

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.283/2020
Jehanzeb Naseer
Versus
The State and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	12.01.2021	Raja Faisal Younas, Advocate for the appellant

Through the instant appeal, the appellant, Jehanzeb Naseer, impugns the order dated 25.09.2020 passed by the learned Judge-in-Chambers whereby writ petition No.2679/2020 filed by the appellant was dismissed.

2. In the said writ petition, the appellant had impugned the order dated 05.09.2020 passed by the learned *Ex-Officio* Justice of Peace, East-Islamabad whereby the appellant's petition under Section 22-A Cr.P.C. was dismissed. In the said petition under Section 22-A Cr.P.C., which was filed on 30.07.2020, the appellant had alleged that on 01.11.2019 at about 2:30 p.m. he had come to know that proposed accused persons Naseer Ahmed and Mst. Shaheen had dispossessed the appellant's real brother Khurram Naseer from house measuring 4 *marlas* situated at *khasra* No. 300,280, Al-Noor Colony *Nai Abadi*, *Mouza* Kot Hathial, Bhara Kahu, Islamabad ("the house in question"). It was also alleged that Mst. Shaheen hurled threats and abuses towards the appellant when he went at the house in question. The learned *Ex-Officio* Justice of Peace, after obtaining the police report, dismissed the appellant's petition vide order dated 05.09.2020, and observed that the dispute between the parties is of civil nature as such no cognizable offence is made out from the contents of the petition and that the appellant can file a private complaint, if so advised. The appellant assailed the

said order in writ petition which was dismissed vide impugned order dated 25.09.2020. In the said order, the learned Single Judge observed that an adequate and efficacious alternate remedy by way of filing a private complaint is available under the law.

3. Learned counsel for the appellant, after narrating the facts leading to filing of the instant appeal, submitted that the appellant moved applications ("proposed F.I.R.") dated 10.05.2020, 21.07.2020 and 22.07.2020 to respondents No. 3 to 5 for the registration of a case against the proposed accused; that the contents of the proposed F.I.R. disclosed commission of a cognizable offence but the local police reluctant to register the criminal case; that correctness of the allegation can only be determined at investigation stage after registration of the F.I.R.; that the learned *Ex-Officio* Justice of Peace exceeded its jurisdiction by suggesting filing of private complaint; and that the learned *Ex-Officio* Justice of Peace was only vested with the jurisdiction to see as to whether the petition disclosed commission of cognizable offence or not. In making his submissions, the learned counsel for the appellant placed reliance in the case of Muhammad Bashir Vs. Station House Officer, Okara Cantt. and others (PLD 2007 SC 539). Learned counsel for the appellant prayed for the appeal to be allowed and respondent No.5 be directed to register a criminal case against the proposed accused.

4. I have heard the contentions of the learned counsel for the appellant and have perused the record with his able assistance.

5. Having gone through the proposed F.I.R., it appears that the appellant's brother Raja Khurram Naseer entered into an agreement dated 06.09.2019 with one of the proposed accused i.e. Naseer Ahmed.

Through the said agreement, possession of the house in question had to be handed over to the said Raja Khurram Naseer. However, it is an admitted position that neither the appellant nor does his brother hold the title of the house in question. It is also alleged in the proposed F.I.R. that the proposed accused Naseer Ahmed had been delaying the transfer of the house in question in favour of the appellant's brother and eventually dispossessed the latter. The proposed F.I.R. also reflects that the accused were residing in the house in question along with the womenfolk.

6. The appellant's brother claimed to be the owner of the house in question on the basis of the *iqrarnama* agreement dated 06.09.2019 and that the possession of the house in question was taken forcibly from him by the proposed accused Naseer Ahmed. Admittedly, the house in question is in the name of the proposed accused Naseer Ahmad. Perusal of the said *iqrarnama* agreement shows that the suit house was to be transferred in the name of the appellant's real brother by the proposed accused Naseer Ahmad after the payment of remaining sale consideration to the said proposed accused. However, this did not happen to be so. Admittedly, the terms of the said *iqrarnama* agreement were not fulfilled in its original perspective as revealed through the decision of the reconciliation committee. Apparently, in the said *iqrarnama* agreement, there is nowhere mentioned that the possession of the suit house had been handed over either to the appellant or his brother Raja Khurram after receiving the earnest money by the proposed accused. However, as regards forcible taking over of the possession of the suit house, the same was to be handed to the appellant or his brother in pursuance of the said agreement after the fulfillment of its terms meaning

thereby in essence possession of the house in question was not handed over to the appellant or his brother. As such apparently there arises no question as regards forcible taking over of the possession of the suit house in the light of said *iqrarnama* agreement. In view of the abovesaid backdrop, I am not inclined to direct the learned *Ex-Officio* Justice of Peace as regards registration of the F.I.R. against the proposed accused. Along with the instant appeal, the appellant annexed the decision of the reconciliation committee, which shows that there has been a longstanding dispute between the appellant's brother and the proposed accused Naseer Ahmad. Therefore, the appellant's claim as regards forcible taking over of the possession of the house in question does not inspire confidence and at the most a civil dispute is made out from the bare perusal of the appellant's complaint as well as other material appended with the instant appeal.

7. In these circumstances where the allegations do not speak commission of a cognizable offence and pertain to a civil dispute the learned *Ex-Officio* Justice Of Peace cannot be expected to have issued directions for registration of criminal case in a mechanical manner. It is trite law that the powers of *Ex-Officio* Justice Of Peace under Section 22-A(6) Cr.P.C. are discretionary and demand application of mind. While interpreting section 22-A(6) Cr.P.C. in case of "Younas Abbas Vs. Additional Sessions Judge, Chakwal, Okara Cantt. and others" (PLD 2016 SC 581) a larger bench of the Hon'ble Supreme Court *inter alia* held as follows:-

"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 (iii) 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. Every lis before him demands discretion and judgment. Functions so performed cannot be termed as executive, administrative or ministerial on any account. We thus don't agree with the ratio of the judgments rendered in the cases of Khizar Hayat and others v. Inspector General of Police (Punjab), Lahore and others (PLD 2005 Lah. 470) and Muhammad Ali v. Additional I. G. (PLD 2015 SC 753) inasmuch as it holds that the functions performed by the Ex-officio Justice of Peace are executive, administrative or ministerial."

8. Additionally, we do not find any infirmity in the observation in the impugned order that the appellant, beside other alternate legal remedies, can avail an efficacious and adequate remedy by filing a private complaint under Section 200 Cr.P.C., if so advised. Therefore, in presence of the available alternate remedy extraordinary jurisdiction of this Court under Article 199(1)(a) (ii) of the Constitution cannot be invoked. Since the learned Single Judge-in-Chambers observed that the appellant can avail an alternate remedy by way of filing a private complaint under the law. In the event the appellant files a private complaint, the learned Court below while proceeding and deciding the said complaint shall be uninfluenced by the observations made herein above.

9. In view of the above, this appeal is dismissed in limine.

(LUBNA SALEEM PERVEZ)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan