

(Order Sheet)
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.515 of 2021

Sajid Iqbal
Vs
Ex-Officio Justice of Peace, etc.

S.No. of order/ proceeding	Date of hearing.	Order with signature of Judge and that of parties or counsel where necessary.
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(03)	23.02.2021	Mr. Muhammad Faheem Akhtar Gill, Advocate for the petitioner. Mr. Ahmed Abdul Rafey, Advocate for the respondents. Mr. Zohaib Hassan Gondal, State Counsel alongwith Kamal Khan, Assistant Sub-Inspector.
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Ghulam Azam Qambrani, J.:- Through this petition, the petitioner has challenged the order dated 21.12.2020, (hereinafter be referred to as “**impugned order**”), passed by the learned Ex-Officio, Justice of Peace/ Additional Sessions Judge-X, Islamabad-West, whereby, application under Section 22-A Cr.P.C., filed by petitioner was dismissed.

2. Brief facts of the petition are that the petitioner purchased land measuring more than 50 Kanal from one Khalid Bhatti and others against sale consideration and possession of 14 Kanal lands was handed over by one of the proposed accused Khalid Bhatti. After taking the possession on 16.04.2015, he started construction of the boundary wall with iron poles and barbed wires, also installed an iron gate and constructed a room over there. The petitioner has further averred that he kept an employee namely Raz Muhammad as watchman at the said land. Alleged on 28.11.2020, the proposed accused persons alongwith some unknown persons duly armed trespassed the boundary wall, issued serious threats to the above said watchman for leaving said land. The petitioner was informed by the watchman about the act of the

respondent, he immediately made a call to the local police about the said incident, the accused persons in presence of local police also issued life threats to the petitioner and used abusive language. That the respondents are members of Qabza Mafia. The accused persons took away the generator, water motor, bundle of barbed wires and some other articles lying at the land. The accused persons tried to dispossess the petitioner from the said land and damaged the valuable articles. The petitioner moved an application to the SHO for registration of a criminal case against the accused persons, but he refused to register F.I.R. After refusal of registration of a criminal case, the petitioner filed an application under Section 22-A Cr.P.C before the learned Ex-Officio Justice of Peace/ learned Additional Sessions Judge-X, Islamabad-West. After securing report from the concerned SHO and after providing opportunity of hearing, learned Ex-Officio Justice of Peace dismissed the application vide order dated 21.12.2020, hence instant petition.

3. Learned counsel for the petitioner contended that a cognizable offence committed by the respondents, therefore, the SHO was duty bound to register a criminal case against them and then to investigate the matter; that the respondent No.3/ SHO failed to discharge his duty, when from the report of petitioner, a cognizable offence was being made out, but the respondent being influential persons, he refused to register report under Section 154 Cr.P.C; that the learned Ex-Officio Justice of Peace also fell into error while, dismissing the petition under Section 22-A Cr.P.C; that from the facts and circumstances of the case, the learned Additional Sessions Judge-X, Islamabad-West, was required to direct the

respondent No.3 for registration of a criminal case; that unless a criminal case is registered, the police cannot collect evidence under the law, only contents of the complaint have to be seen in order to visualize whether, *prima facie*, cognizable offence has been committed, therefore, F.I.R in this regard was to be registered; that the respondent No.3 and learned Ex-Officio Justice of Peace have not acted in accordance with law, therefore, the impugned order dated 21.12.2020 may be set-aside and a direction be given to the respondent No.3 / SHO for registration of a criminal case against the accused persons.

4. *Per Contra*, learned State counsel assisted by the learned counsel for the proposed accused controverted the contention of the learned counsel for the petitioner and contended that about the said incident, F.I.R No.679/ 2020, had already been lodged at police station Golra Sharif, Islamabad, on the report of proposed accused Muhammad Sattar S/o Qadir Bakhsh wherein the petitioner is specifically nominated; that the land in-question is the ownership of the respondent/ accused; that infact, the petitioner alongwith his companions tried to dispossess the proposed accused person from the subject land, who were duly armed, entered inside and extended threats, the police also reached at the spot, keeping in view facts and circumstances of the case, on the report of Muhammad Sattar above-mentioned F.I.R was registered about the same incident; that two F.I.Rs cannot be registered about the same incident; that prior to registration of above F.I.R, the proposed accused persons have already filed a civil suit against the respondent for declaration and permanent injunction, wherein, the petitioner is a party in the suit. The learned Court of Civil Judge, Islamabad-West,

appointed a local commission, who after inquiry has also submitted a report, wherein, it was proved that the land in disputed was and is in possession of the proposed accused persons; that the said learned Court of Civil Judge has also passed an injunctive order dated 21.12.2018; that the petitioner with ulterior motives has tried to convert the civil litigation into criminal just to harass the proposed accused persons; that no offence has been committed by the proposed accused persons and learned Ex-Officio Justice of Peace has passed a well-reasoned order and lastly, urged for dismissal of the petition.

5. I have given anxious consideration to the contentions of learned counsel for the parties and have perused the available record with their able assistance. It is a settled law that each and every case is to be decided on its own peculiar facts and circumstances as laid down by August Supreme Court of Pakistan in its cases reported as “Trustees of the Port of Karachi V. Muhammad Saleem” (1994 SCMR 2213) and “State V. Mushtaq Ahmed” (PLD 1973 SC 418). In the case of Mushtaq Ahmed, the Hon’ble Supreme Court of Pakistan has been held as under:-

“Everything said in a judgment and more particularly in a judgment in a criminal case must be understood with great particularity as having been said with reference to the facts of that particular case.”

6. Perusal of the record reveals that the petitioner has filed an application to the respondent No.3/ SHO for registration of a criminal case against the proposed accused on 28.11.2020, while, on the same day, on the application of proposed accused Muhammad Sattar son of Qadir Bakhsh, F.I.R No. 679 of 2020, under Sections 447,511,148,149, 506 (ii), 109 P.P.C was already registered at the Police Station Golra

Sharif, Islamabad, against the petitioner. In support of his contention, the petitioner has failed to produce any evidence with regard to his possession over the land and also failed to prove that the proposed accused persons have committed the alleged offence. After registration of F.I.R No.679/ 2020, investigation was carried out and it was found that the proposed accused was in possession of the land. The record further shows that the proposed accused, Qadir Bakhsh and others, have filed a civil suit against the petitioner and has secured restraining order against him from the Court of learned Civil Judge-West, Islamabad, vide order dated 21.12.2018. Furthermore, a local commission was also appointed. During the arguments, learned counsel for respondent has placed the report of local commissioner on record, which depicts that the proposed accused was in possession of the subject land at the relevant time, meaning thereby, that there is a dispute of land in between the parties since long. During the pendency of the suit filed by Qadir Bakhsh, another F.I.R No. 74/2021 at Police Station Golra Sharif, Islamabad, was also registered against the petitioner by the proposed accused Qadir Bakhsh and civil suits have also been filed by the above-mentioned Qadir Bakhsh and Ashfaq Khan, which are pending against the petitioner. From the facts and circumstances of the case, it seems that the parties are in civil litigation over the landed property and two FIRs have already been registered against the petitioner. According to report of SHO, Police Station Golra Sharif, Islamabad, and report of Superintendent of Police, Investigation, Islamabad the petitioner just to divert the attention from the above said F.I.Rs and to pressurize the proposed accused persons have filed the application dated 28.11.2020 for registration of a criminal case;

when he was found not in possession of the said land comprising upon 14-Kanals and has failed to produce any cogent evidence about commission of theft or trespassing over the said land, therefore, the learned Ex-Officio Justice of Peace, Islamabad has passed a well-reasoned order, which does not warrant interference by this Court.

7. Further, 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 has 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 others" (2011 P.Cr.L.J 438). In any case, the allegations levelled against the proposed accused by the petitioner cannot be addressed by this Court while exercising its extraordinary constitutional jurisdiction, as the same entails a factual inquiry.

8. Keeping in view the facts and circumstances of the case, the learned Ex-Officio Justice of Peace has rightly dismissed the application filed by the petitioner under Section 22-A Cr.P.C.

9. For what has been discussed hereinabove, 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