

**THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Muhammad Hashim Khan Kakar  
Mr. Justice Salahuddin Panhwar  
Mr. Justice Ishtiaq Ibrahim

**CRIMINAL PETITION NO.1160 OF 2025**

*(Against Order dated 25.06.2025 passed by the Lahore High Court,  
Lahore in Criminal Revision No. 35459 of 2025)*

Maham Fatima ... Petitioner(s)

**VERSUS**

The State and another ... Respondent(s)

For the Petitioner(s): Barrister Salman Safdar, ASC.  
a/w Sardar Mazhar Ali Haider, AHC.

For the Respondents: Mr. Abdul Khaliq Safrani, ASC.  
a/w Mr. Khuwailid Ali, AHC,  
Mr. Khubaib Ali, AHC.  
Ms. Khadija (Complainant)

For the State: Mr. Tariq Siddique, APG, Pb.

Assistance: Muhammad Subhan Malik  
(Judicial Law Clerk, SCP)

Date of hearing: 19.02.2026

**ORDER**

**Salahuddin Panhwar, J-** The instant Criminal Petition No. 1160 of 2020, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, challenges the order dated 25.06.2025 passed by the Lahore High Court, Lahore in Criminal Revision No. 35459 of 2025, whereby the petitioner's application for consolidation of trials arising from two interconnected F.I.Rs was dismissed.

2. The brief facts of the case are that the complainant, Khadija Ghafoor, lodged two separate FIRs regarding series of occurrences against the same accused persons: initially by moving an application to FIA Cyber Crime Faisalabad on 15.08.2022 (Inquiry No.

794/2022), and subsequently on 16.08.2022 before P.S Women, Faisalabad, resulting in FIR No.42/2022 under sections 376, 382, 354, 342, 337F(i), 337A(i), 337L(2), 337V, 148, 149, 365B, 355 & 452 of the Pakistan Penal Code 1860 (**PPC**), with additional sections added during investigation; thereafter, FIR No.126/2022 was registered on 17.08.2022 by FIA Cyber Crime Wing under sections 3,4,20,21,24 & 46 of the Prevention of Electronic Crimes Act 2016 (**PECA**) read with Section 109 PPC. Despite later admitting before different forums that both FIRs pertained to the same occurrence and seeking their amalgamation through petitions under Sections 22-A & 22-B Cr.P.C and a transfer application, no merger was ordered. Separate challans under Section 173 Cr.P.C were submitted by two investigating agencies before different courts under the Anti-Rape (Investigation & Trial) Act, 2021 (**ARA**) and (**PECA**), leading to two simultaneous trials. The accused repeatedly challenged the continuation of separate trials before the Lahore High Court through various criminal revisions and writ petitions; although the High Court initially directed compliance with both statutes and later referred the matter to the Sessions Judge to avoid conflicting judgments, applications for a joint trial were dismissed by the trial court and the Sessions Judge. Subsequent revisions filed by co-accused and the petitioner resulted in interlocutory proceedings and eventual dismissal in limine on 25.06.2025, prompting the filing of the present petition seeking setting aside of the impugned order and requesting one joint trial for the same occurrence on a single charge.

3. The Learned counsel for the petitioner contended that the registration of two FIRs for the same occurrence violates the principle laid down in ***Sughran Bibi v. The State (PLD 2018 SC 595)***, wherein this Court held that multiple FIRs for the same incident are impermissible, and cross-versions must be investigated within the primary FIR. It was argued that the impugned order disregards sections 235(2) and 239(d) Code of Criminal Procedure, 1898, (**Cr.P.C**) allowing joint trial for offences committed in the same transaction, and section 16(4) of the ARA, empowering Special Courts to even try PECA offenses not listed in the schedules, if they are in connection with those mentioned in the schedules, Reliance was placed on ***Sughran Bibi Case (supra)***, ***Sheraz Ahmad v. The***

*State (2024 P.Cr.LJ 1098), ANF v. Muhammad Faizan and others (PLD 2022 Lahore 700), Hamid Khan v. The State (MLD 2022 Islamabad 31) & MD. Mosaddar Hoque v. The State (PLD 1958 SC 131)*. Further, it was submitted that parallel trials attract double jeopardy under Article 13 of the Constitution, causes prejudice (including prolonged incarceration), and risk conflicting judgments, violating Article 10-A for fair trial, therefore, only a joint trial is warranted in these circumstances as those offences were part of same transaction.

4. The contentions of the learned counsel for the petitioner were rebutted by the learned counsel for the complainant, who contended that it is a separate transaction, so two separate trials are mandated as per law, since the type of offences are falling under two different statutes; that Sections 234 to 239 Cr.P.C are not mandatory provisions of law and are merely enabling provisions; that only Section 233 Cr.P.C is mandatory, which requires a separate charge for every distinct offence and every such charge shall have a separate trial; that a joint trial is not compulsory, even if it is a same transaction. Reliance was placed on *Ahmad Khan vs Commissioner, Rawalpindi (PLD 1965 (W.P) Peshawar 65)*, *Ilyas Ahmad and Others vs. The State and another (1982 PCr.L.J 1336)*, *Tamizuddin Ahmed vs. The State (1971 PCr.L.J 707)*, *The State vs Muhammad Aziz (1986 PCr.L.J 2884)*, *Chhutanni vs. The State (PLD 1957 SC (Ind) 23)*, *Shahadat Khan and another vs Home Secretary (PLD 1969 SC 158)*, *Sheraz Khan vs. The State (2022 PCr.L.J 203)*, *Sheikh Muhammad Aslam and another vs. The State (1991 MLD 1973)*, *Javad Khan vs. The State (2023 PCr.L.J 1092) & Mian Muhammad Nawaz Sharif vs. The State (2018 PCr.L.J 521)*.

5. The learned Additional Prosecutor General added that it is by all means a different transaction and does not amount to the criteria of same transaction laid down by the courts, as they were committed on different times and places and that both types of offences had different motives. Reliance was placed on the following precedents by him, *Shahadat Khan and another vs. Home Secretary (PLD 1969 Supreme Court 158)*, *MD. Mosaddar Hoque & another vs.*

***The State (PLD 1958 SC 131) & Nadir Shah vs. The State (PLD 1980 SCMR 402).***

6. We have heard the learned counsels, perused the record with their able assistance and gone through the precedents referred to this bench. It is pertinent to reproduce three provisions of Cr.P.C, first of all, section 233, which is as following:

***“233. Separate charges for distinct offences.*** *For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.”*

Secondly section 235(1) which quotes:

***“235. Trial for more than one offence.*** *(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.”*

Thirdly section 239(d), which is exception to general rule stated in section 233 and is reproduced as under:

***“239. What persons may be charged jointly.*** *The following persons may be charged and tried together, namely:*

*(d) persons accused of different offences committed in the course of the same transaction;”*

Section 233, Cr.P.C. lays down the general rule that every distinct offence must be tried separately, but this rule is subject to exceptions provided in Sections 234, 235, 236, and 239, Cr.P.C., and must be read in conjunction with them. Section 235 permits a single accused to be charged and tried in one trial for multiple offences if they arise from a series of acts forming the “same transaction,” including situations where acts fall under multiple legal definitions or where several acts combine to constitute a different offence. Section 239 extends this principle to joint trials of multiple accused who commit different offences in the course of the

same transaction. While Section 235 applies to a single accused committing multiple offences in a connected series of acts, Section 239 particularly clause (d) has a broader scope and allows joint trial of several accused involved in offences committed during the same transaction.

7. At this juncture, the prime question before this bench is as to what constitutes "*same transaction*" in the eye of law. The question has been previously raised long ago before this bench and we feel necessitated to shed the light on it, once again. In ***MD. Mosaddar Hoque & another vs. The State (PLD 1958 SC 131)***, this court observed that expression "transaction" is not defined in the Code which leaves it to the Court to determine whether a given set of facts do or do not constitute "the same transaction" within the meaning of sections 235 and 239. Previously, the courts, while indicating that the tests to be employed are proximity of time and place, community of purpose or design and, continuity of action, have also pointed out that the two latter are the essential elements which are necessary in order to link together different acts into the same transaction. Proximity of time and place by themselves are insufficient. On the other hand, there are decisions, which lay down that to constitute the "same transaction", community of purpose or design and continuity of action are necessary.

In ***Emperor v. Datto Hanmant Shahapurkar (I L R 30 Born. 49)***, which was referred to by their Lordships of the Privy Council with approval in ***Babulal Chaukhani v. King Emperor (65 I A 158)*** on the relevant point of time in the proceedings at which the condition of the sameness of transaction must be fulfilled, it was observed as follows:

*"According to its etymological and dictionary meaning the word "**transaction**" means 'carrying through' and suggests, we think, not necessarily proximity in time-so much as continuity of action and purpose. The same metaphor implied by that word is continued in the illustrations where the phrase used is in the course of the "same transaction"....In section 239, therefore, a series of acts separated by intervals of time are not, we think, excluded, provided that those jointly*

*tried have throughout been directed to one and the same objective".*

In *Crump, J., of the Bombay High Court in Emperor v. Sejmal Poonamchand (I L R 51 Bom. 310)*, observed that to determine whether two persons concerned were engaged in one transaction, it is necessary to regard the facts from the point of view of those two persons. If they are animated by a common purpose, and there is continuity in their action, then surely there is one transaction so far as they are concerned. In *Ata Muhammad Khan Alvi v. Crown (P L D 1950 Lah. 288)* the following observation made by the Chief Justice of the High Court of Lahore, that an analysis of these cases would show that the offences, the question of whose being parts of the same transaction was involved in them, were related to each other by a causal connection, and such connection seems to be absolutely necessary if two offences are to be treated as having been committed in the course of the same transaction.

Testing the given facts on the above said criteria does not make it a single transaction, since the allegations can be easily separable from each other; the first phase involves the physical occurrence of the incident, while the second phase involves the dissemination of the event. The motive of the former can be sexual gratification, whereas the motive for the latter can be humiliation, degradation or blackmail.

8. On shedding light on the statutory scheme, Section 233, Cr.P.C. lays down the general rule that for every distinct offence there shall be a separate charge and every such charge shall be tried separately, except in cases falling within Sections 234, 235, 236 and 239, Cr.P.C. Sections 235 and 239 provide enabling exceptions where offences forming part of the "same transaction" may be tried together. Significantly, the legislature has used the expression "**may be charged and tried at one trial**" in Section 235, and similarly permissive language in Section 239. The use of the word "**may**" unmistakably render these provisions discretionary rather than mandatory. They confer jurisdiction upon the Court to order a joint trial where circumstances so warrant, but they do not create an obligation to amalgamate proceedings merely because such joinder

is legally possible. Additionally, Section 16(4) of the Anti-Rape (Investigation & Trial) Act, 2021 provides that a Special Court “**may also try**” offences not listed in the Schedules if committed in connection with scheduled offences. Here again, the legislature has consciously employed the expression “**may**”, thereby vesting discretion in the Trial Court. It will be a fallacy, if this court conclusively determines that a trial ought to be joint or not, since it is sole prerogative of the trial court as per law. Even otherwise, in view of Article 175(2) of the Constitution, it may be prudent to avoid any impression of jurisdictional enlargement beyond what is expressly conferred by law.

9. Where the legislature has created separate court structures for distinct categories of offences, consolidation across regimes may raise the question whether the trial court is being required to assume jurisdiction not clearly conferred by the relevant statute. The two enactments are special statutes with distinct investigative and trial mechanism. The ARA creates Special Courts for scheduled offences and provides its own procedural regime. Section 9 of ARA, states that the investigation in respect of the scheduled offences, “Special Sexual Offences Investigation Units” shall investigate these offences, whereas Section 30 of PECA, requires the investigation in PECA offences to be conducted by investigation agency, which is notified as National Cyber Crime Investigation Agency (NCCIA) under Section 29 of PECA. In this statutory setting, section 16(4) of the ARA is an enabling provision, which empowers a Special Court to try offences not listed in the schedules if committed in connection with scheduled offences, and it may be read narrowly so as not to displace the forum and procedure contemplated by PECA.

10. Coming back to the present matter, separate F.I.Rs were registered under two different statutory regimes; separate investigations were lawfully undertaken by distinct agencies; separate reports under Section 173, Cr.P.C. were submitted; and separate charges have been framed. The trials have commenced and prosecution evidence has partly been recorded. At this advanced stage, formal consolidation would necessarily require alteration of charges and re-structuring of proceedings, which may disturb

procedural continuity. Consolidation after commencement of evidence is, therefore, an exception rather than the norm.

11. The apprehension of conflicting judgments does not arise in the peculiar facts of the case, as both matters stand entrusted to the same Court. The possibility of inconsistency is substantially minimized when the same judicial forum evaluates the evidence. In such circumstances, simultaneous continuation of trials before the same Court sufficiently safeguards coherence in proceedings without disturbing the procedural structure already in place. The discretion conferred under Sections 235 and 239, Cr.P.C., and Section 16(4) of ARA is to be exercised judiciously, not mechanically. The mere existence of a legal power to consolidate does not translate into a legal duty to do so.

12. Before parting with this order, we are necessitated to discuss another issue highlighted during the proceedings; this court was informed that there is a significant delay in the conclusion of the trial, despite the direction of this court to conclude expeditiously. It was also informed that, the complainant is being subject to inordinately lengthy cross-examinations which are even continued for days, and separate counsel for each accused is cross-examining the complainant, whilst repeating the same questions. There is no cavil of proposition regarding the existence of right of the accused persons to cross examine the complainant, but during such, the judge shall sit as cautious as justice itself requires, to balance the right of cross-examination, with the right of fair trial and dignity enshrined in Article 10-A and 14 of the Constitution, respectively. The Judge shall not permit questions which are irrelevant, indecent and are asked without reasonable grounds or are intended to insult or annoy the person standing in the witness box. The sole purpose of cross-examination, is to assist the Court in bringing the truth to light by either disclosing or clarifying matters which witnesses may wish to conceal or confuse the Judge for whatsoever reasons. It is however, a regrettable practice to use the tool of prolonged cross-examination for the purpose of leading the witness into some error by exhausting him through unnecessary and irrelevant questioning. This depicts a misuse of the right of cross-examination. In such a situation, the presiding officer of the Court, i.e. the Judge, should

not remain a silent spectator but should act as a vigilant supervisor, as the right of cross-examination is neither unlimited nor unbridled. When the judge observes that the right of cross-examination is being abused by asking questions which are irrelevant and intended to prolong the cross-examination with the object of manipulating error, or to scandalize, insult or annoy the witness, he should intervene and disallow such questions. The silence of the trial judge on allowing the above said, will defeat the spirit of the provisions of Qanun-e-Shahadat Order 1984, in regard to mode of examination; to be specific, Articles 131 and 143 to 148.

13. We note with concern that during trials, particularly at the stage of examination and cross-examination, witnesses are often required to remain standing in the witness box for prolonged periods, sometimes extending to several hours regardless of age, gender and physical health of the person. There is no legal requirement under the Code of Criminal Procedure, 1898, the Code of Civil Procedure, 1908, or the Qanun-e-Shahadat Order, 1984 that a witness must remain standing while giving evidence. The continuation of such a practice serves no legitimate purpose in the administration of justice and is inconsistent with the dignity owed to every individual appearing before a court of law. The administration of criminal justice must be safe, humane, and consistent with constitutional guarantees. Compelling a witness, specially in cases related to sexual offences to remain standing for extended durations while giving testimony places an unnecessary physical and psychological burden upon the individual and may impair the clarity and composure with which evidence is delivered. Allowing a witness to remain seated while deposing does not diminish the sanctity of the oath or the dignity of judicial proceedings. On the contrary, it promotes fairness, composure, and the orderly administration of justice, particularly in cases involving prolonged cross-examination or witnesses who may be vulnerable, elderly, infirm, or otherwise under stress. The State bears a constitutional obligation to ensure that complainants and witnesses are provided a safe and reasonable environment within the courtroom. The protection of witnesses and complainants in Pakistan is firmly grounded in the constitutional framework of fundamental rights, particularly Articles 9 and 10-A of the

Constitution of the Islamic Republic of Pakistan, 1973, which guarantee the security of person and the right to a fair trial and due process. These guarantees are further strengthened by the principle of human dignity embodied in Article 14 of the Constitution. Together, these provisions impose a duty upon the State to ensure that witnesses and victims are protected from intimidation, coercion, humiliation, or undue hardship so that testimony may be rendered freely and judicial proceedings conducted in accordance with law.

The statutory framework further reflects this constitutional commitment. The Witness Protection, Security and Benefit Act, 2017 at the federal level, together with corresponding provincial enactments, namely the Sindh Witness Protection Act, 2013, the Balochistan Witness Protection Act, 2016, the Punjab Witness Protection Act, 2018, and the Khyber Pakhtunkhwa Witness Protection Act, 2021, provide mechanisms for the protection of witnesses, including anonymity, relocation, security arrangements, and testimony through video-link. These legislative measures reinforce the guarantees of a fair trial and seek to ensure that vulnerable witnesses, including women and minors, may depose without fear or unnecessary hardship.

14. A court of law is not merely a chamber where disputes are resolved; it is a place where the majesty of the law must walk hand in hand with the dignity of the individual. Every person who enters its precincts, whether as a litigant, an accused, a complainant, or a witness, comes under the protection of the Constitution. A witness who steps into the witness box does so not as a servant of the court, but as a citizen assisting the administration of justice. The law requires such a person to speak the truth; it does not require that truth to be extracted through needless physical strain. Justice does not demand endurance; it demands truth. And truth is best spoken where the witness is afforded composure, security, and respect. A courtroom must therefore remain a place where justice is administered not only with authority but with humanity.

15. Accordingly all District and Sessions Judges as well as courts subordinate to them, Administrative Judges of Special Courts and Tribunals in Pakistan, are directed to ensure that appropriate seating

arrangements are mandatorily provided to the person in witness box, whether in the form of a chair, seat, or bench. Allowing a witness to remain seated while giving evidence remains consistent with the constitutional guarantees of human dignity and the right to a fair trial.

16. The Registrar of this Court is directed to circulate a copy of this judgment to the Honourable Chief Justices of all High Courts in Pakistan for the purpose of ensuring its circulation, implementation, and compliance in all courts where evidence is recorded, including civil courts, criminal courts, special courts, and tribunals operating under federal or provincial laws. The Honourable Chief Justices shall ensure that appropriate administrative directions are issued so that the requirement of providing seating arrangements for witnesses in the witness box is implemented and observed across all subordinate courts and judicial forums within their respective jurisdictions.

17. In view of the above, we are not persuaded that the impugned order suffers from any jurisdictional defect, illegality, or perversity warranting interference under Article 185(3) of the Constitution. The question raised pertains essentially to the exercise of judicial discretion by the Courts below, which does not call for intervention in the absence of any injustice. Consequently, leave to appeal is refused and this Criminal Petition is dismissed.

Sd/-  
**Judge**

Sd/-  
**Judge**

Sd/-  
**Judge**

Islamabad  
19.02.2026  
**Muhammad Subhan Malik (JLC)/-**  
Approved For Reporting

*Announced in open Court on 6th March, 2026*

**Judge**