

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.56691/2022
(Sakina Bibi vs. Additional Sessions Judge, etc.)

JUDGMENT

Date of hearing:	01.06.2023
Petitioner by:	Mr. Shakeel Ahmad Malik, Advocate
State by:	Mr. Shahid Nawab Cheema, AAG & Mr. Hafiz Asghar Ali DPG with Shahida S.P (Investigation) Pakpattan along with report and Ashiq Abid, S.I/SHO.
Respondents by:	Rana Muhammad Shahid, Advocate

ALI ZIA BAJWA, J.:- Through this writ petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter ‘the Constitution’*), the petitioner has assailed the vires of the impugned order dated 15.08.2022 passed by the ex-officio Justice of Peace (*hereinafter ‘the JOP’*), Pakpattan Sharif, whereby the application under Section 22-A(6) of the Code of Criminal Procedure, 1898 (*hereinafter ‘the Code’*) filed by her for registration of a criminal case was dismissed.

2. Arguments heard and the record perused.
3. The record reflects that the petitioner filed an application under Section 22-A (6) of the Code for registration of a criminal case before the JOP with the allegation that respondents No.5 to 9 abducted her son namely Muhammad Usman on 03-11-2021 at gunpoint from the territorial jurisdiction of police station Chak Badi

District, Pakpattan and took him away to an unknown place. The occurrence was witnessed by Munir Ahmad and Khadim. The petitioner further alleged that on 13.11.2021, she received the information that the dead body of her son was lying in DHQ Hospital, Sahiwal. On reaching the hospital, she was informed by the police of Police Station Ghalla Mandi, District Sahiwal that the dead body was hanging on a tree. JOP dismissed the application of the petitioner with findings as infra: -

“that alleged occurrence qua abduction of son of petitioner has not taken place within District, Pakpattan Sharif and resultantly this Court is not inclined to order for registration of FIR. Hence, instant petition is hereby dismissed accordingly.”

4. It has been straightaway observed by this Court that the JOP dismissed the application of the petitioner mainly on the grounds that no evidence could be brought on the record that son of the petitioner was abducted from District Pakpattan and since the dead body was found in District Sahiwal, therefore, direction for registration of criminal case cannot be issued. There are two important legal questions involved in this writ petition which are formulated as infra: -

A) Whether JOP had any jurisdiction to render his finding qua the veracity of the allegations leveled against the proposed accused; and

B) In a case where the abduction took place in District Pakpattan Sharif and the dead body was found in District Sahiwal, where the criminal case can be registered and investigated.

5. As far as the first question is concerned, it is a settled proposition of law as enunciated by the Supreme Court of Pakistan that the only jurisdiction which can be exercised by JOP under Section 22-A(6) of the Code is to examine whether the information disclosed by the applicant did or did not constitute a

cognizable offence and if it did, then to direct the concerned Station House Officer to register an FIR, without going into the veracity of the information in question and no more.¹ The JOP traveled beyond his mandate while holding in the impugned order, in an unequivocal manner, that the son of the petitioner was not abducted in the manner alleged by her. Such findings of the JOP are touching the merits and veracity of allegations, hence, utterly unwarranted and not sustainable in the eye of the law. These findings would have the effect of burying the case of the petitioner at its very inception, which is yet to be registered, investigated and tried. It has also been observed that the JOP while passing the impugned order used the word ‘Court’ for him, which is highly misconceived and misunderstood, as it is trite law that the office of JOP is a quasi-judicial forum and functions performed by it cannot be termed judicial or of a court.²

6. Now I would like to take up the next vital question, which in my humble view is not a complicated one, as the statutory provisions embodied in the Code and The Police Rules, 1934 (*hereinafter the ‘Rules’*) governing such situations are self-explanatory and unambiguous. It shall be appropriate to reproduce the relevant Sections of the Code for better comprehension. Sections 156, 177 & 179 of the Code are of utmost importance and relevance, hence, have been reproduced hereinafter: -

Section 156 of the Code

Investigation into cognizable cases. (1) Any officer-incharge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2).....

(3).....

¹ PLD 2007 SC 539

² PLD 2018 SC 595

(4).....

Section 177 Cr.P.C.

Ordinary place of inquiry and trial - Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Section 179 Cr.P.C.

Accused triable in district where act is done or where consequence ensues. When a person is accused of the commission of offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Section 156 (1) of the Code contemplates that any officer-in-charge of a police station can investigate a cognizable offence, which a court having jurisdiction over the local area within the limits of such police station would have the power to inquire into or try under the provisions of Chapter XV of the Code relating to the place of inquiry or trial. A bare perusal of Sections 156 (1) and 177 of the Code makes it abundantly clear that as a general rule, a criminal case should be registered and investigated by the police station, within the local limits of whose jurisdiction such offence was committed. Keeping in perspective the word "ordinarily" in Section 177 read with Section 156 (1) of the Code, it is apparent, that generally the occurrence is to be investigated at a place where it ordinarily occurs, so the word ordinarily means that it is a general principle. The exceptions to that general rule are contained in the Code itself in the contents of the succeeding Sections from 178 to 185 of the Code. For the purpose of *lis* in hand, the relevant provision of law is Section 179 of the Code.

7. The cumulative effect of Sections 156 (1) and 179 of the Code is that an offence can be investigated by the police officer having territorial jurisdiction over the area where an act is committed or where the consequence of that act ensues. Sections 156 (1) and

177 of the Code provide for the simplest cases and perhaps the cases which most frequently occur, namely, of an offence committed entirely within a single jurisdiction. On the other hand, Section 156 (1) read with Section 179 of the Code enlarges as much as possible the ambit of the sites in which the criminal case can be registered and investigated to minimize, as much as possible, the inconvenience caused by a technical plea of want of territorial jurisdiction of a police station. The wisdom of lawmakers to extend the jurisdiction to various police stations, where an information qua the cognizable offence can be registered and investigated, is to provide against an accused escaping guilt. The general rule of *lex fori*³ has been relaxed by Section 156 (1) of the Code.

8. Mere depiction of the occurrence, as stated in the applications filed before the police, reveals that the proposed accused abducted the son of the petitioner namely Usman at gunpoint which was seen by the eyewitnesses from the territorial jurisdiction of Police Station Chak Bedi, District PakPattan Sharif. Subsequently, his dead body was found hanging on a tree within the territorial jurisdiction of Police Station Ghalla Mandi, District Sahiwal. In view of the above-discussed legal position, a criminal case qua the abduction and murder of the son of the petitioner namely Usman can be registered at any of the Districts, from where the deceased was abducted or from where his dead body was recovered. As the application was filed by the petitioner at Chak Bedi, District Pak Pattan Sharif, therefore, SHO of that police station was under a bounden duty to register the criminal case but unfortunately needful was not done.

9. It would not be out of place to observe here that in a number of cognizable offences, registration of crime reports is delayed on the pretext of lack of territorial jurisdiction of a particular Police Station. Such conduct of police officers not only results in the

³ According to Advanced Law Lexicon, Volume 3, published by LexisNexis, *Lex fori* means 'The law of the forum of court.'

loss of valuable evidence due to delay but also provides an opportunity for accused persons to escape their criminal liability. Law on the subject is very clear that if information regarding a cognizable offence is received, the same cannot be neglected on the pretext of lack of territorial jurisdiction. Relevant rules of the Rules governing such situations have been reproduced for better understanding as infra: -

25.3. Action when offence occurring in another police station is reported.-

When the occurrence of a cognizable offence in another police station jurisdiction is reported, the fact shall be recorded in the daily diary and information shall be sent to the officer-in-charge of the police station in the jurisdiction of which the offence was committed. Meanwhile, all possible lawful measures shall be taken to secure the arrest of the offender and the detection of the offence.

25.4. Where offence appears to have occurred in other police station.-

(1) If a police officer after registering a case and commencing an investigation discovers that the offence was committed in the jurisdiction of another police station he shall at once send information to the officer-in-charge of such police station.

(2) Upon receipt of information such officer shall proceed without delay to the place where the investigation is being held and undertake the investigation.

25.5. Disputes as to jurisdiction.

Should the officer who is thus summoned to the spot dispute the jurisdiction, both officers shall jointly carry on the investigation under the orders of the senior officer and neither shall leave until the question of jurisdiction has been settled and acknowledged. The case record shall be kept at the police station where the information was first received until the question of jurisdiction has been decided.

25.8. Cases which may be lawfully investigated in more local areas than one. -

(1) If the case is one which the officer in charge of the police station may lawfully investigate, but which may also be lawfully and more successfully investigated in another police station, such officer while continuing his investigation, shall refer the matter to the Superintendent, who shall transfer the case or not as he sees fit.

(2) If it is desired to transfer the case to a police station in another district, the Superintendent shall refer the matter to the District Magistrate and move him to act according to the orders contained in Chapter 26, Volume III, of the Rules and Orders of the High Court.

(3) When an investigation has been transferred from one district to another the police files with original first information report shall be forwarded to the Superintendent of the district to which the transfer is made.

The abovementioned rules are self-explanatory and clearly lay down an effective mechanism and the duties of a police officer in case of uncertainty regarding the territorial jurisdiction of a particular police station. The scheme of law provided under the rules clearly reflects the intention of the legislature that a blind eye cannot be turned to the information of the commission of a cognizable offence on the pretext of lack of territorial jurisdiction. For convenience following guidelines can be articulated: -

- I. When the information regarding the commission of the cognizable offence is furnished to the SHO of the Police Station, in whose territorial jurisdiction the offence has been committed, he is bound to register the criminal case immediately.⁴
- II. A criminal case can be registered and investigated in a police station where a cognizable offence is committed or where its consequences ensue.⁵
- III. In the case, where clearly a police station has no jurisdiction to investigate a cognizable offence and information of the same is received, such information shall be recorded in the daily diary and sent to the Officer Incharge of the relevant police station. Meanwhile, all possible lawful measures shall be taken to secure the arrest of the offender and the detection of the offence.⁶
- IV. After registration of a criminal case and the start of the investigation by a police officer, if it transpires that the

⁴ Section 154 of the Code & Rule 25.1 of The Police Rules, 1934.

⁵ Section 156(1) read with Section 179 of the Code & Rule 25.8 of The Police Rules, 1934.

⁶ Rule 25.3 of The Police Rules, 1934.

police station lacks territorial jurisdiction, information shall be sent to the Officer Incharge of the relevant police station in that regard promptly, who shall take over the investigation without delay.⁷

V. When a case is transferred from one police station to another due to lack of territorial jurisdiction or convenience of investigating officer having lawful authority to investigate that case⁸, the crime report registered in the original police station shall be canceled by the Superintendent of police concerned.⁹ The complete record of the case shall be sent to the police station where the case is transferred.¹⁰

VI. When there is a dispute qua the territorial jurisdiction of two police stations, the criminal case shall be registered at the police station where the information of cognizable offence is received first. The investigation shall be carried out jointly by the police officers of both police stations until the question of jurisdiction has been settled and acknowledged.¹¹

10. In the sequel to above, I am of the considered view that the impugned order dated 15.08.2022 passed by the JOP is not sustainable in the eye of the law, therefore, while **allowing** this writ petition, the same is **set aside** with a direction to respondent No. 4 i.e. SHO Police Station Chak Bedi, District PakPattan Sharif to record the version of the petitioner under Section 154 of the Code and register a criminal case. It goes without saying that the investigation, in this case, should be conducted on merits after bringing on the record the evidence of both sides strictly in accordance with the law without

⁷ Rule 25.4 of The Police Rules, 1934.

⁸ Rule 25.8 of The Police Rules, 1934.

⁹ Rule 25.7 of The Police Rules, 1934.

¹⁰ Rule 25.8 of The Police Rules, 1934.

¹¹ Rule 25.5 of The Police Rules, 1934.

getting prejudiced from any finding rendered in the impugned order. The investigating agency shall file its report under Section 173 of the Code after completing the investigation expeditiously within the stipulated time in the spirit of verdict of Supreme Court of Pakistan rendered in Hakim Mumtaz Ahmad.¹²

(ALI ZIA BAJWA)
Judge

The judgment was announced & dictated on 01.06.2023, and after completion thereof, it was signed on the 26-06-2023.

Judge

Approved for reporting.

Usman*

¹² Hakim Mumtaz Ahmad & another vs. The State-PLD 2002 Supreme Court 590