

Form No.HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 598/2023

Shoaib Sohail Vs Ex-officio Justice of Peace and others

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of parties or counsel where necessary
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09.01.2023 Mr Zubair Afzal Rana, Advocate for the Petitioner.

Tariq Saleem Sheikh, J. – Respondent No.5 filed FIR No.2439/2021 dated 08.12.2021 at Police Station Sundar, Lahore, under sections 457 and 380 PPC against unknown persons for stealing 170 bags of fertilizer worth Rs.374,000/- from the godown of M/s Z.N. Enterprises where he worked as a Manager. Subsequently, Respondent No.5 named the Petitioner as an accused in the said case. During the investigation, the police found that the Petitioner was innocent and that the FIR was false. Consequently, they filed a cancellation report with which the Magistrate concurred. The Petitioner claims that Respondent No.5 was his ex-employee whom he dismissed for embezzlement. According to him, he also has a long history of animosity with Respondent No.6, the owner of Z.N. Enterprises. Respondents No.5 & 6 conspired against him, staging a farce through FIR No. 2439/2021 and entangled him in it to torment him. Following the cancellation of the FIR, the Petitioner asked the Respondent SHO to initiate proceedings under section 182 PPC against Respondents No.5 and 6 but he refused. Upon his inaction, he filed an application under section 22-A Cr.P.C. before the Ex-officio Justice of Peace, praying that a direction be issued to the Respondent SHO to start such proceedings. The Ex-officio Justice of Peace dismissed his application by order dated 23.12.2022 for lack of jurisdiction. This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, is directed against that order.

2. I have heard the Petitioner's counsel, Mr Zubair Afzal Rana, Advocate. Let's first see what section 182 PPC is about. I have reproduced it below for facility of reference:

182. False information with intent to cause public servant to use his lawful power to the injury of another person. – Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant:

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may [extend to –

(a) seven years in case the offence in which false information is given is punishable with death;

(b) five years in case the offence in which false information is given is punishable with imprisonment for life; or

(c) one-fourth of the longest term of imprisonment or with fine as is provided for the offence in which false information is given and such offence is not covered under clause (a) or clause (b).]¹

3. The object of section 182 PPC is to stop an individual from giving any false information to a public servant, or such information which he believes to be false, with the intent to mislead him to do anything (or omit to do anything) which he ought not. Section 21 PPC defines the term "public servant." Section 195(1)(a) Cr.P.C. sets out the procedure for prosecuting the offence under section 182 PPC. It states that no court shall take cognizance thereof except on the complaint in writing of the public servant concerned or some other public servant to whom he is subordinate.

4. Section 182 PPC has come up for consideration before the courts in several cases. In Aurangzeb v. The State (1994 SCMR 1280), the appellant filed a complaint before the Divisional Commissioner, who forwarded it to the Deputy Commissioner without taking action or giving any direction. The Deputy Commissioner took cognizance of the complaint and appointed an Inquiry Officer, who examined the witnesses produced by the parties and determined that the complaint was false. The Inquiry Officer submitted his report to the Deputy Commissioner because he had ordered the inquiry. The report was not forwarded to

¹ Substituted by Act IV of 2017 (w.e.f. 16.02.2017)

the Commissioner for action. The Deputy Commissioner reviewed it and directed that a complaint be filed against the appellant under section 182 PPC. The appellant's counsel contended that it was incompetent because the Deputy Commissioner was subordinate to the Commissioner, not his superior. A complaint under section 195(1)(a) Cr.P.C. could be brought by the public servant concerned or by another public servant to whom he is subordinate. The Supreme Court of Pakistan ruled that the Commissioner was not required to issue the directive. In the facts and circumstances of the case, the Deputy Commissioner was the officer concerned.²

5. In **Qutab Din v. The State and another** (2002 PCr.LJ 366), this Court ruled that the public servant concerned is the one to whom the false information was given with an intent to cause him to use his lawful power to the detriment of another person. In this case, the accused had submitted an application with the Inspector-General of Police which was found to be false on inquiry. However, the complaint was filed by the SP Discipline though approved by the DIG. It was held both of them lacked competence. Only the IGP was authorized to make a complaint to the Magistrate for action against him under section 182 PPC. Accordingly, the complaint was quashed, leaving it open for the IGP to make a fresh one in accordance with the law. In **Nasir Ali v. Station House Officer, Police Station Civil Lines, Rawalpindi** (PLJ 2012 Lahore 760), the petitioner submitted an application to the CPO upon which FIR was registered but it was found false during investigation. The High Court held that CPO was the competent authority for making a complaint before the Magistrate for penal action under section 182 PPC, and the SHO could not do so in his stead.

6. In **Haji Muhammad Aslam v. Inspector General and others** (PLD 2001 Lahore 84), the Magistrate discharged the accused of the FIR and directed the Investigating Officer to proceed against the complainant according to law for nominating innocent people in the said case. The High Court set aside the second part of the

² The Supreme Court approved *Nasim Akhtar Soofi v. The State* (1990 PCr.LJ 336), *Abdul Hanan v. The State* (1990 PCr.LJ 777), *Muhammad Boota Anjum v. The State* (1990 PCr.LJ 1538), *Nizamuddin Samejo and others v. Sub-Divisional Magistrate and others* (1988 PCr.LJ 988), *Sher Muhammad v. Emperor* (AIR 1940 Lahore 15), and *Daulat Ram v. State of Punjab* (AIR 1962 SC 1206).

Magistrate's order, holding that the prerogative for initiating proceedings under section 182 PPC lies only with the police officer through whom the legal process was initiated against the accused persons. The Magistrate's role ended when he agreed with the police's report and discharged the accused. The directive to proceed against the complainant/first informant was beyond his authority. The relevant excerpt is reproduced below:

“It is the public servant to whom a false information is given by a person knowing it to be false, who thereafter, moves the machinery of law against the accused person to his detriment or to the injury or annoyance of the accused person. The framers of law left the question for determination to the public servant, as to how far powers exercised, by him cause detriment annoyance and injury to the person proceeded against as accused in consequence of the false information given to him by the complainant. It is not for any other authority to direct the concerned police officer to proceed against the first informant who is giving false information.”

The Court explained:

“There may be cases where due to mistake of fact wrong person may have been named and this mistake can only be rectified if a chance is given to the complainant before proceedings against him to show cause as to why action may be taken. In the present case the occurrence took place in the dark hours of the night, possibility of mistaken identity cannot be ruled out, therefore, the Magistrate instead of directing the police officer authoritatively to proceed against complainant for nominating innocent persons in the FIR, should have left it to the discretion of the concerned police officer to use his prerogative if he so desired strictly in accordance with law. It may be pertinent to mention at this juncture that complainant was medically examined the next day and found to suffer six injuries caused by blunt weapons meaning thereby that some occurrence took place. His direction curtailed the independent exercise of will by the concerned police officers.”

7. In **Khan Ghulam Qadir Khan Khakwani v. A.K. Khalid** [PLD 1960 (W.P.) Lahore 1039], the Magistrate filed a complaint under section 182 Cr.P.C. under the direction of the Deputy Commissioner. B.Z. Kaikaus J. held that the officer who files a complaint must make his own decision. He cannot lodge a complaint under the order of someone else.

8. The law is very well settled that before taking action under section 182 PPC, the person sought to be prosecuted should be served with a show cause notice and he may be given an opportunity to explain his position/defence. In *Haji Muhammad Aslam, supra*, this Court stated:

“In most of the cases, the matter can be truncated after consideration of the reply. If the reply is satisfactory and convinces the public servant that information given to him was based on mistake of fact or other plausible reason the proceedings can be dropped.”³

9. Section 25 Cr.P.C. provides for the appointment of Ex-officio Justice of Peace. It states that by virtue of their respective offices, the Sessions Judges and, on nomination by them, the Additional Sessions Judges are Justices of Peace within and for the whole of the district of the Province in which they are serving. Section 22-A(6) Cr.P.C. describes their powers. There is no doubt that the Ex-officio Justice of Peace can issue directions to the police authorities, and they are bound to comply with them, but they are not subordinate to him within the contemplation of section 195(1)(a) Cr.P.C. Hence, he cannot direct a police officer to initiate action under section 182 PPC. In **Amanat Masih v. Additional Sessions Judge, Kasur, and 4 others** (PLD 2007 Lahore 53), this Court held that the Ex-officio Justice of Peace could only pass an order directing registration of a criminal case if a cognizable offence was made out from the contents of the application or decline the same. The direction given to the SHO by the learned Ex-officio Justice of Peace to initiate proceedings against the petitioner under section 182 PPC is beyond the purview of section 22-A Cr.P.C., hence in excess of the jurisdiction conferred upon him under the law.

10. In the present case, the Ex-officio Justice of Peace has rightly held that he has no jurisdiction to direct the Respondent SHO to proceed against Respondents No.5 & 6 under section 182 PPC. The Impugned Order dated 23.12.2022 is, therefore, upheld. This petition is **dismissed in limine**.

(Tariq Saleem Sheikh)
Judge

Naeem

Approved for reporting

Judge

³ The Court relied upon the following cases for this holding: *Muhammad Murad v. The State* (1983 PCr.LJ 1097); *Sarwar Begum v. The State* (1974 PCr.LJ Note 114 at page 73), *Khan Ghulam Qadir Khan Khakwani v. A.K. Khalid* [PLD 1960 (W.P.) Lahore 1039] and *Mian Fazal Ahmad v. The State* (PLD 1970 Lahore 726).