

JUDICIAL DEPARTMENT

**Safdar Ali. Versus SHO P.S. Bahara Kahu,
Islamabad etc.**

Date of hearing: 18.02.2011

Petitioner by: ***Raja Rizwan Abbasi, Advocate for the petitioner.***

Respondents by:- ***Raja Mujahid, learned counsel for respondents No.3 to 6.***
Raja Muhammad Yasin, learned Standing Counsel.
Mr. Ishaq SI with record.

Riaz Ahmed Khan, J:-

This order is directed to dispose of

Writ Petition No.2711 of 2009.

2. Brief facts of the case are that petitioner lodged report with SHO P.S. Bhara Kahu, Islamabad on 13-12-2008. In the application, the petitioner submitted that he is owner of land measuring 02 Kanals 05 Marlas bearing Khasra No.2256/2 and 91/2, situated in Mouza Pind Beghwal, Islamabad. Eight shops have been constructed over the said land, one shop is in possession of Gul Zarif as tenant, three shops and a hall in possession of Muhammad Folad respondent No.3 herein; whereas two shops are vacant, wherein furniture of the petitioner was lying. The petitioner in the said application alleged that on 06-12-2008, he alongwith his nephew while driving in a car from the road saw that Muhammad Folad armed with repeater gun, Ayaz armed with Kalashnikov, Zahid armed with 30 bore pistol, Hafiz armed with 30 bore and 5/6 other persons armed with sticks were cutting the locks of his shops. When he alongwith his nephew reached near

them, they threatened to kill them, so he left the place. According to the petitioner, he was heart patient, so after seven days on 13-12-2008 filed this report. The SHO entered the report in the Daily Register. The petitioner thereafter filed an application before S.S.P. Islamabad on 16-05-2009 and accordingly an inquiry was conducted by D.S.P. which is dated 14-07-2009. The petitioner in the meanwhile submitted application before the I.G. Police on 10-07-2009 and then petition under Section 22-A and 22-B Cr.P.C before the Court of Sessions Judge / Justice of Peace, Islamabad on 17-07-2009 for registration of case against respondents No.3 to 6. Learned Addl: Sessions Judge / Justice of Peace vide order dated 22-07-2009, came to the conclusion that the dispute between the parties is one of civil nature, therefore, declined to order registration of case. The petitioner thereafter filed the present writ petition.

3. Learned counsel for the petitioner contended that according to law the SHO on receiving information regarding the cognizable offence was bound to register FIR and had no authority to determine truthfulness or falsehood of the information received by him. Learned counsel further contended that under Section 22-A Cr.P.C., Justice of Peace was required to see as to whether the SHO concerned had acted in accordance with law or not. In other words, learned Justice of Peace was to see that the information received by the SHO constituted a cognizable offence or not and if it was so he was to order the SHO to register a case. In support of his contentions, learned counsel relied on P L D 2007 S.C. 539.

4. On the other hand, learned counsel for the respondents contended that the inquiry conducted by the SHO as well as by the D.S.P. revealed that the dispute between the parties was one of civil nature and that the alleged occurrence had never taken place. Furthermore, the report was lodged after about seven days of the alleged occurrence, therefore, learned Justice of Peace was justified in holding that there was no need to register a case.

5. I have heard the learned counsel for the parties and have also perused the record.

6. Section 154 Cr.P.C deals with information of cognizable offences. This Section provides that SHO concerned on receiving the information regarding the alleged offence has to see, as to whether the offence is cognizable or otherwise. If, he comes to the conclusion that the information is regarding cognizable offence then he is bound to register a case. The SHO concerned has no authority to exercise the powers of a Court. Even if it is presumed that the actual dispute between the parties is one of civil nature and same is to be decided by the Civil Court then the SHO concerned by refusing the registration of case and deciding the main issue, has exercised the powers of a Civil Court. It may also be true that the information provided by the petitioner is false but even that alleged falsehood would not oblige the SHO to refuse the registration of case. The accused in case of a false report will have other remedy under the law to proceed against the person who has lodged false report against him. As such the inquiry conducted by the SHO or D.S.P., refusing the registration of case is totally illegal and of no effect.

7. The learned Addl: Sessions Judge / Justice of Peace accepted the version put forward by the SHO and the inquiry conducted by the D.S.P., gave decision that the dispute between the parties is one of civil nature. The learned Addl: Sessions Judge in a cursory manner decided the whole issue that it is a civil case. For the sake of convenience, impugned order is reproduced as under:-

22.7.2009

Present: Mr. Asad Mehmood Khokhar Advocate learned
counsel for the petitioner.

Police report has been submitted by Muhammad
Akbar S.I.

Heard. Police report perused.

2. According to the police report, no cognizable
offence has been found in this case rather possession of the
disputed shop is with Muhammad Folad (against whom
registration of case is being sought for) for the last about 4/5
years on account of sale of the same to him in lieu of
Rs.14,00,000/- out of total sale consideration of Rs.17,00,000/-
and civil litigation between the parties is also pending

adjudication whereas 05 Marlas of the disputed land has also been transferred in his name.

3. In view of the above, this petition stands disposed of while relying upon Khizar Hayat's case PLD 2005 Lahore 470 and 2008 YLR 2301. File be consigned to record room after its due completion and compilation within prescribed time.

8. Learned Addl: Sessions Judge, although has referred two judgments, yet it seems that the learned Addl: Sessions Judge / Justice of Peace has misconceived the principle laid down in the two judgments. In the judgment reported in **PLD 2005 page 470**, historical prospective of Section 22-A Cr.P.C has been given. In addition to other conclusions, it was held by their lordships that powers and duties of Justice of Peace or Ex-officio Justice of Peace in Pakistan do not involve any jurisdiction, which can be termed as judicial and the functions performed by him are merely administrative and ministerial in nature and character.

9. It was further held that the proceedings before Ex-officio Justice of Peace under Section 22-A(6) Cr.P.C are essentially summary in character. In such proceedings notice, if required may be issued only to the concerned police officer and not any private party as no direction adverse to any private party is to be issued in such proceedings. A direction to the relevant officer regarding activating any legal remedy of the complaining person cannot be termed as direction adverse to another party. Even a direction to police officer to comply with the mandatory provision of law cannot be called a direction adverse to another person.

10. Similarly in judgment reported in **2008 YLR 2301**, it was held that under Section 22-A(6) Cr.P.C. Justice of Peace has to decide after examining information as to whether or not any cognizable offence was made out and the order is to be passed without holding trial or mini trial of the controversy.

11. Keeping in view the principles laid down in the above said two judgments as well as the judgment of the Hon'ble Supreme Court of Pakistan reported in **PLD 2007 S.C. 539**, it becomes clear that Justice of Peace in a petition u/S 22-A (6) Cr.P.C. does not perform judicial function, rather he performs administrative

function, so Justice of Peace in exercise of his powers under Section 22-A(6) Cr.P.C is not required to pass a detailed judicial order. Since requirement of law is that even administrative order should be a speaking order, so the order passed by the Justice of Peace must be a speaking order. But since he is not required to decide the rights of the parties, so in that sense he is not required to pass judicial judgment. It is also to be noted that Justice of Peace while deciding a case u/S 22-A & B Cr.P.C is not required to issue notice to the persons against whom registration of case is required. In the ordinary circumstances, if a person wants to file report against another person, then the person against whom report is to be lodged cannot be called and be asked to explain his position. As such Justice of Peace is only required to summon the concerned police officer, so that a direction may be issued to him to register a case provided, the Justice of Peace comes to the conclusion that on the basis of available information cognizable case is made out. Since the Justice of Peace does not exercise judicial powers, so there can be no question of holding inquiry or deciding the civil rights of the parties.

12. In the circumstances, I accept this petition, set aside the order of learned Addl: Sessions Judge dated 22-07-2009 and direct the respondent / SHO P.S. Bahara Kahu, Islamabad to register a case against the respondents Nos.3 to 6 namely Muhammad Folad, Ayaz Wali, Zahid and Hafiz in accordance with law.

Order accordingly.

(Riaz Ahmed Khan)
Judge

Asad K/*

Approved for reporting.