

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.274 of 2020

Muhammad Yasir Aziz Malik
Versus
Superintendent of Police, Islamabad, etc.

Petitioners By:	Raja Yasir Farid, Advocate
Respondents No.3&4 by:	Mr. Imran Farooq, Advocate
State by:	Hafiz Mazhar Javaid, State counsel along with Mumtaz Baig, Sub-Inspector.
Date of Hearing:	24.02.2020

GHULAM AZAM QAMBRANI, J.:- The petitioner has invoked the Constitutional jurisdiction of this Court by filing instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 with the following prayer:-

"In view of above, it is most respectfully prayed that instant writ petition may kindly be issued and the order dated 14.01.2020 passed by the learned Ex. Officio Justice of Peace Islamabad (East) may kindly be set aside and directions may kindly be issued to the respondent No.2 to register an FIR on the application dated 26.12.2018 submitted by the petitioner against the said culprits / respondent No.3 & 4, in interest of justice.

Any other relief which this Hon'ble court deems fit and proper may also be awarded to the petitioner."

2. Briefly stated facts of the instant petition are that the petitioner filed an application under Section 22-A & B of Cr.P.C. before the learned (Ex-Officio Justice of Peace), Additional Sessions Judge (East)

Islamabad, for registration of F.I.R against respondents No.3 & 4 (hereinafter be called as "**respondents**") stating therein that the petitioner entered into an "*Iqrarnama*" for exchange of property with respondents No. 3 & 4. The petitioner in pursuance of the said Iqrarnama, transferred his house to the respondents, but they did not fulfil their part of obligation in terms of the Iqrarnama and had not transferred the plots in exchange of house of the petitioner. It has been further stated that the petitioner filed a civil suit against the above said respondents which is pending before the learned Civil Court, Islamabad and that respondents No.3 & 4, in his absence had taken away valuable articles lying in his house along with the construction material. It has been further mentioned that the petitioner is a resident of Lahore, when he came back on 25.12.2018, he found some persons were residing in the house who informed the petitioner that the respondents have taken away the articles.

3. The learned counsel for the petitioner argued that the petitioner filed an application for registration of F.I.R but in vain; despite hectic efforts respondent No.1 did not take any action; that the petitioner approached the Ex-officio Justice of Peace by filing a petition U/s 22-A of Cr.P.C. which was dismissed without application of judicial mind.

4. Conversely, the learned counsel for the respondents strongly opposed the contentions raised by the learned counsel for the petitioner and argued that relevant documents have not been annexed with the petition; that possession of the house was handed over to the respondents by the petitioner; the property has been transferred in the name of the respondents. Learned state counsel supported the impugned order.

5. The learned counsels for the parties have been heard and record perused with their able assistance.

6. Perusal of the record reveals that an agreement, dated 12.05.2018 was executed between the parties for exchange of their properties. The contents of *Iqrarnama*, dated 12.05.2018 show that pursuant thereto possession of respective properties was handed over to each other. The sale agreement is attested by the Sub-Registrar, Islamabad and the property was transferred in the name of the respondents. It is not the case of the petitioner that execution of *Iqrarnama* is a result of unlawful coercion and duress. Handing over of possession and transferring the property in the name of the respondents is admitted in the *Iqrarnama*, therefore, there is no question of commission of any cognizable offence by the respondents. Perusal of the contents of the application does not disclose commission of cognizable offence which would warrant interference with the well reasoned order of the learned Ex-Officio Justice of Peace.

7. It is a settled principle of law that the Ex-Officio Justice of Peace while seized of a petition under Section 22-A/22-B of Cr.P.C is not to act mechanically by issuing a direction for registration of a criminal case in each and every case, which have to be decided on its own peculiar facts and circumstances as has been held by the Hon'ble Lahore high Court, Lahore in case "*Mian Abdul Waheed vs. Additional Sessions Judge, Lahore and seven others*" [2011 P.Cr.L.J 438]. In any case, the allegations levelled against the accused persons by the petitioner cannot be addressed by this Court while exercising its extraordinary constitutional jurisdiction, as the same entail a factual inquiry.

8. For what has been discussed hereinabove, the learned counsel for the petitioner has failed to point out any illegality or irregularity in the impugned order calling for interference by this Court in its Constitutional jurisdiction. Resultantly, the instant petition having no force, is hereby **dismissed**.

~~Ghulam Azam Qambrani~~
Judge

Announced in Open Court, on 04-3 2020.

Judge

Rana. M. Ift