

Stereo.HCJDA 38.
Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

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WRIT PETITION NO.3343 of 2023

CHAUDHARY ABDUL MAJEED

Versus

**THE LEARNED EX-OFFICIO JUSTICE OF PEACE RAWALPINDI and
6 others**

JUDGMENT

Date of hearing:	<u>15.11.2023</u>
Petitioner by:	Mr. Muhammad Faisal Malik, Advocate.
Respondents No.1 & 3 to 7 by:	Mr. Muhammad Shahid Munir, Assistant Advocate General Punjab alongwith Hasnain Sub- Inspector/Station House Officer, Police Station Dhamial, District Rawalpindi.
Respondent No.2 by:	Mr. Muhammad Zaheer, Advocate.

MIRZA VIQAS RAUF, J. This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assails the *vires* of order dated 06th October, 2023, whereby the Ex-Officio Justice of Peace, Rawalpindi proceeded to direct the Station House Officer (SHO) Police Station Dhamial, Rawalpindi to record statement of respondent No.2 (hereinafter referred to as “respondent”) under Section 154 of the Code of Criminal Procedure, 1898 (hereinafter referred to as “Cr.P.C.”) and to proceed further in accordance with law.

2. Facts forming background of this petition are that the “respondent” moved a petition under Section 22-A/22-B of the “Cr.P.C.” stating therein that initially he moved an application to respondent No.7 complaining the commission of offence by the petitioner but he turned deaf hear. It is asserted that though the petitioner voiced his grievance before respondents No.3 to 6 but remained unsuccessful. While proceeding with the petition under Sections 22-A/22-B of the “Cr.P.C.” the Ex-Office Justice of Peace requisitioned a report from the concerned police, which was accordingly submitted. On receipt of report and after hearing the parties the Ex-Officio Justice of Peace passed the impugned order.

3. Learned counsel for the petitioner contended that the matter in issue relates to enforcement of contractual obligations. He added that though the “respondent” initially moved an application to respondent No.7 but it was not disclosing commission of any cognizable offence. It is argued with vehemence that the Ex-Officio Justice of Peace proceeded in a mechanical manner. Learned counsel submitted that civil litigation is already pending between the petitioner and the “respondent” but he converted the same into criminal one. Emphasized that the impugned order is not tenable being illegal and unlawful. In support of his contentions, learned counsel placed reliance on JAMAL KHAN versus SECRETARY HOME DEPARTMENT (2021 SCMR 468) and YOUNAS ABBAS and others versus ADDITIONAL SESSIONS JUDGE, CHAKWAL and others (PLD 2016 Supreme Court 581).

4. Conversely, learned counsel for the “respondent”, while defending the impugned order submitted that criminal and civil litigation can go side by side. He added that the petitioner while using the heavy machinery demolished the room constructed upon the plot by the “respondent”. It is contended that the Ex-Officio Justice of Peace was justified in the circumstances to direct respondent No.7 to proceed in terms of Section 154 of the “Cr.P.C.”.

5. Learned Law Officer also argued in support of the impugned order.

6. Heard. Record perused.

7. It is an admitted position on the record that the “respondent” initially moved the application available at page No.15 of this petition to respondent No.7. From perusal of the application it clearly reveals that the petitioner was not named therein. The application also comprises of bald and general allegations. It is also an undeniable fact that the petitioner and “respondent” are entangled in litigation before the Civil Court. There is no cavil that Ex-Officio Justice of Peace is vested with the power to direct the police to proceed in terms of Section 154 of the “Cr.P.C.” if some cognizable offence is apparently made out from the allegations leveled by the petitioner in application under Section 22-A of the “Cr.P.C.”.

8. As already observed that initially the “respondent” moved an application to respondent No.7 which was founded on general and bald allegations and the petitioner was even not named in the said application as perpetrator of the alleged offence. On receipt of petition under Section 22-A/22-B of the “Cr.P.C.” Ex-Officio Justice of Peace requisitioned report from the police wherein it is mentioned that the dispute interse petitioner and “respondent” is relatable to land and no such incident as reported by the “respondent” has taken place.

9. It is trite law that functions performed by the Ex-Officio Justice of Peace under Section 22-A of the “Cr.P.C.” are quasi-judicial in nature and it cannot be termed as executive/administrative or ministerial. At the same time powers exercised by the Ex-Officio Justice of Peace are neither unbridled nor indefinite. While exercising powers under Section 22-A(6) of the “Cr.P.C.” the Ex-Officio Justice of Peace is not supposed to proceed mechanically and in vacuum. After requisitioning a report from the police, Ex-Officio Justice of Peace is not expected to brush aside such report without assigning any lawful reasoning. In the case of YOUNAS ABBAS and others versus ADDITIONAL SESSIONS JUDGE, CHAKWAL and others (PLD 2016 Supreme Court 581), while examining the scope of sub-section

(6) of Section 22-A of the “Cr.P.C.” the Supreme Court of Pakistan laid down certain guidelines for the Ex-Officio Justice of Peace. The relevant extract from the same is reproduced below :-

“2.....In such a milieu, powers given to an ex-officio Justice of the Peace under subsection (6) of Section 22-A, Code of Criminal Procedure, to issue appropriate directions on a complaint filed by an aggrieved person for registration of a criminal case (Clause-i) and for transfer of investigation from one police officer to another (Clause-ii) though efficacious and expeditious besides being at the doorstep, but at the same time, these provisions should not be unbridled or open-ended. These provisions must be defined, structured and its contour delineated to obviate misuse by influential and unscrupulous elements. Therefore:-

(i) The ex-officio Justice of the Peace, before issuance of a direction on a complaint for the non-registration of a criminal case under subsection (6)(i) of section 22-A, Code of Criminal Procedure must satisfy himself that sufficient material is available on the record, such as application to the concerned SHO for registration of the criminal case and on his refusal or reluctance, complaint to the higher police officers i.e. DPO, RPO etc., to show that the aggrieved person, before invoking the powers of ex-officio Justice of the Peace, had recourse to the high ups in the police hierarchy.

(ii) So far as transfer of investigation of a criminal case from one police officer to another police officer is concerned, a complete mechanism has been provided in the Police Order, 2002.

However, Clause (ii) of Subsection (6) of Section 22-A, Code of Criminal Procedure has given power to the ex-officio Justice of the Peace to issue appropriate direction to the concerned police authorities for the transfer of investigation of a case from one police officer to another, but it does not prescribe a criterion or mechanism in so many words as to what might be the standard or what reasons should prevail with the ex-officio Justice of the Peace while issuing such a direction. To issue a direction regarding transfer of investigation by ex-officio Justice of the Peace without taking into consideration the attending circumstances of the case may be counter-productive and may defeat the purpose of the mechanism as provided in the Police Order, 2002, thus may result into unnecessary interference with the working of an agency. Therefore, it would be appropriate for the ex-officio Justice of the Peace, before issuance of any direction regarding the change of investigation, to satisfy himself from the available record that the grievance of the aggrieved person (who has filed the application for this purpose) has not been redressed by the Police Officers/authorities as provided in the Police Order, 2002.”

After having an overview of the principles laid down in the judgment *supra* when the order of the Ex-Officio Justice of Peace is examined on the touchstone of said principles, there remains no hint of doubt

that the Ex-Officio Justice of Peace failed to adhere the well-recognized principles.

10. Perusal of petition under Section 22-A/22-B of the “Cr.P.C.” reveals that it is lacking any detail of alleged incident. There is no cavil to the proposition that civil and criminal proceedings can move side by side but one cannot be allowed to shift the civil liability into criminal one. Prima facie there is property dispute interse the “respondent” and the petitioner for the resolution of which they have already approached the Civil Court. In the circumstances the “respondent” is precluded to resort to the Ex-Officio Justice of Peace under Sections 22-A & 22-B of the “Cr.P.C.”. Even otherwise impugned order is completely non-speaking. Guidance in this respect can be sought from RAI ASHRAF and others versus MUHAMMAD SALEEM BHATTI and others (PLD 2010 Supreme Court 691) and JAMAL KHAN versus SECRETARY HOME DEPARTMENT (2021 SCMR 468).

11. For the foregoing reasons, this petition is **allowed**, consequently impugned order dated 06th October, 2023 passed by the Ex-Officio Justice of Peace, Rawalpindi is set aside being illegal and unlawful with no order as to costs.

(MIRZA VIQAS RAUF)
JUDGE

APPROVED FOR REPORTING

JUDGE