

Judgment Sheet
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT

Writ Petition No.3072 /2012

(Ali Asghar. Vs. Syed Zafar Hussain Shah etc.)

JUDGMENT

Date of hearing 28.09.2012.

Petitioner by Ch. Abdul Aziz, Advocate.

Respondent by: Ch. Hafeezullah Yaqoob, Advocate for the
respondent No.1/ complainant.

Mr. Tariq Mahmood Jahangiri, Deputy
Attorney-General.

Iftikhar S.I.

IQBAL HAMEEDUR RAHMAN, C.J:- Through the instant Constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 read with Section 561-A Cr.P.C. the petitioner seeks suspension of order dated 14.09.2012 passed by the learned Justice of Peace/Additional Sessions Judge (East), Islamabad whereby he has ordered the local police for registration of F.I.R. against the petitioner on the application under Section 22-A Cr.P.C. filed by respondent No.1.

2. The facts tersely revealing from the instant petition are that on 13.07.2012 at about 9 am, Zafar Ali Shah and Takmeel Shah alongwith 10 unknown persons armed with deadly weapons trespassed into the land owned and possessed by the petitioner situated in Khasra No.2361 at Moza Jigjot and by extending life threats to the guard of the petitioner, uprooted the pickets from petitioner's land and took away all the articles with them. The petitioner moved an application before the local police regarding the occurrence but in vain. Subsequently, the petitioner approached the learned Justice of Peace, Islamabad who accepted the application of the petitioner under Section 22-A Cr.P.C. and F.I.R. was lodged and registered against respondent No.1 and others. As a counter blast to the same and in order to create a ground to wriggle out their criminal liabilities respondent No.1 also filed an application for registration of criminal case against the petitioner regarding the same occurrence, firstly before the police and thereafter, before learned Justice of Peace, Islamabad under Section 22-A Cr.P.C. which was accepted vide impugned order i.e. order dated 14.09.2012, for lodging a criminal case against the petitioner and others. Hence, the instant petition.

3. Learned counsel for the petitioner has contended that respondent No.1 had directly approached the SSP, Islamabad for registration of the criminal case against the petitioner instead of approaching the local police, as such, the procedure adopted by respondent No.1 was illegal; that the petitioner had produced all the documents regarding his title of land but respondent No.1 failed to produce even a single document to prove his ownership and possession over the said land and on the basis of the same F.I.R. No.73/2012 had been lodged against respondent No.1 and others; that the petitioner in the said FIR has not alleged that any firing has been made or anyone has been injured during the occurrence. That the local police has received two applications one from the petitioner side and the other from respondents No.1's side and accordingly recorded *rupt* No.43 dated 13.07.2012 on the application of respondent No.1 thereafter, the local police visited the place of occurrence and found no armed person or empties and even no alleged injured persons were produced before the police, therefore, as per report dated 17.07.2012 the local police found the occurrence alleged by respondent No.1 as false and concocted one; that the learned Justice of Peace, Islamabad while passing the impugned order has not taken into consideration the said report of the local police negating the

allegations of respondent No.1; that respondent No.1 is not the owner of the land but only a watchman; that respondent No.1 is also running a business of property in the name and style of "*Real Estate*" and *mala fidely* obtained the impugned order dated 14.09.2012 against the petitioner in connivance with the alleged owner of the land who has neither appeared before the local police nor before any Court rather he is living abroad. That the provisions of Section 154 Cr.P.C. are not to be read in isolation rather these are to be read in conjunction with the provisions contained in Section 157 Cr.P.C. and Chapter-24 Rule 4 of Police Rules, 1934; that the local police has recorded reasons in the daily diary for non-registration of respondent No.1's F.I.R. against the petitioner; that no reason has been given in the impugned order while accepting application of respondent No.1; that the learned Justice of Peace, Islamabad has passed the impugned order without applying its judicial mind and without keeping in view all the facts and circumstances coupled with the report of local police, as such, the same is not in accordance with law; that the impugned order has been passed in the capacity of Additional Sessions Judge rather than as Justice of Peace, therefore, liable to be set aside for this very reason alone. Learned counsel, while relying upon the cases of Ch. Shah Muhammad .vs. S.H.O.

Rahimyer Khan and 2 others (1977 P.Cr. L. J. 2 [Lahore]) and Muhammad Mushtaq. Vs. Additional Sessions Judge, Lahore and others (2008 YLR 2301 [Lahore]) vehemently contended that the impugned order is liable to be set aside.

4. Learned counsel for respondent No.1 has vehemently controverted the arguments advanced by the learned counsel for the petitioner and contended that Khasra No.2361 referred to by the petitioner is neither mentioned by respondent No.1 in his application before the police nor in application under Section 22-A Cr.P.C. before the learned Justice of Peace; that learned counsel for respondent No.1, while producing copies of certain documents contended that respondent party is owner in possession of the said land and it was the petitioner who illegally dispossessed respondent No.1; that prior to the petitioner respondent No.1 filed application before the police for registration of F.I.R. and being unsuccessful before the local police filed application under Section 22-A Cr.P.C. That prior to the application of the petitioner for registration of F.I.R. before the local police, *rupt* No.43 of respondent No.1 had been recorded which was prior to *rupt* No.45 of the petitioner; that both the applications under Section 22-A Cr.P.C. filed by the petitioner as well as respondent No.1 were accepted and

registration of criminal cases had been allowed in both the petitions; that learned Justice of Peace keeping in view the above facts and circumstances passed the impugned orders dated 14.09.2012 giving cogent reasons, as such, the petitioner has got lodged the F.I.R. against respondent No.1 and others as a counter blast. Learned counsel has relied upon the case of Muhammad Bashir. Vs. Station House Officer Okara Cantt and others (PLD 2007 Supreme Court 539).

5. Learned Deputy Attorney-General has adopted the arguments advanced by the learned counsel for respondent No.1 and prayed for dismissal of the petition.

6. Arguments of learned counsel for the petitioner and learned counsel for respondent No.1 heard. Record made available on the file perused.

7. Admittedly, both the parties i.e. the petitioner and respondent No.1 filed separate applications for registration of criminal case against each others before the police. The petitioner had alleged in his application that respondent No.1 dispossessed him illegally from the land owned and possessed by him whereas on the other hand respondent No.1 also alleged the same version but case was not registered by the

local police on their applications. Subsequently, both the parties approached the Court of learned Justice of Peace, Islamabad by filing separate applications under Section 22-A Cr.P.C. Learned Justice of Peace sought comments from the local police and accepted both the applications on the same day i.e. 14.09.2012 directing the SHO P.S. Bani Gala, Islamabad for registration of F.I.Rs by accepting both the petitions under Section 22-A Cr.P.C. of the petitioner as well as that of respondent No.1.

8. No doubt as per Section 154 Cr.P.C. and also the judicial pronouncements it has been held that the local police has no power to first investigate the matter and then register the criminal case. But when the matter regarding registration for criminal case is subjudice before the *ex-officio* Justice of Peace, he is required to take into consideration the complaint including facts and circumstances of the case and also the report of the police while deciding the application under Section 22-A Cr.P.C rather than deciding the same in a mechanical manner without giving any reason for allowing registration of criminal case, in the instant case it appears that both the orders for registration of criminal cases on the applications of the petitioner as well as respondent No.1 under Section 22-A

Cr.P.C, have been passed in mechanical manner. In view of the same, two FIRs with regard to the same allegation of taking possession forcibly of the same land cannot be registered. As such, the learned Justice of Peace at the most could have ordered for registering of F.I.R. by accepting one of the petitions under Section 22-A Cr.P.C. of either the petitioner or respondent No.1 and further if the other petition under Section 22-A Cr.P.C. was to be accepted then only a cross-version could be ordered to be recorded.

9. In the above perspective, it appears that the learned Justice of Peace while deciding both the applications under Section 22-A Cr.P.C for the petitioner as well as of respondent No.1 has passed a mechanical order without application of legal mind. The learned Justice of Peace was fully competent to examine all the material brought before him including the police reports and thereafter with full application of legal mind should have passed appropriate order for lodging of criminal case. Allowing both the applications of the petitioner as well as of respondent No.1 in mechanical manner has given rise to complications as to whose F.I.R. is to be registered. The learned Justice of Peace before passing any order under Section 22-A(6) Cr.P.C is expected and required to scrutinize

all the material available and in this regard should also have taken the police report into consideration. There was no bar to him in taking into consideration of the same. In the instant case the learned Justice of Peace while passing the impugned order appears to have ignored the said material available before him and in a mechanical manner had passed the impugned order dated 14.09.2012. In view of the same the impugned order is set aside. In this regard I seek guidance from the judgment reported as Muhammad Mushtaq. Vs. Additional Sessions Judge, Lahore and others (2008 YLR 2301 [Lahore]) wherein it has been held as under:-

“A combined examination of Section 154 Cr.P.C., 22-A(6) Cr.P.C. and the case law laid down by the Apex Court and the Full Bench of this Court, referred to above, would show that an Ex-officio Justice of the Peace before whom an application under Section 22-A(6) Cr.P.C. has been laid seeking a direction to the S.H.O. concerned for registration of a case is not expected and required to allow the request of the complaining person mechanically blindly and without application of legal mind. The Apex Court held in an express term that it was the duty of Ex-officio Justice of the Peace to examine whether the information did or did not constitute a cognizable offence. In other words the Ex-officio Justice of the Peace is competent to examine the complaint obviously with full application of legal mind and is not supposed to accept

and believe the same as gospel truth. In case Ex-officio Justice of the Peace after examination of the complaint with full application of legal mind comes to the conclusion that the allegation set up by the complaining person contradictory or vague or barred by law or offensive to the public policy and accepted standards of morality, he may be legally justified to turn down the request for registration of a case.

I am not in agreement with the learned counsel for petitioner that the august Supreme Court of Pakistan has restrained Ex-officio Justices of the Peace from examination of complaints placed before them under Section 22-A(6) Cr.P.C. However, such examination cannot be and should not be with the yardstick of trial Court. The office of Ex-officio Justice of the Peace is a legal forum. The complaints against an action or inaction of the police are filed by the aggrieved person before its legal forum, which performs administrative and ministerial function subject to scrutiny by superior Courts of Pakistan having Constitutional, supervisory and inherent judicial jurisdiction. Any order passed by an Ex-officio Justice of the Peace is subject to scrutiny on judicial side by the superior Courts of the Pakistan, therefore, the administrative legal forum is required to dispose of the applications under Section 22-A and 22-B, Cr.P.C. by means of speaking and well reasoned orders in the light of available material without holding trial or mini trial of the controversy.”

10. Before parting with this judgment it is observed that at present it is an admitted position that F.I.R. No.73/2012 dated 17.09.2012 under Section 506(ii)/379/511/447 P.P.C. of the petitioner against respondent No.1 and others stands registered. It is also apparent from the record that both the parties have levelled almost the same allegations against each others. Since F.I.R. No.73/2012 has already been registered, therefore, respondent No.1 could at the most get recorded his cross-version in the said F.I.R. or in alternate respondent No.1 may file a private complaint before the Court of competent jurisdiction, if so advised.

11. In view of the above, the impugned order dated 14.09.2012 is set aside and the instant petition stands accepted.

CHIEF JUSTICE

M Naveed