdul Mukhtadar and another v. District and Sessions Judge, Jhang and 2 others (2010 SCMR 194), it has been observed that initiation of process under sections 202 and 204 of the Code depends upon the availability or non-availability of sufficient incriminating material. Moreover, in the case of Abdul Wahab Khan v. Muhammad Nawaz and 7 others (2000 SCMR 1904) it was held that provisions as contained in sections 202 to 204 of the Cr.P.C, if read together, would show that a proper safeguard has been provided by the Legislature by using the words "if any" and "sufficient grounds for any" in section 203 of the Code and accordingly the frivolous and vexatious complaints must be buried at their inception where no prima facie case is made out.

15. This court in the case of Zafar and others v. Umer Hayat and others (2010 SCMR 1816) has dilated upon the scope of provisions of Section 202, 203 & 204 Cr.P.C and ruled that:-

“It is duty and obligation of the trial Court to scrutinize the contents of the complaint, nature of allegation made therein supporting material in support of accusation, the object intended to be achieved, the possibility of victimization and harassment, if any, to ensure itself that no innocent person against whom allegations are levelled should suffer the ordeal of protracted time consuming and cumbersome process of law. It is also settled principle of law that the provisions as contained in sections 202 to 204, Cr.P.C. if read together would show that a proper safeguard has been provided by the Legislature which showed its such intention by using the words "if any" and "sufficient grounds for any" in section 203, Cr.P.C. and accordingly the frivolous and vexatious complaints must be buried at their inception where no prima facie case is made out. See Abdul Wahab Khan's case (2000 SCMR 1904). It is also settled principle of law that everyone has a right to approach the court for redress of grievances but the same is subject to condition that sufficient grounds for

issuance of process is made out. In the case in hand, we have found that there was no sufficient ground for issuance of process considering the facts that earlier also F.I.R. No.304 of 2008 was got registered by one Rehmatullah son of Dara but after about more than seven months counter version has been brought by respondent No.1 about the same incident.”

**[Emphasis Added]**

16. In the present case, the material presented by the petitioner in support of the complaint failed to make out a prima facie case. It has been rightly held by the learned High Court that this inadequacy of supporting material necessitates that the trial court exercise its discretion to dismiss the complaint, thereby preventing the legal system from being burdened with unsubstantiated claim.

17. In view of the above discussion, we find that impugned order is well-reasoned and has considered all the material aspects of the case. Learned counsel for the petitioner has failed to point out any illegality or infirmity in the impugned order.

18. Consequently, this petition is dismissed and leave refused. As a natural corollary, the Application for grant of Stay **(Cr.M.A.No.124-K/2022)** stands dismissed.

19. Above are the reasons for our short order of even date.

**JUDGE**

**JUDGE**