

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
(JUDICIAL DEPARTMENT)

Case No. Writ Petition No.37138/2023

Mst. Shamim Akhtar **Versus** *Ex-officio Justice of Peace, etc.*

Sr.No.of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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06.09.2023

Mr. Muhammad Rizwan Mirza, Advocate for the petitioner.
Mr. Saleem Ullah Khan, Advocate for respondent No.5.
Ch. Fiza Ullah, A.A.G. with Javaid, ASI.

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Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner Shamim Akhtar has challenged the vires of order dated 17.03.2023 passed by the learned Ex-Officio Justice of Peace, Faisalabad whereby upon her petition under Section 22-A Cr.P.C. seeking registration of criminal case against the proposed accused, the said Court referred the matter to the CPO, Faisalabad for addressing her grievance.

2. Brief facts necessary for disposal of present writ petition are that the petitioner filed a petition under Section 22-A Cr.P.C. before the learned Ex-Officio Justice of Peace alleging therein that on 16.12.2022 at about 5.00 p.m. proposed accused Pervaiz @ Paija, ASI/ Incharge Police Post Shalimar, P.S Batala Colony, alongwith other police officials apprehended nephew of petitioner namely Kashif Masih, tortured him with his stick, resulting into fracture of right foot and left him near his house in a severe injured condition; She, in the first instance, filed application for registration of case before the concerned Station House Officer but no action was taken thereon which constrained her to file application before Ex-Officio Justice of Peace,

who after obtaining comments from the police, vide impugned order dated 17.03.2023 referred the matter to respondent No.2/CPO, Faisalabad to address the grievance of the petitioner and then proceed with the matter strictly in accordance with law. Being dissatisfied with the said order, the petitioner preferred instant writ petition.

3. Heard. Learned counsel for the petitioner laid much emphasis that learned Ex-officio Justice of Peace vested with no authority to refer the matter to CPO, Faisalabad for addressing the grievance of the petitioner; that while dealing with the application U/S 22-A Cr.P.C. Ex Officio Justice of Peace is duty bound to pass a direction either for registration of case or its dismissal; that merely for the reasons that the proposed accused are police officials, they cannot be given premium of inquiry prior to registration of case. I am in agreement with the submission of learned counsel for the petitioner that there was no justification for the learned Ex Officio Justice of Peace for referring the matter to police authorities for addressing the grievance of the petitioner. The context in which the word ‘shall’ used in Section 154 Cr.P.C. leads me to an irresistible conclusion that the police has no authority/ discretion whatsoever to ascertain the veracity of information disclosing commission of cognizable offence prior to registration of case. In case reported as Sana Ullah ..Vs.. SHO, Police Station Civil Lines, Gujrat and 3 others (PLD 2003 Lahore 228), it has been held as under:-

“... the words “every information relating to the commission of a cognizable offence” appearing in section 154, Cr.P.C., pertain only to the information so supplied and do not pertain to actual commission

of a cognizable offence. These provisions are universally accepted to mean that the information supplied should be about an alleged commission of a cognizable offence irrespective of the fact whether such information is ultimately proved to be correct or not and also irrespective of the fact whether ultimately such an offence is found to have been actually committed or not. All that a Station House Officer is to be satisfied with at such a stage is that the information is in respect of an offence which is cognizable. The argument of the learned counsel for the petitioner that a Station House Officer is to form an opinion at such a stage whether any cognizable offence has actually been committed or not does not fit into the scheme of Code of Criminal Procedure as is evident from the provisions of sections 154,155,157,167,169 and 170, Cr.P.C., which highlight a clear distinction between an “information” and an “investigation” during which the information received earlier on may or may not be found to be correct.”

Similarly, in case reported as Muhammad Bashir ..Vs.. Station House Officer, Okara Cantt. and others, (PLD 2007 Supreme Court 53), the Hon'ble Apex Court has laid down as under:-

“ It may be reiterated and even emphasized that there was no provision in law, including the said section 154 or 155 of the Cr.P.C. which authorized an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or the falsity of the information received by him before complying with the command of the said provisions which obliged him to reduce he same into writing irrespective of the fact whether such an information was true or otherwise.”

4. The direction of the learned Ex-officio Justice of Peace for referring the matter to CPO, Faisalabad without dismissing or allowing the application of the petitioner for registration of case being contrary to

law cannot be allowed to hold field. Bare reading of the application of the petitioner seeking registration of criminal case against the proposed accused, coupled with medico legal certificate of the injured discloses commission of cognizable offence. Thus, irrespective of the veracity or otherwise of the allegations contained in the said application, it was the bounden duty of the Station House Officer concerned to register the FIR and then proceed with the investigation strictly in accordance with law but he has failed to perform his statutory duty enshrined under the law, which constrained the petitioner to knock the door of Ex-officio Justice of Peace, who also unfortunately failed to exercise the authority vested him under the law and passed a direction which is contrary to law.

5. For what has been discussed above, instant writ petition is allowed as a result whereof impugned order of learned Ex-officio Justice of Peace dated 17.03.2023 is set-aside. Respondent No.4/ S.H.O. shall record the statement of the petitioner U/S 154 Cr.P.C. and then proceed further with the matter strictly in accordance with law.

**(Asjad Javaid Ghural)
Judge
Approved for Reporting**

JUDGE

*Azam **