

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**(JUDICIAL DEPARTMENT)**

**Writ Petition No.2800/2020**

Malik Muhammad Zubair  
Versus  
The S.S.P, Islamabad, & others

Petitioner by:	Mr. Tariq Mehmood Mughal, Advocate
Respondents 4 to 13 by:	Syed Muhammad Ali Bukhari Advocate
State By:	Mr. Hammad Saeed Dar, State Counsel alongwith Khalid Awan, Sub-Inspector.
Date of Hearing:	03.12.2020

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**GHULAM AZAM QAMBRANI, J:-** Through this petition, the petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer:-

*“In the abovementioned circumstances, it is therefore, respectfully prayed that the instant writ petition may please be accepted and the said impugned order dated 04-09-2020 may kindly be set aside and the petition of the petitioner under Section 22-A Cr.P.C may please be accepted and respondent No.1&2 be directed to register the criminal case/FIR against the respondents No. 4 to 12/proposed accused as prayed in the application filed by the petitioner in the office of respondent No.1&2 in the best interest of justice.*

*It is also prayed before this Honourable court that direction for legal action against respondent No. 13/ Lied witness, for giving a false statement with intent to deprive the petitioner from his legal remedy, may please be awarded.*

*It is also prayed that any other relief, which this Hon’ble Court deems fit and proper, may also be awarded.”*

2. Briefly stated facts of the petition are that the petitioner filed an application to respondent No.2 on 29.07.2020 alleging therein that on 29.07.2020 at about 09:45 a.m., he was on duty. The respondents No.4 to 13 entered in their house. After abusing and

thrashing his mother and sister also caused damage to the different articles to the tune of Rs.60,000/- to 70,000/-. It was further alleged that the private respondents committed theft by taking away the household articles. The motive behind the occurrence was that his wife left the house and was not ready to reside with him and the parents of his wife are not allowing him to meet the minors. Since, no F.I.R was lodged on application of the petitioner, therefore, he moved an application under section 22-A Cr.P.C to the learned Ex-Officio Justice of Peace, which was dismissed vide order dated 04.09.2020, hence this petition.

3. Learned counsel for the petitioner has contended that respondent No.2 being a public functionary is required to act in accordance with law and to protect the rights of the petitioner; that the private respondents No. 4 to 13 have committed cognizable offence and are liable to be prosecuted. He further submits that the impugned order passed by the learned Ex-Officio Justice of Peace, is contrary to the facts and circumstances of the case; that before registration of F.I.R inquiry conducted by respondent No.2 is against the law; that the statements of witnesses were not recorded by the respondent and the report submitted before the learned Ex-Officio Justice of Peace was against the facts on the basis whereof the learned Ex-Officio Justice of Peace dismissed the petition which order is liable to be set aside.

4. Conversely, learned State Counsel assisted by learned counsel for the respondents has opposed the contention of petitioner and submitted that the petitioner is not an eye witness of the occurrence; that no specific role was given to any of the respondent; that the affidavits attached with the petition have been sworn after passing of the impugned order; that the contents of affidavits are altogether different from the story mentioned in the application dated 29.07.2020; that no evidence was produced before the learned Ex-Officio Justice of Peace to justify the allegation even no such affidavit of any witness was placed before it; that no such occurrence ever occurred; that the petitioner himself pronounced talaq to his wife, she alongwith minors left the house and had already taken the dowry articles and, therefore, the learned Additional Sessions

Judge/Ex-Officio Justice of Peace rightly dismissed the petition. Lastly, urged for dismissal of petition.

5. Arguments heard, record perused.

6. Perusal of the record reveals that the learned Ex-Officio Justice of Peace directed respondents No.1 & 2 for submission of report, which reveals that the petitioner had pronounced talaq to his wife. The respondents are brother-in-law and close relatives of the petitioner. During the probe by the police, the petitioner admitted the fact that he pronounced talaq to his wife and this fact was admitted by the petitioner before the learned trial Court and this fact is also evident from the statement of one Ghulam Sabir wherein he has stated that Zubair has pronounce Talaq through message on phone and orally. Further, in reply to the application under Section 22-A, Cr.P.C. filed by the petitioner before the learned Justice of Peace, Khalid Javaid, Sub-Inspector submitted a report stating therein that during his visit at the house of the petitioner, he found that rough papers and useless articles were lying scattered in the rooms and on inquiry, it was told that wife of the petitioner has taken away her household articles from the house of the petitioner after he had pronounced Talaq to his wife and this fact has been admitted by Mst. Shabana. There is no evidence on record that the respondents unlawfully entered into the house of petitioner, committed theft or caused damage to the household articles. The impugned order was passed on 04.09.2020. No evidence was produced before the learned Ex-Officio Justice of Peace, while the affidavits of some witnesses have been attested on 24.09.2020. Submission of affidavits after passing of impugned order is not beneficial to the petitioner at this stage. In the facts and circumstances, *prima facie*, no cognizable offence is made out, as such, the learned Ex-Officio Justice of Peace has passed a well-reasoned order.

7. It is pertinent to mention here that in the case of "Muhammad Bashir v. Station House Officer, Okara Cantt and others" (PLD 2007 SC 539) the Hon'ble Supreme Court of Pakistan has held as under:-

*"41. 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 FIRs. 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 consideration 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 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. 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 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 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 extraordinary constitutional jurisdiction, as the same entail a factual inquiry.

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 **dismissed**.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

*Announced in open Court on this 05<sup>th</sup> of January, 2021.*

**JUDGE**

S.Akhtar