

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.937 of 2020

Sheikh Muhammad Hanif

Vs

The learned Justice of Peace (East), Islamabad & others.

Date of Hearing: 13.08.2020

Petitioner By: Naeem Hussain Advocate.

Proposed accused by: Waseem Ahmad Abbasi Advocate.

State by: Hammad Saeed Dar, State Council
with Muhammad Farooq SI.

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

“It is, therefore, respectfully prayed that the instant writ petition may kindly be accepted and the impugned order dated 11.3.2020 passed by the learned Justice of Peace may kindly be set aside and order for registration of criminal case against the culprits may kindly be passed, in the interest of justice.

Any other relief which this Hon'ble Court deems just and proper, may also be awarded.”

2. Briefly stated facts of the case as narrated by the petitioner are that he is a lawful owner in possession of the house No. 159, Street No. 08, Rawal Town, Islamabad, and his brother-in-law namely Muhammad Ajmal, was residing at the ground portion of the said house, with the mutual consent and understanding of the petitioner. Muhammad Arshad has occupied the said house in the capacity of a tenant whereafter it came into knowledge of the petitioner that Muhammad Ajmal (brother in law of the petitioner) has entered into an agreement with Muhammad Arshad against sale

consideration of Rs.5,500,000/- without the knowledge, consent and permission of the petitioner. After getting knowledge of bogus and fraudulent transaction, the petitioner has filed a civil suit and got status quo order to the extent of further alienation of the property in order to save his valuable rights, involved in the property. In spite of filing civil suits, he has also moved applications before respondents No.2 & 3, but to no avail due to malafide and connivance of respondents. Muhammad Arshad, with the collusion of Muhammad Ajmal has filed an application before respondents 2 & 3 in which a false and concocted story was narrated in order to pressurize the petitioner. That on 18.02.2020, the petitioner and Muhammad Arshad have filed separate petitions under Sections 22-A/22-B of Cr.PC against each other before the learned Additional Sessions Judge-III (East), Islamabad, who called for comments from respondents No.2 & 3. Learned Addl. Sessions Judge-III (East), Islamabad, after hearing the parties at length, keeping in view the comments filed by the police authorities, has declined to interfere in the matter and dismissed both the applications. Muhammad Ajmal sold out the valuable property of the petitioner to Muhammad Arshad without any lawful authority and committed criminal breach of trust, fraud and forgery. The petitioner alongwith his application has furnished documentary evidence in support of his allegation, but the same were not inquired into or investigated by the investigating agencies and only formal inquiry was initiated, hence this petition.

3. Learned counsel for the petitioner has contended that the order passed by respondent No.1 is not maintainable in the eye of law; that respondent No.1 gave unnecessary weightage to the comments filed by respondents 2 & 3 while passing the impugned order dated 11.03.2020; that learned respondent No.1 has ignored this important fact that the civil and criminal proceedings can run side by side and both are independent proceedings and there is no bar to initiate both the proceedings at once, at different forums. Next contended that respondent No.1 has miserably failed to consider the contents made in the application, which clearly disclosed the role, mode and manner of Muhammad Arshad and Muhammad Ajmal regarding commission of cognizable offences. The application filed

by Muhammad Arshad under section 22-A of Cr.P.C was false and based upon the malafide intention just to deprive the petitioner from his right. Further contended that the petitioner filed a civil suit restraining the further alienation of the property and later on with malafide intention just to pressurize, harass, blackmail and to put undue influence upon the petitioner to withdraw the civil suit, filed application under Section 22-A Cr.P.C, but respondent No.1 has ignored the stated facts and passed the impugned order dated 11.03.2020. Learned counsel for the petitioner has finally contended that the order passed by respondent No.1 is totally illegal, null and void, without any lawful justification and is liable to be set aside.

4. Conversely, learned counsel for the respondents opposed the contention of learned counsel for the petitioner and contended that the proposed accused has also filed a complaint under Section 3 & 4 of the Illegal Dispossession Act, 2005 against the petitioner which is still pending adjudication. Further contended that wife of the petitioner namely Naseem Bano entered into a lease agreement with Muhammad Ajmal (proposed accused) and the petitioner is a witness there; that the respondent purchased the said house from Muhammad Ajmal through Iqarnama dated 14.12.2019 with the consideration amount of Rs.55,00,000/- and paid the whole consideration to the said Muhammad Ajmal. Thereafter, on 31.01.2020 the petitioner alongwith 3/4 unknown persons forcibly entered into his house and threatened of dire consequences; that the respondent submitted an application to the SHO, Police Station Shahzad Town, Islamabad, with regard to the said occurrence and taking legal action against the petitioner and others. Lastly prayed for dismissal of the instant petition.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. Perusal of the record prima facie reveals that in the year, 2005 the petitioner had sold the disputed house to Muhammad Ajmal for a sale consideration of Rs.2,000,000/- and also executed an agreement in this regard. Further, on 14.12.2019 the said Muhammad Ajmal sold out the said house to Muhammad Arshad for sale consideration of Rs.55,00,000/-. Moreover, civil suits interse the

parties are pending adjudication before the competent Court of jurisdiction. Further a complaint under Section 3 & 4 of the Illegal Dispossession Act, 2005 is also pending adjudication. As per police report submitted before the learned Additional Sessions Judge, the petitioner is occupying first floor of the disputed house whereas the respondent Muhammad Arshad is occupying the ground floor of the disputed house. Hence the learned Additional Sessions Judge-III(East), Islamabad after evaluating the documentary evidence available on record has rightly dismissed the application filed by the petitioner through the impugned order.

7. 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:-

“ 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.

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.”

8. 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 impugned order is reproduced herein below:-

"From perusal of record and police report it transpires that petitioner himself has illegally occupied the house of the proposed accused, so, no cognizable offence is made out. Under these circumstances, no direction is required to be issued to the local police. Resultantly, the petition in hand needs no further consideration, thus the same is hereby dismissed. File be consigned to the record room after due completion/compilation."

9. 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 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 leveled against the proposed accused by the petitioner cannot be addressed by this Court while exercising its extra ordinary constitutional jurisdiction, as the same entail a factual inquiry.

10. For what has been discussed hereinabove, 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 **dismissed**.

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

Announced in Open Court, on this 19th day of August, 2020.

S.Akhtar

Judge