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JUDGMENT SHEET

IN THE LAHORE HIGH COURT

BAHAWALPUR BENCH, BAHAWALPUR.

JUDICIAL DEPARTMENT

Writ Petition. No.9774 of 2022

Umair Afzal VS. The Additional Sessions Judge/
Justice of Peace, Bahawalpur and
three others.

JUDGMENT

Date of hearing	10.02.2023
Petitioner represented by:	Syed Aasim Ali Bukhari, Advocate.
State by:	Mr. Zafar Iqbal Awan, Additional Advocate General.

SADIQ MAHMUD KHURRAM, J.- Through this petition filed under

Article 199 of the Constitution of Islamic Republic of Pakistan, 1973

the following prayer has been made:-

“Under the above circumstances, it is, therefore, humbly prayed that by accepting instant writ petition, the impugned order dated 30.03.2022 passed by respondent No. 1 may kindly be declared being illegal, without lawful authority and the respondent No.3 may kindly be directed to initiate criminal proceedings against the respondent No.4 on the application of the petitioner, in the interest of justice and proceedings u/s 182 P.P.C. be quashed.”

2. Brief facts of the case leading up to the filing of this petition are that the petitioner moved an application under section 22-A/22-B Code of Criminal Procedure, 1898, complaining of the non-registration of the F.I.R. by the police authorities with regard to the commission of the offence made punishable under section 489-F PPC by Mst. Asia Sattar

(respondent No.4) however, the said application was dismissed by the learned Ex Officio Justice of Peace vide order dated 30.03.2022 and a further direction was issued to the SHO Police Station Kotwali, District Bahawalpur to initiate proceedings against the petitioner in respect of offence made punishable under section 182 P.P.C., hence, the petition.

3. The learned counsel for the petitioner, *inter alia*, contended that the learned Ex-officio Justice of Peace, while dismissing the application as filed by the petitioner under section 22-A/22-B Cr.P.C, also directed the SHO concerned to initiate the proceedings under section 182 P.P.C as against the petitioner and in compliance of the said order passed by the learned Ex-officio Justice of Peace, a complaint in respect of an offence under section 182 P.P.C had been submitted which, under the circumstances of the case, was liable to be quashed as no proceeding under section 182 P.P.C could have been ordered to be initiated against the petitioner for filing of a petition under section 22-A/22-B Cr.P.C. The learned counsel for the petitioner placed reliance upon the case of “Amanat Masih versus Additional Sessions Judge, Kasur and four others” (PLD 2007 Lahore 53).

4. The learned Additional Advocate General has submitted that the learned Ex-officio Justice of Peace, exceeded his powers, hence, the direction issued by the Ex-officio Justice of Peace to the SHO Police Station Kotwali, District Bahawalpur to initiate proceedings against the petitioner in respect of offence made punishable under section 182 P.P.C., be set aside.

5. I have heard the learned counsel for the petitioner, the learned Additional Advocate General and perused the documents appended

with this petition as well as the impugned order dated 30.03.2022 passed by the learned Ex-Officio Justice of Peace, Bahawalpur.

7. The record evinces that the petitioner moved an application under section 22-A/22-B Code of Criminal Procedure, 1898, complaining of the non-registration of the F.I.R. by the police authorities with regard to the commission of the offence made punishable under section 489-F PPC by Mst. Asia Sattar (respondent No.4) however, the said application was dismissed by the learned Ex Officio Justice of Peace vide order dated 30.03.2022 and a further direction was issued to the SHO Police Station Kotwali, District Bahawalpur to initiate proceedings against the petitioner in respect of offence made punishable under section 182 P.P.C. and subsequent to the said direction, a complaint was submitted as against the petitioner for holding of a trial in respect of an offence made punishable under section 182 P.P.C. A perusal of the provision of section 22-A(6), Cr.P.C. reveals that the learned 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 application or decline the same. Any direction given to the S.H.O. by the learned ex officio Justice of Peace to initiate proceedings against the petitioner under section 182, P.P.C. was beyond the purview of section 22-A, Cr.P.C., hence in excess of the jurisdiction conferred upon him under the law. The prerogative for proceeding under section 182, P.P.C. lies only with the police officer who has moved the machinery of law against the accused persons nominated in the F.I.R. by the complainant. Section 182, P.P.C. is reproduced, 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 six months, or with fine which may extend to one thousand rupees, or with both."

The wording of the section, when split, provides the following essential ingredients:-

- (i) information to a public servant;
- (ii) informant is in the knowledge that such information is false;
- (iii) information is given knowingly to cause such public servant to do or to omit anything which such public servant ought not to do or omit if the true state of facts respecting such information is given were known by him, or to use the lawful powers for such public servant to the injury, or annoyance of any person.

It is the public servant to whom 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 caused 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. There may be cases where due to a mistake of fact, the 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 not be taken. In order to initiate action under section 182, P.P.C., it is essential that the false complaint involving cognizable offence should properly be registered, investigated and found to be false and baseless. In this manner, the prerogative to proceed under section 182, P.P.C. lies only with the Police Officer, who has moved the machinery of law against the accused nominated in the F.I.R. by the complainant and no other Authority can direct the concerned Police Officer to proceed against the first informant, who has given the false information.

8. For the above identified reasons, it is a fit case for interference and invalidation of the impugned order. Therefore, by allowing this petition, the impugned order dated 30.03.2022, passed by the learned Ex-Officio Justice of Peace, Bahawalpur, to the extent of the direction given to the SHO Police Station Kotwali, District Bahawalpur to initiate proceedings against the petitioner in respect of offence made punishable under section 182 P.P.C. is **set-aside**. Consequently, the complaint submitted against the petitioner for holding a trial in respect of an offence made punishable under section 182 P.P.C., and all the proceedings thereon, are also quashed.

(SADIQ MAHMUD KHURRAM)
JUDGE

Rashid

APPROVED FOR REPORTING

JUDGE