

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 3609/2019

Muhammad Shahzad

versus

Ex-Officio Justice of Peace/ Additional Sessions Judge, (East) Islamabad, etc.

Petitioner by: Mr. Mazhar Akram Awan and Mirza Irfan Ghazanfar, Advocates.

Respondents by: Mr. Saifullah Khan, State Counsel.
Sardar Shabbir Hussain, Advocate for respondent No.4.

Date of Decision: 20.01.2021.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner has called in question the order dated 08.10.2019, passed by learned Ex-Officio Justice of Peace, Islamabad, whereby application U/S 22-A/B Cr.P.C. filed by the petitioner was dismissed.

2. Learned counsel for the petitioner contends that petitioner submitted application to the SHO P.S. Bhara Kahu with the allegations that he is owner in possession of land situated in khasra No.2093 since forefathers, which is joint land and he being co-sharer has erected stone wall around the land and cultivated maize crop, however, on 28.08.2019 at about 11:30 a.m. Shahzad Musharraf, Talat, Gul Latif and 20/25 unknown persons demolished the boundary wall through their tractor and destroyed the cultivated crop, however, when confronted, the said accused persons who were armed with weapons assaulted the petitioner and threatened him for dire consequences but the said incident was not converted into FIR; that learned Justice of Peace, has not appreciated the legal position and passed the order without appreciating the question of cognizability of offence.

3. Conversely, learned counsel for respondent No.4/proposed accused contends that after the dismissal of petitioner's application by the learned Justice of Peace, he filed similar applications on four different occasions before learned Justice of Peace and all of them were dismissed, even matter was inquired by SP (Investigation), who has declared all the applications of petitioner being false and frivolous and directed the parties to approach the competent court where matter is subjudice.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner is mainly aggrieved with the order passed by learned Justice of Peace who dismissed application U/S 22-A/B Cr.P.C. while referring the dispute being of civil nature on the ground that both the parties are co-owners and co-sharers in different khasras and the same are not partitionable.

6. When confronted the petitioner, he conceded that land is common land and both the parties are co-sharer, however, the question of possession is *prima-facie* not shown by the petitioner on the basis of any document i.e. khasra girdawari, especially when he claims to be the owner since his forefathers. On the other hand respondents have taken categorical stance that they have purchased the land from other family members of the petitioner and they were given possession of the property in question, even pendency of the matter before civil court has not been denied and the same has been acknowledged by the inquiry officer in the inquiry report placed before learned Justice of Peace, Islamabad.

7. I have also gone through the second report dated 25.09.2011 submitted by Talib Hussain, S.I, P.S. Bhara Kahu, whereby, it has categorically been referred that:- تاہم پیشتر کی درخواست میں مندرجہ وقوعہ حقیقت پر مبنی نہ ہے and this aspect has been considered by the Court and even report of SP (Investigation) has been placed on record, whereby petitioner has challenged different events on similar allegations before learned

Justice of Peace and all of his applications U/S 22-A/B Cr.P.C. have been dismissed. SP (Investigation) has declared that dispute between the parties is of civil nature and is pending before civil court and petitioner wants to convert the same into criminal litigation.

8. In this backdrop, cognizability of offence has not been agreed by the inquiry officer as well as other investigation officers on different forums, in such eventuality the alternate remedy under the law is available to the petitioner and it has been settled by now that if a complaint discloses commission of cognizable offence, Ex-Officio Justice of Peace is bound to direct officer in charge of the police station to register a case. Reliance is placed upon 2007 P.Cr.L.J 1935 (Faiz Ahmed Vs. Additional Sessions Judge/Justice of Peace, Sargodha and 3 others) and police authority is not best judge to settle a matter is of civil nature or otherwise, therefore, it is the duty of Justice of Peace to determine the question of existence or non-existence of cognizable offence without going into the veracity of the information in question. Reliance is placed upon 2013 P.Cr.L.J 117 (Ghulam Fareed Vs. SHO, P.S. Sangi and another).

9. Similarly, Apex Court in case reported as PLD 2007 SC 539 (Muhammad Bashir Vs. SHO, Okara Cantt and others) had laid down criteria that Ex-officio Justice of Peace U/S 22-A(6) Cr.P.C. was to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence and if it did then to direct the concerned SHO to record an FIR without going into the veracity of the information in question, and no more. Similar aspect has also established in PLD 2013 Islamabad 45 (Muhammad Akram Vs. Additional Session Judge/Justice of Peace, Islamabad).

10. In view of above reasons, instant petition is allowed, order passed by learned Ex-Officio Justice of Peace, Islamabad is hereby set aside and SHO P.S. Bhara Kahu, Islamabad is directed to register the FIR on the request of petitioner

and if complaint is found to be false and frivolous, action shall be initiated against the petitioner/applicant under law accordingly.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid