

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.4160 of 2018**

Mushtaq William Sotra  
**Vs**  
Additional Sessions Judge, Islamabad (West), etc.

Petitioner By: Mir Muhammad Ghufraan Khurshid  
Imtizai, Advocate.

Respondent No.2 By: Ch. Abdul Jabbar, A.A.G. with  
Naseem, Sub-Inspector, F.I.A.

Respondents No.4&5 by: Mr. Mudassir Hayat, Advocate.

Date of Hearing: 21.02.2020

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**GHULAM AZAM QAMBRANI, J.** The petitioner has  
filed the instant writ petition with the following prayer:-

*"Under the above mentioned circumstances, it is most humbly prayed that this writ petitioner may kindly be accepted and the order dated 10.10.2018 by respondent No.1 be set aside and direction may please be issued to respondent No.2 to lodge FIR against respondents No.3-5 in the best interest of justice.*

*It is further prayed that if in the presence of FIR No.277/18 P.S FIA another FIR is not suitable then the names of purposed accused/respondent No.3-5 may be include in the said FIR in the interest of justice.*

*Any other relief which this honourable court may deems fit may also be awarded."*

2. Briefly stated facts of the case are that the petitioner submitted an application Under section 22-B Code of Criminal Procedure (hereinafter be referred as "**Cr.P.C**") before respondent No.1 for registration of F.I.R stating therein that the proposed accused persons/respondents No.3, 4 & 5 (hereinafter be referred as "**respondents**") have committed serious fraud with the petitioner by preparing and handing over forged Visas of Canada to the petitioner and got money from him. The petitioner initially filed an application under Section 22-A, Cr.P.C. against the accused before learned Additional Sessions Judge-West, Islamabad, wherein a direction was issued to the Director General, FIA, to finalize the inquiry within a period of 01 month from the date of this order but no action was taken. On filing of second petition under section 22-B Cr.P.C before the learned Additional Sessions Judge-IX (West) Islamabad, comments were sought from respondent/ the Director General Federal Investigation Agency, which were filed, wherein it had been stated as under:-

*"On scrutiny of record it has been revealed that an enquiry No.PC-184/2018 is probed in FIA, AHTC, Islamabad on the complaint of intending immigrants against the petitioner for extortion of Rs.49,20,000/-. Approval for registration of case has been granted by the competent authority as his son Ashir Mushtaq has given two cheques amounting to Rs.49,20,000/- and two stamp papers from Mushtaq William regarding return of extorted amount Rs.49,20,000/-. Both cheques have been dishonoured by the concerned banks."*

3. After hearing the parties, learned Ex-Officio Justice of Peace (Additional Sessions Judge-IX, West Islamabad) passed the impugned order dated 10.10.2018, and made the following observation:-

*"6. It also transpires that an FIR No.277 dated 12.09.2018 under section 18, 22 EO & 489-F PPC has been registered in connection with the subject matter of the instant petition. This court is also apprised with an undertaking given by the present petitioner showing that son of petitioner Ashir Mushtaq has received an amount of Rs. 49,20,000/- from one Muhammad Ramzan for sending him to Canada and as surety couple of cheques have also been issued. Thereafter, the controversy culminated into registration of said FIR No.277/2018, in which present petitioner is also one of the accused. It is noteworthy that no plausible explanation could be advanced on behalf of the present accused with respect to execution of said undertaking."*

4. Learned counsel for the petitioner has contended that the impugned order passed by respondent No.1 is illegal and against the facts, therefore, the same is not tenable; that petitioner appeared before respondent No.2 and submitted all the documentary evidence, but even then, the F.I.R was not registered, thus miscarriage of justice has occurred.

5. Conversely, learned Assistant Attorney General vehemently opposed the contentions of learned counsel for the petitioner and argued that the petitioner twice filed petitions under section 22-A &

22-B Cr.P.C on the same subject but during the investigation, the petitioner was found to be involved in F.I.R No.277 dated 12.09.2018 and lastly requested for dismissal of the instant petition.

6. The learned counsels for the parties along with learned A.A.G have been heard and record perused with their able assistance.

7. A careful perusal of the record reveals that respondent No.2 carried out the Inquiry No.PC-184/2018 on the basis whereof, FIR No.277 dated 12.09.2018 under sections 18, 22, EO and 489-F of Pakistan Penal Code, 1860 (hereinafter referred to as "**PPC**") has been registered wherein the petitioner and his son Aashir Mushtaq are nominated.

8. It is necessary to mention here that in the case of Muhammad Bashir versus Station House Officer, Okara Cantt. And others (PLD 2007 SC 539), the Hon'ble Supreme Court of Pakistan has been pleased to observe as under:-

*"40. Therefore, in our opinion, the only jurisdiction which could be exercised by an Ex-officio Justice of the Peace under section 22-A (6), Cr.P.C. was 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 S.H.O. to record an F.I.R. without going into the veracity of the information in question, and no more. Offering any other interpretation to the provisions in question would be doing violence to the entire scheme of the Cr.P.C. which could not be permitted.*

*41. We are conscious of the fact that in pursuance of petitions filed under Article 199 of the Constitution, the High Courts, at times, did refuse to issue writs directing recording of F.I.Rs. Suffice it to say that the exercise of discretion under the said jurisdiction was not dependent only on an illegality committed by a competent authority but was also controlled by some other important considerations such as the seeker of a writ being an aggrieved person; availability of alternative remedies such as filing of a complaint etc. in criminal matters and the applicant being qualified, in equity, for the grant of the sought relief. The powers of the Ex-Officio Justice of the Peace under section 22-A (6) of the Cr.P.C. could, therefore, not be equated with the constitutional jurisdiction vesting in a High Court."*

9. In view of the above legal position, I am clear in my mind to observe that Ex-Officio Justice of Peace, under Section 22-A(6) Cr.P.C have to examine whether the information disclosed by the petitioner did or did not constitute a cognizable offence and if it did, then to direct the concerned S.H.O to register an F.I.R. The record shows that after registration of F.I.R No.77 dated 19.09.2018, the petitioner has been arrested and challan against him has been submitted before the learned trial Court. The record further reveals that the petitioner himself was allegedly found involved in receiving amount from some other persons for sending them to Canada for employment. One of the proposed accused namely Amin Shahzad has been declared as proclaimed offender in the case.

10. In view of the forgoing facts and circumstances, learned counsel for the petitioner has failed to point out any illegality or

irregularity in the impugned order dated 10.10.2018, calling for interference by this Court in exercise of its constitutional jurisdiction. Resultantly, the instant petition having no force, is **dismissed**.

~~Ghulam Azam Qambrani~~  
**Judge**

Announced in Open Court, on this 28<sup>th</sup> day of February, 2020.

**Judge**

*Rana. M. Ift*