

HIGH COURT OF AZAD JAMMU AND KASHMIR
(Shariat Appellate Bench)

Cr. Revision petition 176/2025.

Date of Institution: 25.04.2025.

Date of decision 19.05.2025.

Sumera bibi widow of Bilal Hussain, caste Khokhar R/o Kotli chakar
District Jehlum Valley, Azad Jammu and Kashmir.

....Petitioner

Versus

1. Gulzar Hussain.
2. Muhammad Mukhtar Sons of Hassan.
3. Afija alias Afia bibi, daughter of Muhammad Mukhtar.
4. Musadaq.
5. Muzamil Sons of Muhammad Mukhtar.
6. Taj Begum W/o Muhammad Mukhtar.
7. Rukhsana Bibi W/o Gulzar Hussain.
8. Uzma Bibi D/o Muhammad Mukhtar W/o Touseef, caste
Khokhar R/o Kotli Chakar District Jehlum Valley, Azad Jammu &
Kashmir.

.....Real-respondents

9. The State through Advocate General.

.....Proforma-Respondent

CRIMINAL REVISION PETITION

Before:- ***Justice Syed Shahid Bahar, J.***

In the presence of:

Sajid Maqbool, Advocate for the petitioner.

Syed Faisal Gillani, Assistant Advocate General for the State.

Manzoor Hussain Raja, Advocate for accused-respondents.

ORDER:-

1. Instant partial revision petition is directed against the
order dated 12.03.2025 passed by the learned trial Court i.e
District Court of Criminal Jurisdiction Jehlum Valley, whereby
private complaint No.5, titled "Sumera Bibi vs. Gulzar Hussain &

others” to the extent of respondents No.7 and 8 (Rukhsana Bibi and Uzma Bibi) was dismissed as being untenable while the proceedings in the said complaint alongwith challani case to the extent of other accused/respondents has been continued.

2. Facts of the case as per petitioner are that a case titled “State vs. Mst. Affija mukhtar & others” bearing challan No.60/2024, under Sections 302, 341, 34 APC, 15(2) A.A was subjudice before the District Criminal Court, Jehlum Valley and during pendency of the said case, the petitioner filed a private complaint under Section 200, Cr.P.C for the offences under sections 302, 427, 337-L, 109, 34 APC and 14 EHA, before the aforesaid Court, against the accused/respondents. Petitioner contended that after filing private complaint, the learned trial Court while keeping in abeyance the proceeding in the challan case through its order dated 13.02.2025, fixed the private complaint for preliminary arguments, which was heard on 12.03.2025 and after hearing arguments of the parties, the learned trial Court admitted the private complaint partially for regular trial through the impugned order dated 12.03.2025; hence, the learned trial Court committed serious error of law while declaring the private complaint is not tenable/ triable to the extent of respondent No.7 & 8 and also ordered the

commencement of trial in challan case and consolidated the same with the private complaint, hence, this partial revision petition.

3. Mr. Sajid Maqbool, the learned counsel for the petitioner vehemently contended that it was crystal clear by the memorandum of private complaint that the petitioner filed the complaint by dissatisfying with challan case and under the law trial Court was obliged to try the same while keeping in abeyance the challan case, hence, the impugned order is not sustainable under law and same is liable to be modified. Counsel for the petitioner staunchly contended that the impugned order to the extent of dismissal of private complaint with regard to respondents No.7 and 8 is also against the law as the petitioner has alleged the specific role of respondents No.7 & 8 which can only be proved during trial of private complaint. The learned counsel argued that the counsel for the respondents also raised no objection regarding filing and trial of the complaint, hence, the impugned order is not sustainable under law, which is liable to be modified/reversed partially. In support of this submissions, the learned counsel for the petitioner placed reliance on the following case laws:

- i. 1984 SCMR 221.
- ii. PLD 1966 SC 708 (Noor Elahi vs. State).
- iii. PLD 1970 Kar. 261.
- iv. 2004 YLR 1850 (S.C AJK).
- v. 2004 YLR 1153, 1234.
- vi. 2003 P.Cr.L.J 528.

- vii. 2019 MLD 1434.
- viii. PLD 1981 SC AJK 77.
- ix. 1979 SCMR 129.

4. Mr. Manzoor Hussain Raja, counsel for respondents No.1 to 6 opposed the arguments of the learned counsel for the petitioner, defended the impugned order on all counts and prayed for dismissal of the revision petition.

5. Syed Faisal Gillani, A.A.G adopted the arguments of the counsel for the petitioner/complainant and prayed for disposal of the case under law.

6. Through this petition, the petitioner prayed that the impugned order dated 12.03.2025 passed by the learned District Court of Criminal Jurisdiction, Jehlum Valley (trial Court) may be modified/reversed to the extent of dismissal of private complaint titled “Sumera Bibi vs. Gulzar Hussain and others” against respondents No.7 & 8 and also consolidation order of complaint with challan case, hence, same may be remanded to the trial Court with the direction to try the complaint case first instead of challan case.

7. Proposition involved in the lis is very narrow and rare. No specific Codal provision regarding the matter is directly available in Statute i.e. Cr.PC. Wisdom can be gathered from judgemade law pertaining to the matter.

8. Pro and Contra arguments heard at considerable length. Record perused.

9. At the outset, cursory survey of the case law on the subject is necessary. Leading case law in this regard is the case of Noor Elahi vs. State [PLD 1966 SC 708].

10. In the very beginning, question emerges that in case of joint trial or for that matter consolidation of both the cases (مسئل چالانی واستغاثہ) whether witnesses would be examined only once and their statements read out as evidence in the other case, in our view after having survey of case law and codal road map answer is negative, as it is not supportable in law since complainant is master of facts and controller of his case in the complaint case who himself takes responsibility to prove his case, that too filing of Complaint on his part itself exhibits dissatisfaction upon the police, thus, he must have been given chance to bring evidence in line with case portrayed in the Complaint and it will *ex-facie* satisfy the desire of dispensation of criminal justice system. My this view breath from the authoritative view of the Supreme Court of Pakistan taken in PLD 1966 SC 708.

(Underlining is mine)

11. Ratio of the Noor Elahi's case¹ is as infra:-

¹ PLD 1966 SC 708.

A fair procedure would be for the learned trial Judge to take the Complainant case first for trial, during that case the learned trial Judge may call the witnesses on behalf of the Complainant mentioned in the Police challan if they were not already examined on behalf of the complainant as court witnesses under Section 540-A of the Criminal Procedure Code, so that they can be cross examined by both the parties, this will enable the Court to have whole relevant evidence included in one trial and a decision could be arrived at after a proper consideration of the entire material relied on by the parties. The accused persons would in addition obviously have the right to adduce defence evidence if they so choose.

12. If the trial results in a conviction, it will be for the public prosecutor to consider whether or not he should withdraw from the prosecution with the permission of the Court, under Section 494 of the Cr.P.C in the police challan case.

13. It would be easy for him to take a such decision after the whole evidence has been thrashed out in the first trial of the first case ends in an acquittal, he might still have to consider whether the police version has not been so seriously damaged by what has been brought out in the first trial, as to justify withdrawal of the prosecution, otherwise the second trial would be allowed to proceed in its normal conclusion and parties would

have the advantage of utilizing the material placed on the record of the earlier trial by way of cross examination of the relevant witnesses as permitted by law.

14. Thus, procedure is being suggested to avoid a difficulty that might otherwise confront the complainant if the police challan is taken up first for trial the Complainant would be under a handicap in so far as she would be not in position to cross examine the witness of the prosecution.

15. Another difficulty may arise in respect of conducting the case on behalf of the complainant in the first trial, normally of course under the law the public prosecutor is the incharge of the case even if the trial is based on private complaint, the (PP) however in the special circumstances of the case could permit the Complainant's counsel to conduct the proceedings on his behalf under his directions.

16. Alternatively and that may meet the situation more adequately, Govt. in the interest of justice could notify the Complainant's Counsel as a special public prosecutor for the conduct of that case alone, this would ensure fair justice to the complainant and he/she would not be left with any sense of grievance.

17. Contra view was adopted by the Apex Court of Pakistan in **Zulfiagr Ali Bhutto's case PLD 1979 SC 53.**

It was held in the supra case as infra;

“It was only to avoid prejudice to the complainant that a particular procedure was devised to the reported case of **Noor Elahi** but to say that invariably it should be followed even if the facts are distinguishable is not correct as it does not amount to a declaration of law having held so we might also point out that the objection to the trial of any should have been taken before the trial bench, and having not done so, it is too late in the day to urge that it has caused prejudice to the appellant.

18. Subsequently up till now dicta of the Apex Court laid down in **Noor Elahi’s case** is being followed.

It was held in the case titled Arshad Mahmood vs. State reported in 2003 P.Cr.LJ 704 (Lah) as infra:-

“Even otherwise it is in accordance with the principle of criminal administration of justice that where a complainant who has initiated the prosecution machinery of the State through lodging an FIR is not satisfied with the investigating process carried out by the police he may file a private complaint in respect of the same occurrence.”

In the case titled “Zakar Ullah vs. State 2002 YLR 1714 dicta of the Supreme Court in **PLD 1966 SC 708** was followed and again

in the case titled Mst. Haleema Bibi vs. State 2008 YLR 1144, it was held as infra:-

“Law is by now settled that if the same party lodges an FIR and after having remained dissatisfied with the investigation carried out by the police files a private complaint in respect of the same allegations then in such a situation the Complaint case is to be tried first and if needed to, the challan case is tried to be latter.”

19. As per law evidence recorded in a criminal case is not legal evidence in another criminal proceeding. The law does permit more than one proceeding in respect of the same matter but every separate proceeding is to be decided on its own record and is not affected by the decision in another case.

20. Now coming back to the revision in hand, the challan case is at the verge of recording of prosecution evidence while complaint is also in progress, thus, as per law following guiding principles are articulated as infra after squeezed analyses of supra case law:-

1. Trial Court is directed to stop the further proceedings qua adjudication of the challan case and
2. Take up the complaint case, and Public Prosecutor (to be incharge of the criminal case) in special circumstances of the case could permit the complainant counsel to conduct the proceedings on his behalf under his directions alternatively Court in the interest of justice could notify the complainant counsel as a special Public Prosecutor (for conducting only this case) and there after complete the proceedings in accordance with law and announce the decision separately or simultaneously.

3. Order impugned passed by the trial Court to the extent of respondents No.7 & 8 is set-aside. Case is remanded back and trial Court is directed to decide the entire lis expeditiously on the receipt of order of this Court.

21. Copy of the judgment be transmitted to learned District Court of Criminal Jurisdiction Jehlum Valley/ (trial Court).

22. In matrix of the above, revision petition at hand is allowed with the direction that the trial shall now be taken up by the trial Court with the observations made supra. Thus, the impugned order stand modified accordingly.

(Revision petition partly allowed)

Muzaffarabad,
19.05.2025.

JUDGE

(Approved for reporting)

JUDGE