

2025 Y L R 1657

[Balochistan]

Before Muhammad Najam-ud-Din Mengal, J

ABDUL BAQI---Petitioner

Versus

The STATE---Respondent

Criminal Revision Petition No. 124 of 2024, decided on 18th April, 2025.

Criminal Procedure Code (V of 1898)---

----Ss. 561-A & 22-A---Penal Code (XLV of 1860), Ss. 403 & 409---Constitution of Pakistan, Art. 199---Criminal misconduct---Dishonest misappropriation of property---Criminal breach of trust by public servant---Power of Ex-Officio Justice of Peace---Quashing of order---Scope---Petitioner had recovered a car during the investigation of a case---Subsequently, the owner of the vehicle in question filed an application under S. 516-A, Cr.P.C before the Trial Court for release of vehicle; initially the same was withdrawn and subsequently fresh application was filed, which was allowed, whereby the Trial Court, while utilizing the powers and jurisdiction as an Ex-Officio Justice of Peace directed the Commissioner and the Deputy Commissioner concerned to initiate a criminal case by means of lodging FIR against the petitioner/Investigation Officer of the case under Ss.403 and 409, P.P.C---Validity---In the case in hand, no complaint had been filed against the petitioner rather an application under Section 561-A, Cr.P.C. for release of vehicle was filed before the Ex-Officio Justice of Peace, wherein neither any complaint was filed or pending against the petitioner nor any such relief was sought against the petitioner for registering FIR against him---Impugned order had been passed by the Trial Court in the capacity of Ex-Officio Justice of Peace without holding an enquiry and without giving an opportunity of hearing to the petitioner, giving directions to the higher hierarchy of the petitioner's department for lodging of FIR, which was contrary to the scheme of law---Besides, the Ex-Officio Justice of Peace was not a Judicial Magistrate, who could take cognizance upon his own knowledge or information communicated to him---However, any order passed by a Court in the capacity of Ex-Officio Justice of Peace should be respected as the same was passed by him; while performing a quasi-judicial function, but only in a case, when a complaint was made before him in writing for excess committed by a levies/police official/officer---Without any application or complaint before Ex-Officio Justice of Peace, he could not pass an order against any levies/police officer---In such a situation, it would be appropriate to provide the said levies officer an opportunity to clarify his position by holding an inquiry by himself or through some other authority---Any suggestion or direction given by the Ex-Officio Justice of Peace is required to be respected similar to a judicial order and should be followed in letter and spirit, otherwise the person disobeying the same may expose himself for appropriate action as per law---Petition was allowed accordingly.

Younas Abbas and others v. Additional Sessions Judge, Chakwal and others PLD 2016 SC 581 rel.

Muhammad Saleem Lashari for Petitioner.

Wajahat Khan Ghaznavi, State Counsel for the State.

Date of hearing: 8th April, 2025.

JUDGMENT

MUHAMMAD NAJAM-UD-DIN MENGAL, J.--- In the instant Criminal Revision Petition, the petitioner has prayed as follows:

"It is accordingly respectfully prayed that while exercising powers under Section 561- A Cr.P.C. the impugned order dated 23.02.2024 to the extent of directions for lodging of FIR against petitioner be set aside/quashed, in the interest of justice, equity and fairplay."

2. It is worthwhile to mention here that initially the petitioner filed the instant petition as Criminal Quashment Petition under Section 561- A Cr.P.C., while on the very first hearing i.e. 19th March 2024, the learned counsel for the petitioner was confronted with the maintainability of Quashment Petition, who sought time to assist the Court on the said point. Subsequently, the matter was again fixed for Katcha Peshi on 20th March 2024, whereby learned counsel for petitioner prayed for conversion of the Quashment Petition into Criminal Revision Petition. Accordingly, the Quashment Petition was converted into Criminal Revision Petition.

3. Facts of the case are that the petitioner is seeking the quashment of order dated 23rd February 2024 passed by learned Sessions Judge, Washuk at Basima, whereby directions were issued for lodging FIR against the petitioner. It is averred in the petition that on 21st April 2023 the complainant namely Mahesh Kumar son of Jawahir Lal registered FIR bearing No.11 of 2023 offence under Sections 365-A, 34 P.P.C at Levies Station, Basima, District Washuk. In pursuance whereof, the investigation of the case was entrusted to the petitioner. During course whereof, the abductees were released; however, the petitioner has also recovered the alleged Honda City Car bearing Registration No.BWQ-161. Subsequently, the owner of the vehicle in question filed an application under Section 516- A Cr.P.C before learned Sessions Judge, Washuk at Basima (hereinafter referred as "the trial Court") for release of vehicle, initially the same was withdrawn and subsequently fresh application was filed, which was entered and allowed by the learned trial Court, vide order dated 23rd February 2024 ("the impugned order"), whereby the learned trial Court, while utilizing the powers and jurisdiction as an Ex-officio Justice of Peace directed the Commissioner, Rakhshan Division and the Deputy Commissioner of Washuk to initiate a criminal case by means of lodging FIR against the petitioner (Investigation Officer of the case in FIR No.11 of 2023 of Levies Station Basima, District Washuk under Sections 403 and 409 P.P.C).

4. Whereafter, the petitioner assailed the impugned order before this Court by means of filing instant petition, as such, the petition was admitted for regular hearing and notices were also issued to the State.

5. Learned counsel for the petitioner contended that the impugned order passed by the learned trial Court is against the law; that the learned trial Court has exercised the powers not vested to it and whilst doing so he travelled beyond his jurisdiction and authority; that the no complaint or application under Section 22-A Cr.P.C. was pending before the Court below, but despite such fact, the learned trial Court made directions to the higher authorities for initiating criminal case by means of lodging FIR against the petitioner.

6. Learned State Counsel strongly opposed the arguments so advanced by the learned counsel for petitioner and whilst supporting the impugned order contended that a well-reasoned order has been passed by the learned trial Court, which is not open for any interference by this Court.

7. Heard the learned counsel for parties and perused the record with their able assistance. The moot question involved in the instant matter pertains to interpretation of Section 22-A Cr.P.C. and the relevant provision is subsection (6) of Section 22-A Cr.P.C., which deals with the power of Ex-Officio Justice of Peace, hence for facilitation the same is reproduce herein below:

- "22A. Powers of Justices of the Peace. (1) A Justice of the Peace.....
- (2)
- (3)
- (4)
- (5)

(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."

8. The above cited provision of law has made it clear that the Ex-Officio Justice of the Peace may issue appropriate directions to the police authorities concerned, on a complaint regarding non-registration of FIR. Admittedly, in the case in hand no such complaint has been filed or pending before the Court below, thus the powers so exercised are beyond the scope and jurisdiction of learned Court below. Even otherwise, the matter pending before the learned trial Court was with regard to release of vehicle under Section 561-A Cr.P.C. and there was no complaint filed against the petitioner seeking directions for registration of FIR against him. Admittedly the Court below was exercising his powers as Judge, while the Ex-Officio exercises his powers on administrative side, thus he had absolutely no jurisdiction to simultaneously exercise the powers on judicial and administrative side as well. Perusal of impugned order passed by the learned trial Court reveals that the same is contrary to the legal norms and beyond the scope of Ex-Officio Justice of Peace, who while discharging a 'quasi-judicial' function is undoubtedly not performing the duties of a judge sitting under the canopy of justice. Nevertheless, he is fully competent to discharge his functions as Ex-Officio Justice of Peace, described within the Statute and he cannot travel beyond the same.

9. In the case in hand, since no complaint has been filed against the petitioner rather an application under Section 561-A Cr.P.C. for release of vehicle bearing Registration No.BWQ-161 was filed before the Ex-Officio Justice of Peace, wherein neither any complaint was filed or pending against the petitioner nor any such relief was sought against the petitioner for registering FIR against him. I am of the view that the impugned order passed by the learned Sessions Judge, Washuk at Basima in the capacity of Ex-Officio Justice of Peace without holding an enquiry and without giving an opportunity of hearing to the petitioner, has given directions to the higher hierarchy of the petitioner's department for lodging of FIR, which is contrary to the scheme of law. Besides, the Ex-Officio Justice of Peace is not a Judicial Magistrate, who can take cognizance upon his own knowledge or information communicated to him. The functions of Ex-Officio Justice of Peace are defined by the Hon'ble Supreme Court in a case titled as "Younas Abbas and others v. Additional Sessions Judge, Chakwal and others (PLD 2016 SC 581), wherein it is held as:

"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 Sections 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 subsection (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 Clauses (i), (ii) and (i) of subsection (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."

10. However, I am not in agreement with the learned counsel for the petitioner that no direction can be issued by the Ex-Officio Justice of Peace and he is not competent to pass an order against a Levies or Police Officer rather I am of the view that any order passed by a Sessions Judge in the capacity of Ex-Officio Justice of Peace should be respected as the same is passed by him; while performing a quasi-judicial function, but only in a case, when a complaint is made before him in writing for excess committed by a levies/police official/officer. Without any application or complaint before him, he cannot pass an order against any Levies/ Police Officer. In such a situation, it would be appropriate to provide the said Levies officer an opportunity to clarify his position by holding an inquiry by himself or through some other authority. It has further been observed that in this regard, any suggestion or direction given by the Ex-Officio Justice of Peace is required to be

respected similar to a judicial order and should be followed in letter and spirit, otherwise the person disobeying the same, may expose himself for appropriate action as per law.

Thus, in view of the observations made hereinabove, the petition is allowed and the impugned order dated 23rd February 2024 passed by the learned Sessions Judge, Washuk at Basima is set aside only to the extent of issuing directions for registration of FIR against the petitioner. However, any application or complaint within the meaning of Section 22-A Cr.P.C. is filed before the Court below, the same shall be disposed of in accordance with law.

JK/53/Bal.

Petition allowed.