

ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP 3704 — 2012.

Titled Umer Hayat Vs I. G. Police, Islamabad.

(a) Judgment approved for reporting

☒ Yes ☐ No

(b) Judgment any comment upon the Conduct of the Judicial Officer for Quality of the impugned judgment is Desired to be made.

Yes ☒ No

(In case the answer is the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

Initial of the Judge. J. M. H.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

W.P. No.3704-2012

Umer Hayat

V.

Inspector General of Police, Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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08.06.2015

Mr. Sher Afzal Khan, Advocate for  
petitioner.

Raja Khalid Mahmood Khan, Standing Counsel  
with Ghulam Abbas, SI with record.

Through the instant writ petition,  
following prayers have been made: -

*It is, therefore, respectfully prayed that the writ petition may kindly be accepted and the impugned order dated 19.10.2012 passed by learned respondent No.5 may kindly be declared illegal, void, unlawful and without lawful jurisdiction and the same may please be set aside in the interest of justice;*

*It is further prayed that the respondents No.1 to 4 may kindly be directed to register a case against the accused in the light of Annex-B, arrest him and deal him in accordance with law".*

2. Facts of the case are that one Muhammad Zubair was appointed as Driver on 03.05.2011 with Wada Clinic, Islamabad and he tendered a fake Driving License in order to get the job. He also took away Rupees One Lac from the clinic and disappeared. The matter was reported to the police, but no

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action was taken against said Muhammad Zubair. There-after, the petitioner filed a petition u/s 22-A & 22-B Cr.P.C. for registration of case against the accused, but same was dismissed vide impugned order dated 19.10.2012, hence this writ petition.

3. It is contended by the learned counsel for the petitioner that impugned order is against law and facts of the case which is liable to be set aside; that learned Additional Sessions Judge-II, Islamabad (East)/Ex-Officio Justice of Peace, without applying his judicial mind and the law on the subject, has passed the impugned order, which is not sustainable in the eye of law; that learned respondent No.5 did not call the report from respondent No.4 which was necessary for the just and proper conclusion of the case because he verified the driving license of the accused which was later on found fake; that learned respondent No.5 without appreciating the law laid down by the Hon'ble Supreme Court of Pakistan in PLD 2007 sc 539 has passed the impugned order which is a patent illegality in the eye of law; that learned respondent No.5 without taking into account the orders mentioned above passed the impugned order

which is a nullity in the eyes of law; that the accused Muhammad Zubair after impersonation himself a fake driver caused financial loss to Wada Clinic therefore the petitioner time and again requested the respondents to registered a case against the accused, but needful was not done hence the petitioner has been deprived of his fundamental right of getting the case registered against the accused; that the respondents are duty bound to conduct preliminary inquiry immediately after receipt of complaint against the accused, if information submitted makes out a cognizable offence, but no action was taken against the accused, which is against the law laid down in PLD 2007 SC 529 & PLD 2009 Lah. 232. Learned counsel has prayed for acceptance of this writ petition in view of prayers made therein.

4. On the other hand, learned Standing Counsel has opposed the grant of relief to the present petitioner in view of reasons given in the impugned order.

5. I have heard the parties and have perused the record.



6. It is observed that the learned Ex-Officio Justice of Peace is not required by law to form his opinion with regard to merits of the case therefore the last part of the impugned order is totally contrary to law. For convenience, the same is reproduced as under:-

*"4. The report of Police convinced me to hold that the alleged forged driving license has not been tendered by the respondent Muhammad Zubair before any authority, its genuineness or otherwise is still a mystery. Criminal litigation between the parties is also a fact as per record. Therefore, the application is dismissed. File be consigned to the record room after its due completion"*

6. Discussing the above portion of the impugned order, it is observed that if the genuineness or otherwise of the disputed document is still a mystery, it can only be resolved, when FIR is lodged and investigation is conducted. Without lodging FIR, formation of opinion by the learned Ex-Officio Justice of Peace is not in accordance with law, who should have confined himself only to the extent of issuance of directions, in case, if it appears from the statement of complainant that cognizable offence is made out.



7. The petitioner, being complainant, moved an application. On the report of SHO, who might have supported the adverse party i.e. why earlier, FIR was not registered, which is strengthening the case of present petitioner.

8. Principally, the learned Ex-Officio Justice of Peace has also not put himself into this controversy of making application and denial of police by receiving the same for lodging FIR. If SHO submits a report that application was never moved, it would not be incumbent upon learned Ex-Officio Justice of Peace to believe upon it in toto. The learned Ex-Officio Justice of Peace has to form his own opinion. The report of police does not mean that same was called to ascertain the real facts about the incident but same was called merely to ascertain whether application was moved or not. In case of denial by SHO, even directions could be issued for lodging FIR. If allegations against leveled in the FIR are proved to be false, there is a way to compensate the party adversely affected by initiating proceedings u/s 182 PPC, but if FIR is not lodged, there is no compensatory process and promptly the material required for the

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purpose of fair investigation is to be collected.

It is observed that registration of FIR is an expeditious way to provide justice, whereas direct complaint could be delayed for decades and is not to be considered as prompt justice.

9. There is an apprehension that material could be detected during investigation to prove into direct complaint. There is another aspect, if an opinion is formed that police is not going to support the complainant, there is a remedy to approach superior authorities for either party with regard to fair and impartial investigation by a honest and impartial investigating officer whereas, in other case, such facilities are lacking.

10. In view of above, this writ petition is allowed. SHO concerned is directed to record the statement of complainant/petitioner. If from the same, it appears that cognizable offence is made out, FIR be registered, promptly by applying relevant penal sections. In case, if it appears that false accusations have been leveled in FIR, action in accordance with law be taken by reporting the matter to the concerned Magistrate u/s 182 PPC.

11. It is made clear that investigation of the case does not mean that after registration of

FIR, the accused must be arrested. Investigation means collection of evidence helping to form an opinion by the Investigating Officer for submission of final report u/s 173 Cr.P.C. before the court of competent jurisdiction. Therefore, I.O. is not supposed to arrest the accused in any of circumstances after lodging FIR. He is further required to follow the procedure laid down in the Police Rules and may affect arrest after collecting tangible evidence against the accused persons.

(NOOR-UL-HAQ N. QURESHI)  
JUDGE

Approved for Reporting

JUDGE

 Zawar

Blue Slip added.  
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