

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MANZOOR AHMAD MALIK

CIVIL APPEALS NO. 1491 OF 2013, 63-L & 64-L/14, CIVIL PETITIONS NO. 1945-L/11, 933-L, 1840-L/13, 372-L, 589-L, 736/14, 1155-L/13, 1483-L/14, 1524-L/14, 1535-L/14, 928-L/14, 719-L/14, 1053-L/14, 1112-L/14, 1338-L/14, 1429-L/14, CRIMINAL PETITIONS NO. 74-P/12, 62-Q/13, 30-Q/14, 49-Q/14, CIVIL PETITIONS NO. 1325/14, 1831-L/14, 1727-L/14, 1732-L/14, 1861-L/14, 1883-L/14, 1921-L/14, 1958-L/14, 2116-L/14, 2161-L/14, 2213-L/14, 102-L/15, 249-L/15, 598-L/15, 908-L/15, 1139-L/15, 1197-L/15, 544-L/15, 1431-L/15, 1434-L/15, 937-L/15, 2202-L/15, 2270-L/15, 2276-L/15, 2380-L/15, 2489-L/15, 2585-L/15, 2580-L/15, 2552-L/15, 2715-L/15, 2776-L/15, 2939-L/15, 24-L/16, 1716-L/15, 2150-L/15, 1179-L/15, 1180-L/15, 1923-L/15, CMA. 13/16 IN CP. 2852-L/15, 1966-L/2015.

(On appeal against the judgments/orders dated 01.10.2013, 3.10.2013, 23.10.2013, 17.6.2010, 16.06.2014, 25.06.2013, 25.01.2012, 03.04.2014, 30.04.2012, 9.10.2013, 27.06.2014, 16.12.2013, 11.02.2014, 27.5.2013, 19.9.2011, 17.03.2015, 10.06.2015, 11.11.2015, 12.5.2014, 30.10.2014, 24.6.2014, 28.10.2014, 29.4.2014, 7.7.2014, 3.7.2014, 19.6.2014, 6.6.2014, 18.8.2014, 10.4.2014, 28.5.2014, 28.10.2014, 19.11.2014, 24.11.2014, 17.10.2014, 07.11.2014, 21.10.2014, 10.12.2014, 11.12.2014, 25.3.2015, 6.4.2015, 29.4.2015, 21.4.2015, 4.2.2015, 6.4.2015, 10.08.2015, 13.7.2015, 15.9.2015, 5.10.2015, 7.9.2015, 14.10.2015, 13.10.2015, 06.10.2015, 14.10.2015, 18.11.2015, 9.11.2015, 29.7.2015, 8.6.2015, 21.04.2015, 21.4.2015, 30.07.2015 and 20.06.2014 of the Lahore High Court, Rawalpindi Bench, Rawalpindi, Lahore High Court, Lahore, Lahore High Court, Multan Bench, Multan, Lahore High Court, Bahawalpur Bench, Bahawalpur, Peshawar High Court, Peshawar, Peshawar High Court, Circuit Bench, Abbottabad, Islamabad High Court, Islamabad and High Court of Balochistan, Quetta, passed in ICA. Nos. 248 of 2010, 764 of 2013, ICA. No. 1081 of 2013 in W. P. No. 7519/13, CP. 1012-L of 2007, in ICA. 597 of 2014 in W. P. No. 25865 of 2013, ICA. 273 of 2013 in W. P. No. 1834 of 2013, in ICA. 500/12, W. P. No. 2141 of 2014, W. P. No. 8962 of 2014, Cr. M. Q. No. 17 of 2011, Crl. Quashment No. 331 if 2013, Crl. Quashment P. No. S-10/2014, ICA. No. 1069 of 2013, W. P. No. 27381 of 2013, W. P. No. 12961 of 2013, ICA. No. 548 of 2011, W. P. No. 7535 of 2015, W. P. No. 2586 of 2015, ICA. 1453 of 2015, W. P. 2582 of 2014, ICA. 375 of 2014 in W. P. No. 12333/2014, ICA. 649 of 2014 in W. P. No. 7740 of 2014, ICA. 650 of 2014 in W. P. No. 6167 of 2014, W. P. No. 26388 of 2014, W. P. No. 689-A of 2013, W. P. No. 19650 of 2014, W. P. No. 19430 of 2014, W. P. No. 26486 of 2013, W. P. No. 15114 of 2014, W. P. No. 18823 of 2014, W. P. No. 9725 of 2014, W. P. No. 12456 of 2014, W. P. No. 12226 of 2014, W. P. No. 25281 of 2013, W. P. No. 25919 of 2014, W. P. No. 24246 of 2014, W. P. No. 8035 of 2014-BWP., W. P. No. 12096 of 2014, W. P. No. 18644 of 2014, W. P. No. 24487 of 2014, W. P. No. 8291 of 2015, ICA. 482 of 2015 in W. P. No. 2587 of 2015, W. P. No. 6380 of 2014, W. P. No. 24714 of 2012, W. P. No. 25441 of 2014, W. P. No. 26288 of 2014, W. P. No. 16360 of 2014, ICA. No. 963 of 2015, ICA. No. 1133 of 2015, W. P. No. 19339 of 2015, W. P. No. 28009 of 2011, W. P. No. 12563 of 2015, ICA. No. 552 of 2015, ICA. No. 541 of 2013, ICA. 1317 of 2015 in W. P. No. 27919 of 2015, W. P. No. 10832 of 2013, W. P. No. 29557 of 2014, ICA. 1481 of 2015, W. P. No. 22491 of 2015, ICA. No. 70 of 2015-BWP., W.

*P. No. 10468 of 2014, W. P. No. 34323 of 2014, ICA. No. 639 of 2015 and Writ
Petition No. 1194 of 2014).*

Younas Abbas.
Muhammad Aslam.
Asghar Rafiq and another.
Abdullah.
Mian Naveed Arshad.
Hakim Ali.
Mian Sajjad.
Tanveer Hussain.
Co. (R) Nazar Hussain Islam.
Ahad Nawaz.
Muhamad Javed Afridi.
Haji Murad Bakhsh.
Shakar Khan and others.
Mian Muhammad Usman.
Taj Din Malik.
Anwar Ali.
Hafiz Maqsood Ahmed.
Qalab Abbas, etc.
Bashir Ahmed Ch.,
Sabir Hussain.
Shehzad Khan.
Muhammad Yasin.
Naseebullah.
Rafiullah and others.
Zafar.
Kamran Butt.
Kamran Butt.
Fida Hussain.
Muhammad Ramzan.
Nazir Ahmad.
Muhammad Safdar Shaheen.
Syed Afzaal Hussain Kazmi.
Ch. Ali Ahmad.
Rana Naseem Haider.
Nasreen Bibi.
Muhammad Ahmad Ramay.
Ameen.
Shahbaz Sarfraz.
Lt. Col. (R) Aqeel Ahmed.
Muhammad Anwar.
Muhammad Ameer.
Saima Firdous.
Abdul Rauf.
Haji Maqbool Hussain.
Uzma Imran.
Sardar Shaukat Mahmood.
Ghulam Nabi.
Muhammad Aslam Hayat.
Muhammad Ishaq.
Zahid Hussain.
Umer Din.
Muhammad Iqbal.
Muhammad Sana Ullah Khan.

Ehtasham Ali, etc.
Muhammad Afzal.
Mst. Malka Bushra Haider.
Ch. Zafar Iqbal.
Mst. Shehzadi Rani.
Muhammad Ali.
Muhammad Ali.
Shah Nawaz Bhali.
Mrs. Maryam Zahid.
Mr. Maryam Zahid.
Abdul Hameed. ...Petitioner/Appellant(s)

VERSUS

Additional Sessions Judge, Chakwal and others.
Additional Sessions Judge, Lahore and others.
Learned Justice of Peace/ASJ, Faisalabad and others.
Additional Sessions Judge, Faisalabad, etc.
Additional Sessions Judge, Lahore etc.
Additional Sessions Judge, Lahore, etc.
I. G. Punjab, Lahore, etc.
Deputy I. G. Police, Gujranwala, etc.
Additional Sessions Judge/Justice of Peace, (East), Ibd and others.
Additional Sessions Judge, Sargodha, etc.
Muhammad Anwar Khan and others.
The State and others.
The State and others.
Additional Sessions Judge, Lahore, etc.
Mian Tauseef, etc.
Additional Sessions Judge/Ex-Officio Justice of Peace, Chiniot, etc.
ASJ/Ex-Officio Justice of Peace, Sialkot and others.
Muhammad Ashraf, etc.
Director General, FIA and others.
Ex-officio Justice of Peace/ASJ, Faisalabad and others.
ASJ/Ex-Officio Justice of Peace, Sialkot and others.
ASJ, Lahore and others.
Ibrahim Jan and others.
District Police Officer, Mansehra and others.
Muhammad Nawaz, etc.
CCPO, Lahore, etc.
CCPO, Lahore, etc.
Justice of Peace/ASJ, Karor District Layyah, etc.
CCPO, Lahore, etc.
Waqas Anwar, etc.
Justice of Peace/ASJ, Lahore, etc.
ASJ/Justice of Peace, Daska, Sialkot, etc.
Justice of Peace Pakpattan, etc.
SHO P.S. Chichawatni, District Sahiwal, etc.
ASJ, Faisalabad, etc.
The Sessions Judge Okara, etc.
ASJ, Pakpattan Sharif, etc.
ASJ, Justice of Peace, Lahore, etc.
Ch. Safdar Bhatti, Justice of Peace, ASJ, Lahore etc.
ASJ, Bhakkar, etc.
Sub-Divisional Police Officer, Arifwala, Pakpattan Sharif, etc.

ASJ/Ex-Officio Justice of Peace Pakpattan Sharif, etc.
Muhammad Amin, etc.
ASJ, Gojra District Toba Tek Singh, etc.
SHO PS. Lahore, etc.
SDPO/DSP Circle Jaranwala, Faisalabad, etc.
ASJ/Ex-officio Justice of Peace Pasrur Sialkot, etc.
Justice of Peace/ASJ Shorkot District Jhang, etc.
Munir Badar, etc.
ASJ/Justice of Peace Jampur, District Rajanpur, etc.
Ex-officio Justice of Peace, ASJ, Lahore, etc.
Justice of Peace ASJ Samundari, Faisalabad, etc.
ASJ/Ex-officio Justice of Peace, Mianwali, etc.
Justice of Peace/ASJ, Sialkot etc.
SHO, PS City Depalpur, Okara etc.
Ex-Officio, Justice of Peace, ASJ, Lahore, etc.
Ex-officio, Justice of Peace, ASJ, Gujranwala, etc.
ASJ/Justice of Peace Chishtian District Bahawalnagar, etc.
The State through P. G. Lahore, etc.
ASJ/Justice of Peace, Pindi Bhattian, District Hafiz Abad, etc.
ASJ/Ex-officio Justice of Peace, Lahore, etc.
ASJ/Ex-officio Justice of Peace, Lahore, etc.
ASJ/Ex-officio Justice of Peace, Lahore, etc.
Noal Sher, etc.

...Respondent(s)

ATTENDANCE :

C.A. No. 1491/13

| | |
|-----------------------|--------------------------------|
| For the Appellant(s): | Mr. Muhammad Shahid Kamal, ASC |
| For Respondents 4, 7: | Sh. Zamir Hussain, Sr. ASC |
| For Respondents 5, 6: | Mian Shafaqat JAN, asc |

C.A. No. 63-L of 2014

| | |
|--------------------------|------|
| For the Appellant(s): | Nemo |
| For Respondents 1, 2, 3: | N/R |

C.A. No. 64-L of 2014

| | |
|---------------------------|----------------------------|
| For the Appellant(s): | Mr. Aziz A. Malik, ASC |
| For Respondents 2-3, 6-9: | N/R |
| For Respondents 4-5: | Mr. Aftab Ahmad Bajwa, ASC |

C.P. No. 1945-L of 2011

| | |
|------------------------|------|
| For the Petitioner(s): | Nemo |
| For the Respondents: | N/R |

C.P. No. 933-L of 2013

| | |
|------------------------|------|
| For the Petitioner(s): | Nemo |
|------------------------|------|

For the Respondents: N/R

C.P. No. 1840-L of 2013

For the Petitioner(s): Nemo

For the Respondents: N/R

C.P. No. 372-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 589-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 736 of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. 1155-L of 2013

For the Petitioner: Nemo

For the Respondents: N/R

Crl. P. No. 74-P of 2012

For the Petitioner: Nemo

For the Respondents: N/R

Crl. P. No. 62-Q of 2013

For the Petitioner: Nemo

For the Respondents: N/R

Crl. P. No. 30-Q of 2014

For the Petitioner: Mr. Zahoorul Haq Chishti, ASC

For the Respondents: N/R

Crl. P. 1483-L of 2014

For the Petitioner: Nemo.

For the Respondents: N/R

C.P. Nos. 1524 & 1535-L of 2014

For the Petitioners: Nemo

For the Respondents: N/R

C.P. No. 928-L of 2014

For the Petitioner: Mr. Salim Khan Cheechi, ASC

For the Respondents: N/R

C.P. No. 719-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 1053-L of 2014

For the Petitioner: Rana Aftab Ahmad Bajwa, ASC

For the Respondents: N/R

C.P. No. 1112-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 1338-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 1325 of 2014

For the Petitioner: Malik Jawad Khalid, ASC

For the Respondents: N/R

C.P. 1831-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. Nos. 1727 & 1732-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 1861-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 1883-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 1921-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 1958-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 2116-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 2161-L of 2014

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 2213-L of 2014

For the Petitioner: Mr. Zafar Mehmood Chaudhry, ASC

For Respondent 2: Mr. Javed A. Khan, ASC

C.P. No. 102-L of 2015

For the Petitioner: Syed Nisar Ali Shah, ASC

For the Respondents: N/R

C.P. No. 598-L of 2015

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 908-L of 2015

For the Petitioner: Sahir Mahmood Bhatti, ASC

For Respondent 3: Mr. M. Zahid Rana, ASC

C.P. No. 1139-L of 2015

For the Petitioner: Mr. Irshad Ahmed Cheema, ASC

For the Respondents: N/R

C.P. No. 1197-L of 2015

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 544-L of 2015

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 1431-L of 2015

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 1434-L of 2015

For the Petitioner: Mr. Munir Ahmad Bhatti, ASC

For the Respondents: N/R

C.P. No. 937-L of 2015

For the Petitioner: Miam Muhammad Aslam, ASC

For the Respondents: N/R

C.P. No. 2202-L of 2015

For the Petitioner: Mr. M. Sohail Dar, ASC

For the Respondents: N/R

C.P. No. 2270-L of 2015

For the Petitioner: Mrs. Kausar Iqbal Bhatti, ASC

For the Respondents: N/R

C.P. No. 2276-L of 2015

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 2380-L of 2015

For the Petitioner: In person

For the Respondents: N/R

C.P. No. 2489-L of 2015

For the Petitioner: Mr. Saiful Malook, ASC

For the Respondents: N/R

C.P. No. 2585-L of 2015

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 2580-L of 2015

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 2552-L of 2015

For the Petitioner: In person

For the Respondents: N/R

C.P. No. 2715-L of 2015

For the Petitioner: In person

For the Respondents: N/R

C.P. No. 2776-L of 2015

For the Petitioner: Mr. Salim Khan Chechi, ASC

For the Respondents: N/R

C.P. No. 2939-L of 2015

For the Petitioner: In person

For the Respondents: N/R

C.P. No. 24-L of 2016

For the Petitioner: In person

For the Respondents: N/R

C.P. No. 1716-L of 2015

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 2150-L of 2015

For the Petitioner: Nemo

For the Respondents: N/R

C.P. No. 1179-L of 2015 & C.P. No. 1180-L of 2015

For the Petitioners: Nemo

For the Respondents: N/R

C.P. No. 1923-L of 2015

For the Petitioner: Nemo

For the Respondents: N/R

C.M.A. No. 13/16 in C.P. No. 2852-L of 2015

For the Applicant/P: Mr. Ahmad Nawaz Chaudhry, AOR

For the Respondents: N/R

C.P. No. 1966-L of 2015

For the Petitioner: Mr. Muhammad Sohail Dar, ASC

For the Respondents: N/R

On Court’s Call:

For Province of Punjab: Mr. Razzaq A. Mirza, Addl. AG

For Province of Sindh: Mr. Abdul Jabbar Qureshi, Asstt. AG

For Province of KPK: Mr. Waqar Ahmed Khan, Addl. AG

For Province of Balochistan: Mr. Ayaz Swati, Addl. AG

Amicus Curiae: Kh. Haris Ahmed, Sr. ASC

Date of Hearing: 12.02.2016 (Judgment Reserved)

J U D G M E N T

EJAZ AFZAL KHAN, J.- Though the appellants and the petitioners in many cases voiced their individual grievances against the orders directing or refusing the registration of cases but appellants in Civil Appeal No. 491 of 2013 also questioned the vires of Section 22-A in general and 22-A(6) of the Cr.P.C. in particular. This Court after hearing the learned ASCs for the parties crystallized the formulations as under :-

"3. We have gone through the leave granting order dated 13.12.2013, wherein the afore-referred questions have been adverted to for consideration, however, while hearing the appellant's learned counsel, we find that certain issues relatable to the vires of Section 22-A Cr.P.C. and the manner it is being used, require consideration. In this view of the matter, we are persuaded to direct the learned counsel for the parties to address the Court, inter alia, on the following issues :-

- a) Whether Section 22-A Cr.P.C. is ultra vires of the Constitution inasmuch as it confers Executive powers to a Judicial Officer? and*
- b) Whether its alleged misuse is not in consonance with the canons of expeditious justice? and*
- c) Whether the exercise of power under Section 22-A Cr.P.C. amounts to interference in the investigative domain of police, which is violative of this Court's judgment in **Muhammad Bashir Vs. Station House Officer, Okara (PLD 2007 SC 539)** and **Imtiaz Ahmad Vs. Government of Pakistan (1994 SCMR 2142)**?*

2. Notices were issued to the Advocates General of the Provinces whereas Kh. Haris Ahmed and Mr. Farogh Naseem were appointed as amicus curiae. This case was heard on 20.11.2014 by

a Bench of this Court, which ordered it to be heard by a Larger Bench by observing as under :-

*"2. We have heard the learned amicus curiae. Both the learned counsel have submitted that the powers exercisable under Section 22-A (6) read with Section 25 of the Cr.P.C. are quasi judicial in nature and therefore do not violate the provision of Article 175(3) of the Constitution; and that if these powers are declared to be executive or administrative in nature, the same would not be in consonance with the provision of Article 175(3) of the Constitution. During the course of arguments two judgments were brought to our notice; one by the Lahore High Court authored by Hon'ble Justice Asif Saeed Khan Khosa, as Judge of that Court, which was reaffirmed by a three member bench of this Court in the case of **Muhammad Ali. Vs. Additional I. G. Faisalabad and others** (PLD 2014 SC 753) declaring that the said powers are administrative and executive in nature. Since the said judgment has been handed down by a three member bench, it would be appropriate that this case be heard by a larger bench, in order to determine whether the powers under Section 22-A(6) of Cr.P.C. are quasi judicial in nature, and if not, would it violate the provision of Article 175(3) of the Constitution."*

3. The learned Advocates Supreme Court appearing in the appeals as well as civil petitions and criminal petitions addressed arguments in support of and against the formulations. The main theme and thrust of the arguments addressed in support of the formulations was that the Ex-officio Justice of Peace while exercising powers under Section 22-A (6) Cr.P.C. interferes with investigation, delays dispensation of justice, and thereby abuses the process of the Court which is violative of the dicta rendered in the cases of **Muhammad Bashir. Vs. Station House Officer, Okara Cantt. and others** (PLD 2007 SC 539) and **Brig. (Retd) Imtiaz Ahmad. Vs. Government of Pakistan through Secretary, Interior Division,**

Islamabad and 2 others (1994 SCMR 2142). Some of the ASCs also went to the extent of calling this provision as *ultra vires* in the sense that these powers being executive and administrative in nature militate against the concept of independence of judiciary and its separation from the executive as enshrined in Article 175 of the Constitution of the Islamic Republic of Pakistan.

4. Sheikh Zamir Hussain, learned ASC appearing on behalf of respondents Nos. 4 and 7 in C. A. No. 1491 of 2013 contended that the people could live and lump up with the powers of the Ex-officio Justice of Peace under Section 22-A(6) Cr.P.C. but not with their abuse and misuse especially when he assumes the role of investigator, prosecutor and the Court before the case is sent thereto or any other Court for trial and thereby defeats the purpose this provision was enacted for.

5. Mr. Saiful Malook, learned ASC appearing on behalf of the petitioner in C. P. No. 2489-L of 2015 by highlighting the excesses committed by the Ex-officio Justice of Peace in exercise of his powers, vehemently pleaded for prescribing parameters in this behalf lest it does more harm than good.

6. Mr. Muhammad Shahid Kamal, learned ASC appearing on behalf of the appellant in C. A. No. 1491 of 2013 contended that enactment of Section 22-A, 22-B and 25 of the Criminal Procedure Code is well intentioned, if their efficacy in facilitating the cause of justice is looked at and that there may be deviations here and there, but they can well be corrected through judicial review.

7. The learned Advocates General of the respective Provinces contended that these provisions cannot be treated as heal-all inasmuch as their side effects have added to the backlog

which is already mountain-high as was also observed by this Court in the case of **Muhammad Bashir. Vs. Station House Officer, Okara Cantt. and others (supra)** .

8. Kh. Haris Ahmed, learned ASC appearing as amicus curiae having cited a good number of judgments sought to canvass at the bar that interference with investigation at any level has not been approved of by this Court unless of course it is malafide and without jurisdiction. He next contended that even the powers conferred on the High Court under Section 561-A of Cr.P.C. cannot be used to impede or hamper the investigation, but to prevent the abuse of the process of the Court. The learned ASC to support his point of view referred to the cases of **Muhammad Bashir. Vs. Station House Officer, Okara Cantt. and others, Brig. (Retd) Imtiaz Ahmad. Vs. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others** (supra), **Emperor. Vs. Khawaja Nazir Ahmad** (AIR 1945 PC 18), **Shahnaz Begum. Vs. The Hon'ble Judges of the High Court of Sindh and Baluchistan and another** (PLD 1971 SC 677) and **Ghulam Mohammad. Vs. Muzzamil Khan** (PLD 1967 SC 317). The learned ASC went on to argue that what cannot be permitted in exercise of jurisdiction under Article 199 of the Constitution or 561-A of Cr.P.C. cannot be permitted at the level of the Ex-officio Justice of Peace. According to the learned ASC, the view taken in the judgments cited above was reaffirmed in the cases of **Saeed Hussain Shah. Vs. The State** (1996 SCMR 504), **Raja Rustam Ali Khan. Vs. Muhammad Hanif and 6 others** (1997 SCMR 2008), **Muhammad Saeed Azhar. Vs. Martial Law Administrator, Punjab and others** (1979 SCMR 484), **Muhammad Latif, ASI, Police Station Sadar, Sheikhpura. Vs. Sharifan Bibi and**

another (1998 SCMR 666), Mazhar Naeem Qureshi. Vs. The State (1999 SCMR 828), Nasrullah Khan. Vs. Manzoor Hussain and others (2004 SCMR 885), Ajmeel Khan. Vs. Abdur Rahim and others (PLD 2009 SC 102), Hayatullah Khan and another. Vs. Muhammad Khan and others (2011 SCMR 1354) and S. N. Sharma. Vs. Bipen Kumar Tiwari and others (AIR 1970 SC 786).

9. We have gone through the record carefully and considered the submissions of the learned ASCs for the parties, the learned Advocates General as well as the learned amicus curiae.

10. Law is undoubtedly a set of commands of the sovereign. It can endure and stay efficacious if it is not abstract and socially unrelated. It becomes all the more enduring and efficacious if it pulsates from the soil and reflects indigenous conditions around. A law thus evolved not only caters for what people need for their peaceful co-existence but also endures till the time the conditions around change. On the contrary, a law which is a patchwork of imported patches can neither cater for the legitimate needs of the people nor stay efficacious because of its feeble basis and frequent violation. Before we examine these provisions in this background and in the light of the arguments addressed at the bar, it is worthwhile to refer to the provisions which read as under :-

“22-A. Powers of Justice of the Peace.--(1) A Justice of the Peace for any local area shall, for the purposes of making an arrest, have within such area all the powers of a Police Officer referred to in section 54 and an officer in-charge of a police-station referred to in section 55.

(2) A Justice of the Peace making an arrest in exercise of any powers under subsection (1) shall, forthwith, take or cause to be taken the person arrested before the officer in-charge of the nearest police-station and furnish such officer with a report as

to the circumstances of the arrest and such officer shall thereupon re-arrest the person.

(3) A Justice of the Peace for any local area shall have powers, within such area, to call upon any member of the police force on duty to aid him:

(a) in taking or preventing the escape of any person who has participated in the commission of any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having so participated; and

(b) in the prevention of crime in general and, in particular, in the prevention of a breach of the peace or a disturbance of the public tranquility.

(4) Where a member of the police force on duty has been called upon to render aid under subsection (3), such call shall be deemed to have been made by a competent authority.

(5) A Justice of the Peace for any local area may, in accordance with such rules as may be made by the Provincial Government:

(a) issue a certificate as to the identity of any person residing within such area, or

(b) verify any document brought before him by any such person, or

(c) attest any such document required by or under any law for the time being in force to be attested by a Magistrate, and until the contrary is proved, any certificate so issued shall be presumed to be correct and any document so verified shall be deemed to be duly verified, and any document so attested shall be deemed to have been as fully attested as if he had been a Magistrate.

[(6) An ex-officio Justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding-

(i) non-registration of a criminal case;

(ii) transfer of investigation from one police officer to another; and

(iii) neglect, failure or excess committed by a police authority in relation to its functions and duties.]

22-B. Duties of Justices of the Peace.-- Subject to such rules as may be made by the Provincial Government, every Justice of the Peace for any local area shall—

(a) on receipt of information of the occurrence of any incident involving a breach of the peace, or of the commission of any offence within such local area, forthwith make inquiries into the matter and report in writing the result of his inquiries to the nearest Magistrate and to officer in charge of the nearest police-station.

(b) if the offence referred to in clause (a) is a cognizable offence, also prevent the removal of any thing from, or the interference in any way with, the place of occurrence of the offence;

(c) when so required in writing by a police-officer making an investigation under Chapter XIV in respect of any offence committed within such local area.

(i) render all assistance to the police-officer in making such an investigation.

(ii) record any statement made under expectation of death by a person in respect of whom a crime is believed to have been committed'.]

25. Ex-officio Justice of the Peace.—By virtue of their respective offices, the Sessions Judges and on nomination by them, the Additional Sessions Judges, are Justices of the Peace within and for whole of the District of the Province in which they are serving”.

11. The duties, the Justice of Peace performs, are executive, administrative, preventive and ministerial as is evident from sub-sections 1, 2, 3, 4 and 5 of 22-A and 22-B of the Cr.P.C. Such duties have not been a subject matter of controversy nor have they ever been caviled at by anybody. Controversy emerged with the insertion of sub-section 6 in Section 22-A and Section 25 of the Cr.P.C. when Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-officio Justices of Peace. The functions, the Ex-officio Justice of Peace performs, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with things mechanically. His functions as

described in Clause (i), (ii) and (iii) of sub-section 6 of Section 22-A Cr.P.C., are quasi-judicial as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind. Every lis before him demands discretion and judgment. Functions so performed cannot be termed as executive, administrative or ministerial on any account. We thus don't agree with the ratio of the judgments rendered in the cases of **Khizar Hayat and others. Vs. Inspector General of Police (Punjab), Lahore and others** (PLD 2005 Lhr. 470) and **Muhammad Ali. Vs. Additional I. G.** (PLD 2015 SC 753) inasmuch as it holds that the functions performed by the Ex-officio Justice of Peace are executive, administrative or ministerial.

12. Now we are to see whether the insertion of this provision has advanced and hastened or obstructed and delayed dispensation of justice. A brief look into the past and its comparison with the present would answer the question. In the past if a person aggrieved went to report the commission of a cognizable case his report was not registered. If he had means he could file a petition for issuance of an appropriate writ in the respective High Court. By the time his petition matured for being heard and decided in his favour, a great deal of evidence was either lost or destroyed. The relief so granted was almost equal to the relief declined barring exceptions, which were not more than a few. With the insertion of sub-section 6, an aggrieved person could get in time at his doorstep, what he could not get despite approaching the High Court. As against that, grievance of a person having no means and resources went unattended and un-redressed altogether. Wealthy, well off and well connected people exploited this situation. They

committed the crime and yet went scot-free. But ever since the day the Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-officio Justices of Peace, no rich and well off person could break the law with impunity or obstruct the person oppressed and assaulted from seeking remedy at his doorstep. If the SHO of a Police Station, owing to the influence and affluence of any, refused to register a case, resort could be had to the Ex-officio Justice of Peace for the issuance of an appropriate order or direction by moving a simple application. Aggrieved persons, who could not afford the luxury of engaging a lawyer in the past for filing a writ petition in a High Court to get the desired relief, could seek an order or direction from the Ex-officio Justice of Peace without spending much. He could complain against the neglect, failure or excess committed by the Police Authorities in relation to its functions and duties which in the past was no less than living in Rome and fighting with the Pope.

13. Transfer of investigation from one police officer to another was, no doubt, in vogue but it was done only at the bidding of wealthy and well off people. A poor man, whose entry in the well guarded offices of the high-ranking police officers was well nigh impossible, could never dream of getting such relief even in the wildest of his dreams. Article 18(6) of the Police Order also provides a remedy for change of investigation but it, in a set up where the police do not have operational independence, is illusory and inadequate. It is more so where even the high-ranking police officers are posted and transferred with the intervention of the class wielding influence inside and outside the lounges of power. In this state of despair, a legislation establishing equality before the law

and breaking the idols of influence and affluence was desperately needed. The legislature rose to the occasion, enacted sub-section 6 of Sections 22-A and 25 of the Cr.P.C. and enabled the poor and the downtrodden to see eye to eye with those who infringed their rights with impunity in the past. We need not discuss how the Justice of the Peace acts or acted in the United Kingdom, the United States of America or the Union of India. We are to see whether this insertion, giving powers to the Ex-officio Justice of Peace, has harmed the people by and large or empowered them, who on account of economic constraints and compulsions resigned to their unhappy lot. Yes, it is not heal-all as was contended by one of the learned Advocates General because its side effects have added to the backlog which is already mountain-high in the District Courts as well as the High Courts. But these side effects like those of antibiotics have to be borne by the patients for their rapid recovery. Needless to say that someone has to travel a mile extra to restore balance to the society.

14. The argument that the people could live and lump up with the powers of the Ex-officio Justice of Peace under Section 22-A(6) Cr.P.C. but not with their abuse and misuse especially when he assumes the role of investigator, prosecutor and the Court before the case is sent thereto or any other Court for trial and thereby defeats the purpose this provision was enacted for, is misconceived when the orders passed, directions issued and actions taken by the Justice of Peace in excess of his powers being justiciable can well be quashed through judicial review.

15. Granted that jurisdiction to issue a writ is traditionally a high prerogative jurisdiction of a High Court dating back to

antiquity is now recognized by the Constitution, as has been held in the case of **Khizar Hayat and others. Vs. Inspector General of Police (Punjab), Lahore and others (supra)**, but such jurisdiction has now been conferred on the Ex-officio Justices of Peace, as the power to issue direction in the nature of habeas corpus has been conferred on the Sessions Judges and Additional Sessions Judges under Section 491(1-A) of the Cr.P.C. The rationale behind conferment of such powers on the Ex-officio Justices of Peace under sub-section 6 of Section 22-A and on the Sessions Judges as well as Additional Sessions Judges under Section 491(1-A) of the Cr.P.C. was to provide the remedy to an aggrieved person at his doorstep. Exercise of such powers, by no stretch of imagination, interferes with investigation or delays dispensation of justice.

16. The argument pleading for prescribing parameters for exercising such powers by the Ex-officio Justices of Peace may have some substance, but where the parameters laid down for the High Courts are equally applicable to the Ex-officio Justice of Peace exercising almost similar powers, another effort in this behalf would be absolutely unnecessary. What are the parameters in this behalf and how far the exercise of such powers is complementary to the functions of the police are the questions which have been elaborately dealt with in a number of cases. In the case of **Emperor. Vs. Khawaja Nazir Ahmad (AIR 1945 PC 18)**, the Privy Council by prescribing the parameters and highlighting the complimentary nature of the functions of the judiciary and the police held as under:-

“In their Lordship’s opinion however, the more serious aspect the case is to be found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under S. 491, Criminal P. C., to give directions in the nature of habeas corpus. In such a case as the present, however, the Court’s functions begin when a charge is preferred before it and not until then. It has sometimes been thought that S. 561-A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act. No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation and for this reason Newsam, J. may well have decided rightly in AIR 1938 Mad. 129. But that is not this case”.

17. In the case of **Ghulam Mohammad. Vs. Muzzamil Khan** (PLD 1967 SC 317), this Court after examining the ratio of various judgments on a similar issue held as under :-

“The inherent jurisdiction given by section 561-A is not an alternative jurisdiction or an additional jurisdiction but it is a jurisdiction preserved in the interest of justice to redress grievances for which no other procedure is available or has been provided by the Code itself. The power given by this section can certainly not be utilized as to interrupt or divert the procedural statute. The High Court, as has repeatedly been pointed out in a number of decisions, should be extremely reluctant to interfere in a case where a competent Court has after examining the evidence adduced before it, come to the view that a prime facie case is disclosed and has framed charges or summoned the accused to appear, unless it can be said that the charge on its face or the evidence, even if believed, does not disclose any offence. This the High Court has not found in the present case but has merely proceeded on an erroneous conception that in a case where a complaint has been filed the police has no jurisdiction to investigate into any other offence which comes to its notice in the course of the investigation of the complaint, particularly, if the offence disclosed is of a non-cognizable nature. The High Court itself has referred to a Full Bench authority of the Madras High Court where a contrary view was taken but has not quoted any other authority in support of its own view. We are in agreement with the views expressed by the Madras High Court for, we can see no legal bar to the police submitting a challan in respect of offences other than those mentioned in the First Information Report, if the same should come to its notice during the course of investigation on the basis of complaint except in the cases mentioned in Sections 196 to 199, Cr.P.C. Section 190(1)(b) of the Code of Criminal Procedure clearly gives jurisdiction to the Magistrate mentioned therein to take cognizance of an offence on the basis of a police report whether the offence be cognizable or non-cognizable. In the present case, the Magistrate was an Additional District Magistrate and one of the offences in

respect of which the challan was submitted was under section 408, P.P.C., which was cognizable. Thus even the obstacle posed by section 155(2), Cr.P.C., did not stand in the way. The challan submitted by the police was, therefore, lawfully submitted and legally enquired into”.

18. In the case of **Shahnaz Begum. Vs. The Hon’ble Judges of the High Court of Sindh and Baluchistan and another** (PLD 1971 SC 677) this Court held as under :-

“If an investigation is launched mala fide or is clearly beyond the jurisdiction of the investigating agencies concerned then it may be possible for the action of the investigating agencies to be corrected by a proper proceeding either under Article 98 of the Constitution of 1962 or under the provisions of section 491 of the Criminal Procedure Code, if the applicant is in the latter case in detention, but not by invoking the inherent power under section 561-A of the Criminal Procedure Code.

If this be the position with regard to the quashing of an investigation we have no manner of doubt that section 561-A of the Cr. P.C. does not give any power to transfer an investigation as claimed by the learned Advocate General of Sindh. Section 561-A of the Criminal Procedure Code runs as follows:-

“561-A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice”

It will be observed that the power given thereby can be invoked to give effect to any order under the Code to prevent an abuse of the process of any Court or otherwise to secure the ends of justice. The ends of justice necessarily means justice as administered by the Courts and not justice in the abstract sense or justice administered by agencies other than Courts. The words “otherwise to secure the ends of justice”, have to be read along with the earlier objects mentioned in this section and must have some co-relation with them and it is in this sense that this Court in the case of

M. S. Khawaja V. The State (PLD 1965 SC 287) opined that the ends to secure which the inherent power may be invoked “have reference to the purposes which the judicial process is intended to secure, and it is difficult to include actions of investigating agencies within the scope of judicial process.”

19. In the case of **Brig. (Retd) Imtiaz Ahmad. Vs. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others** (1994 SCMR 2142) this Court while reiterating the earlier view held as under :-

“The power under Article 199 of the Constitution is the power of judicial review, that power “is a great weapon in the hands of Judges, but the Judges must observe the Constitutional limits set by our parliamentary system on their exercise of this beneficial power, namely, the separation of powers between the Parliament, the Executive and the Courts”. (Lord Scarman in Nottinghamshire C.C. v. Secretary of State (1986) (All ER 199, 204). Judicial review must, therefore, remain strictly judicial and in its exercise, Judges must take care not to intrude upon the domain of the other branches of Government. As was succinctly put by Hamoodur Rahman, J. (as he then was) in *Mir Abdul Baqi Baluch v. The Government of Pakistan* (PLD 1968 SC 313, 324), under a Constitutional system which provides for judicial review of executive actions :-

“It is, in my opinion, a fallacy to think that such a judicial review must be in the nature of an appeal against the decision of the executive authority. It is not the purpose of judicial authority reviewing executive actions to sit on appeal over the executive or to substitute the discretion of the Court for that of the administrative agency”.

While dealing with transfer of investigation from one police officer to another, this Court applied the same principles by holding that the Investigating Authorities do not have an unfettered

authority of running investigation according to their whim and caprice. They can be pushed back to their allotted turf if and when they overstep it. In the case of **Anwar Ahmed Khan. Vs. The State (1996 SCMR 24)**, this Court held that the High Court in exercise of its jurisdiction was competent to pass necessary orders where investigation was mala fide or without jurisdiction to ensure justice and fair play. It was also held in the case of **Muhammad Latif, ASI, Police Station Sadar, Sheikhpura. Vs. Sharifan Bibi and another (supra)** that the High Court in exercise of its constitutional jurisdiction could pass appropriate orders where investigation is mala fide. In the case of **Nasrullah Khan. Vs. Manzoor Hussain and others (supra)** this Court declined to interfere with the order of the High Court directing entrustment of the investigation of the case to some responsible officer of repute. In the case of **Col. Shah Sadiq. Vs. Muhammad Ashiq and others (2006 SCMR 276)** this Court after referring to a string of judgments of this Court, Privy Council and Indian Supreme Court reiterated the same principle. The same view was also reaffirmed in the cases of **Saeed Hussain Shah. Vs. The State (1996 SCMR 504)**, **Raja Rustam Ali Khan. Vs. Muhammad Hanif and 6 others (1997 SCMR 2008)**, **Muhammad Saeed Azhar. Vs. Martial Law Administrator, Punjab and others (1979 SCMR 484)**, **Mazhar Naeem Qureshi. Vs. The State (1999 SCMR 828)**, **Ajmeel Khan. Vs. Abdur Rahim and others (PLD 2009 SC 102)**, **Hayatullah Khan and another. Vs. Muhammad Khan and others (2011 SCMR 1354)**, **Muhammad Ali. Vs. Additional I. G. (supra)** and **S. N. Sharma. Vs. Bipen Kumar Tiwari and others (AIR 1970 SC 786)**.

20. Next comes the vires of the provisions contained in sub-section 6 of Section 22-A and Section 25 of the Cr.P.C. A provision of

law can be declared *ultra vires* if it is violative of the provisions of the Constitution which guarantee fundamental rights, independence of judiciary or its separation from the executive. An examination and empirical verification of these provisions will show that they do not infringe any of the fundamental rights guaranteed by the Constitution. They on the contrary, not only facilitate their enforcement but also guard against their infringement by providing expeditious and inexpensive justice to the people at their doorstep. It does not even remotely impinge upon the independence of judiciary nor does it militate against the concept of its separation from the executive. When the Ex-officio Justice of Peace passes orders, issues directions, or takes actions under the aegis of judiciary rather than the executive, he instead of going under the thumb of the executive, in fact, brings the executive under the thumb of law. We, therefore, without a moment's hesitation hold that these provisions cannot be declared *ultra vires* on either of the criteria mentioned above. Their *vires* even on the yardstick of the legislative competence cannot be questioned when we don't find any defect in the legislative competence nor has it been imputed thereto by any of the parties before us.

21. Having thus considered, we hold that the functions performed by the Ex-officio Justice of Peace being quasi judicial in nature cannot be termed as executive, administrative or ministerial; that such functions being complementary to those of the police do not amount to interference in the investigative domain of the latter and thus cannot be held to be violative of the judgments of this Court rendered in the cases of **Muhammad Bashir. Vs. Station House Officer, Okara Cantt. and others** and **Brig. (Retd) Imtiaz Ahmad. Vs.**

Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others (supra) and that insertion of sub-section 6 of Section 22-A and 25 of the Cr.P.C. through the Code of Criminal Procedure (3rd Amendment Ordinance) CXXXI of 2002 is not *ultra vires* by any attribute. In this view of the matter, we direct that the cases be listed before the benches for decision in accordance with law. We, while parting with the judgment appreciate the enlightened assistance rendered by Khawaja Haris Ahmad, learned Sr. ASC who despite his heavy pre-occupations honoured the words of this Court.

Chief Justice

| | |
|-------|-------|
| Judge | Judge |
| Judge | Judge |

Announced in open Court at Islamabad on _____

Judge

‘Not approved for reporting’
M. Azhar Malik

Manzoor Ahmad Malik, J.- I have had the privilege of going through the erudite judgment rendered by my learned brother Hon'ble Mr. Justice Ejaz Afzal Khan. While agreeing with the conclusion drawn by his lordship, I am adding following note to attend to certain aspects which are germane to the *lis*.

2. The past experience of around 14 years (since the insertion of these provisions into the Code of Criminal Procedure) would unmistakably reveal that these provisions especially Section 22-A of the Code of Criminal Procedure, though beneficial and advantageous to the public at large, yet in myriad cases, it has been misused and abused.

3. Once a false criminal case is registered against an individual, it becomes exceedingly difficult for him/her to get rid of it. The time and money which is spent on acquiring a clean chit by way of cancellation of the case or acquittal is not hard to fathom. There is no denying the fact that at times false and frivolous cases are got registered just to humiliate and harass the opposite party. In such a milieu, powers given to an ex-officio Justice of the Peace under sub-section (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 sub-section (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 Sub-section (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.

(MANZOOR AHMAD MALIK)
JUDGE

Islamabad,
Approved for Reporting
K.Anees