

JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN, QUETTA

Constitution Petition No.2021 of 2023
(CC# 100107605327)

Raz Muhammad & others

Vs.

The SHO P.S. Killa Saifullah, and others

Date of hearing: 01.12.2025 Announced on: -12-2025

Petitioners by: Mr. Tahir Ali Baloch, Advocate.

State by: Mr. Kamal Hussain, State Counsel.

Respondent No.2
and 3 by:

Mr. Naeem Marri, Advocate.

JUDGMENT

Sardar Ahmad Haleemi, J. The petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**") with the following relief:

"It is, therefore, respectfully prayed that the order dated 27-10-2023 passed by the Ex-Officio Justice of Peace/ Sessions Judge, Killa Saifullah be set aside, and directions may be issued to respondent No.1 for registration of FIR against the accused persons and investigate the matter, with any other relief, in the interest of justice, equity and fairplay."

2. As per contents of the instant petition, on 27-09-2023, at about 03:00 pm, he returned home from the learned Sessions Court, Killa Saifullah, after attending proceedings in a criminal case. After offering prayers and beginning his meal, he heard the sound of firing from the street outside his house. The petitioner immediately came

out of his residence and found his brother, Niaz Muhammad, lying in a pool of blood. His other brother, Ikhtiar Muhammad, who was present at the scene, informed him that an X-Corolla vehicle arrived carrying four persons: Muhammad Hanif, Nasibullah, and two unknown accused. Further disclosed that the accused Muhammad Hanif opened fire on the deceased with a pistol, causing fatal injuries. After committing the offence, the accused persons fled from the scene. The petitioner asserts that the motive behind the incident was prior enmity, as the same accused persons had earlier fired upon another brother of the petitioner and his brother's wife, injuring them. The petitioner further averred that he can identify the two unknown accused persons upon confrontation. The petitioner approached respondent No. 1 (police) for the registration of an FIR, but respondent No.1 didn't take any action. Consequently, he filed an application under Section 22-A Cr.P.C. before the learned Ex-Officio Justice of Peace/Sessions Judge, Killa Saifullah. However, the learned Justice of Peace dismissed the petitioner's application under Section 22-A Cr.P.C., prompting the petitioner to file the present constitutional petition.

3. Learned counsel for the petitioner contended that the impugned order dated 27-10-2023 is illegal, arbitrary, and contrary to the settled principles of law, as the learned Justice of Peace failed to appreciate that the facts disclosed the commission of a cognizable offence, mandating registration of FIR; that the learned court below dismissed the application without recording evidence, without

affording proper hearing to the petitioner, and relied exclusively on the police report submitted by respondent No.1, which was biased, mala fide, and intended to extend undue favour to the accused persons; that the impugned order is a non-speaking, cryptic, and mechanical order that failed to consider the material placed on record, including affidavits of eyewitnesses and the existence of motive; that the accused persons are habitual offenders with several criminal cases registered against them. The police failed to act impartially, and the learned court below ignored this significant aspect, resulting in a miscarriage of justice. The police, being under a statutory obligation under Section 154 Cr.P.C., must register an FIR where information discloses a cognizable offence. The failure to issue directions for the registration of FIR violates the fundamental rights guaranteed under Articles 9, 10-A, and 25 of the Constitution; the impugned order suffers from illegality, irregularity, and impropriety, rendering it liable to be set aside. Lastly, prayed that this court may direct respondent No. 1 to register an FIR against the nominated accused and conduct a fair and transparent investigation.

4. Conversely, learned State Counsel representing the official respondents opposed the petition and contended that the impugned order was passed strictly in accordance with law and suffers from no infirmity; that the Justice of Peace reportedly rightly relied on the police report, which was based on a fair and comprehensive inquiry; that the facts presented did not disclose a cognizable offence by the nominated respondents; thus, no direction

for FIR registration was warranted; that an FIR had already been lodged against unknown assailants, and the petitioner's attempt to nominate the respondents was based on conjecture, personal animosity, and unsubstantiated assumptions; that the Investigating Officer had examined relevant witnesses, collected documentary evidence including CDRs and station attendance records, and concluded that no material existed to proceed against the nominated respondents; that under settled law, a Justice of Peace is not required to mechanically direct FIR registration based merely on allegations, particularly where the police inquiry finds the allegations to be false or motivated; that the constitutional petition was argued to be non-maintainable since the petitioner had alternate remedies, and no fundamental rights were violated; that the State Counsel prayed for dismissal of the petition as frivolous and misconceived.

5. Learned counsel for Respondent Nos.2 and 3 has vehemently opposed the petition and contended that the petitioner did not approach the court with clean hands, suppressing material facts and attempting to misuse constitutional jurisdiction for personal enmity; that they highlighted a previous criminal case lodged by the petitioner, arising from a separate police raid incident where the petitioner's brother had died, in which the respondents were acquitted due to insufficient evidence; that the present petition was characterized as a continuation of a mala fide campaign against the respondents; that the respondents produced attendance records and CDR data confirming their presence at locations far from the

incident, negating the petitioner's allegations; that they fully cooperated with the investigation and were taken into custody for verification. After examining all documentary and testimonial evidence, the Investigating Officer discharged the respondents under Section 169 Cr.P.C. for lack of evidence; that the petitioner failed to produce any admissible evidence linking the respondents to the incident; that the constitutional jurisdiction under Article 199 was said to be invoked only where fundamental rights are violated; in this case, the petitioner's actions were attempting to curtail the rights of the respondents, who are law-abiding police officials; that the petition was therefore alleged to be founded on mala fides, personal grudge, and previous litigation history, with no basis for interference.

6. We have heard the learned counsel for the parties and scanned the record. A perusal of record reveals that the petitioner seeks the registration of an FIR on account of his brother, Niaz Muhammad's murder, supported by the statement of an eyewitness, Ikhtiar Muhammad. Although the SHO lodged an FIR against unknown accused persons, however, the Investigating Officer did not record the supplementary statement of the complainant or the eyewitness. Contrary to that, the investigating officer discharged the nominated respondents under Section 169 Cr.P.C. without fully considering all relevant evidence. This approach reflects a one-sided and legally untenable exercise of discretion.

7. The contents of the impugned order passed by the learned Ex-Officio Justice of Peace manifest that it did not confine

itself to the question of FIR registration and discussed the merits of the case without taking into account the supplementary statements of the complainant and the eyewitness, which is a significant omission. In this context, the principles laid down in 2024 SCMR 1123 are instructive: under Section 22-A Cr.P.C., the Justice of Peace is not required to conduct a detailed investigation or determine the merits of a case, but must ensure whether the facts narrated in the application disclose a cognizable offence. If so, the Justice of Peace may direct the concerned SHO to take the complainant's statement and register an FIR. The role of the Justice of the Peace is therefore limited to vigilance and facilitation, ensuring that a complainant whose report has been refused by the police has a statutory right to register an FIR. Applying these principles to the present case, it is clear that a fair and impartial inquiry could not have been conducted without recording all relevant statements. The omission to record the statements of the complainant and eyewitness before discharging the nominated respondents renders the impugned order defective and calls for its setting aside to allow the investigation to proceed in accordance with law.

For the above reasons, C.P. No.2021 of 2023 is partly allowed, and the impugned order dated 27.10.2023 passed by the learned Ex-Officio Justice of Peace/Sessions Judge, Killa Saifullah, is set aside. The Investigating Officer is directed to take on record the supplementary statement of the petitioner and the statement of eyewitness Ikhtiar Muhammad. The investigating officer shall

proceed strictly in accordance with law, after duly considering all statements and material on record. This court makes it clear that this order does not constitute a determination of guilt or innocence of any party but ensures that the investigation is carried out fairly, transparently, and in accordance with the law.

Announced in open Court:
Quetta, on _____December, 2025

Judge

Judge

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