

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No. 261/2020
Muhammad Islam
Versus
Additional Sessions Judge, Islamabad-West, etc.

Petitioner by: Sardar Nisar Ahmad, Advocate,
Respondents 1 to 3 Syed Shahbaz Shah, State Counsel with
by: Shahzad Rafique ASI.
Respondents 4&5 by: Mr. Ahmad Nawaz Bhatti, Advocate,
Date of Decision: 20.08.2020.

FIAZ AHMAD ANJUM JANDRAN, J: Through the instant writ petition, petitioner assails order dated 03.01.2020, passed by the learned Additional Sessions Judge/Ex-officio Justice of Peace, Islamabad-West, whereby application under Sections 22-A&B Cr.P.C, filed by the petitioner has been dismissed.

2. Learned counsel contends that in case of a report regarding commission of cognizable offence, the local police is under obligation to proceed in terms of Section 154 Cr.P.C and holding of inquiry before registration of FIR is not permissible under the law; that application moved by the petitioner, on the face of it, discloses commission of a cognizable offence by the proposed accused, therefore, there was no justification to reject the application at its inception.

3. Learned counsel further contends that the observations rendered by the learned Ex-officio Justice of Peace amounts to judgment before trial and are liable to be set-aside.

4. As against above, learned State Counsel contends that during initial inquiry it was found by the police that no cognizable offence was made out, therefore, application for registration of FIR could not be processed. It is further asserted that the order impugned is well reasoned and does not call for any interference.

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5. Heard the learned counsel for the petitioner, learned State Counsel and examined the record.

6. It is settled principle that the learned Ex-officio JOP is vested with the powers to issue directions for registration of FIR in case there is a report regarding commission of a cognizable offence. At the same time, it is mandatory that the powers should not be exercised sparingly rather with application of judicial mind. The Hon'ble Apex Court in case reported as **Younas Abbas & Others Vs Additional Sessions Judge Chakwal & Others (PLD 2016 SC 589)**, has elaborated the role of Ex-officio JOP in following terms:-

'Functions performed by the Ex-officio Justice of Peace were not executive, administrative or ministerial inasmuch as he did not carry out, manage or deal with things mechanically. Such functions as described in clauses (i), (ii) and (iii) of section 22-A(6), Cr.P.C., were quasi-judicial as Ex-officio Justice of Peace entertained applications, examined the record, heard the parties, passed orders and issued directions with due application of mind. Every lis before him demanded discretion and judgment. Functions so performed could not be termed as executive, administrative or ministerial on any account.'

7. As expounded by the august Supreme Court, the powers exercised by the Ex-officio JOP are quasi judicial that includes entertaining applications, examination of record, hearing the parties and to pass appropriate directions with due application of mind. Every complaint/ application warrants discretion and judgment. It is thus held that application of judicial mind, examination of record and passing of directions with due application of mind are *sine qua non* for exercising powers under Section 22-A(6) Cr.P.C.

8. By following the principle (*Supra*), record of the present case has been examined whereby, it reveals that the petitioner and respondent No.4 are real brothers, locked in multiple litigation and respondent No.4 got

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registered FIR against the present petitioner. It is also evident from record that the local police inquired into the matter. The report of Superintendent of Police, Investigation, Complaints, ICT available on record reveals that the petitioner was time and again asked to provide ownership certificate of the company or any eye-witness of the alleged occurrence but he failed to do so; that the respondents 4&5 were also questioned and it was concluded that no cognizable offence was found to have been committed, as alleged by the petitioner.

9. The address of the petitioner and that of respondent No.4 is the same which is in fact a house owned and occupied by the respondent No.4, against whom petitioner has leveled the allegations. Same position has been duly admitted by the learned counsel for the petitioner but states that the same was purchased by the father of petitioner and respondent No.4, who are admittedly brothers.

10. There is a litigation filed by the Company against the petitioner, wherein civil disputes are agitated by each other. The law is now settled that civil disputes are required to be adjudicated upon by the courts/forums having jurisdiction while any attempt to convert the same in to criminal is to be deprecated.

11. The circumstances highlighted above aptly indicate that the impugned order is well reasoned and, therefore, does not call for any interference. Consequently, present writ petition being devoid of merits is dismissed, however, petitioner shall be at liberty to avail other remedies, available to him under the law, if so advised.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE