

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

Writ Petition No.4101/2013

Zahid Mehmood
Versus
The S.H.O, P.S Shalimar, Islamabad, & others.

Petitioner by:	Mian Tahir Iqbal, Advocate.
Proposed accused by:	Mr. Aman Ullah Kayani, Advocate.
State By:	Mr. Zohaib Hassan Gondal, State Counsel alongwith Khalid Awan, Sub-Inspector.
Date of Hearing:	08.07.2020.

GHULAM AZAM QAMBRANI, J:- The petitioner has invoked the Constitutional jurisdiction of this Court by filing instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking a direction to the S.H.O/respondent No.1, for registration of criminal case.

2. Briefly stated facts of the instant petition are that the petitioner filed an application under Section 22-A Cr.P.C., before the learned (Ex-Officio Justice of Peace), Additional Sessions Judge (West) Islamabad, for issuance of direction for registration of F.I.R stating therein that he was informed telephonically by one Ramzan that few persons are looting property articles from his shop, situated at Plot No.4-B, Sector F-10, Islamabad. The petitioner rushed to his shop and saw that three accused persons were deteriorating, looting office articles and valuable securities including secret files; that with the help of other shopkeepers, they were forced to leave the scene;

thereafter, he found that damage to the tune of considerable amount had been done. The petitioner submitted an application for registration of the criminal case against the accused persons to the S.H.O concerned, but to no avail. The petition under Section 22-A & 22-B Cr.P.C, of the petitioner was dismissed vide order, dated 31.08.2013 hence, the instant petition.

3. The learned counsel for the petitioner argued that the petitioner filed an application before the concerned police station for registration of F.I.R but in vain; that the petitioner approached the Ex-officio Justice of Peace by filing a petition under Section 22-A & 22-B of Cr.P.C., which was dismissed vide impugned order without application of judicial mind. Further submitted that the impugned order has been passed on the basis of surmises and conjectures, therefore, the same is liable to be set aside.

4. Conversely, the learned counsel for the proposed accused assisted by the learned State Counsel strongly opposed the contentions raised by the learned counsel for the petitioner contending that no offence has been committed by the proposed accused and supported the impugned order.

5. Heard learned counsel for the petitioner, and have gone through the available record, perused the application under Section 22-A Cr.P.C and the impugned order.

6. Perusal of the impugned order which is based on the report of S.H.O shows that on 25.01.2010, the learned Rent Controller had passed ejectment order against the petitioner, in pursuance thereof,

bailiff was deputed to get vacant possession of the said unit but due to intervention of the other shopkeepers, the bailiff failed to comply with the Court order. This fact is reflected from the report of bailiff, dated 11.10.2010, wherein it has been clearly mentioned that the petitioner alongwith the members of the market union resisted in the official work of bailiff. In the said report, bailiff made a request to the concerned Court for aid of police for vacation of the rented unit. In his report, dated 21.02.2019, it has been mentioned that in presence of police the premises were got vacated and handed over the same to its owner. Further a list of articles lying inside the unit was prepared which is annexed with the file. The stance of the petitioner that the proposed accused persons have looted and damaged his shop seems to be a concocted story. Further report of police shows that no such occurrence has taken place. The authorities acted in compliance with an order of the competent Court, which was in the field, and thus it falls within the ambit of the exceptions provided in Chapter "General Exceptions", particularly under section 78 of the PPC. The Ex-Officio Justice of Peace passed well-reasoned order. Further, 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 has 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.LJ 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.

7. The august Supreme Court in the case of "*Muhammad Bashir v. Station House Officer, Okara Cantt and others*" (**PLD 2007 SC 539**) has been pleased to observe as under:

"40. Therefore, in our opinion, the only jurisdiction which could be exercised by an Ex-Officio Justice of the Peace under section 22A (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 S.H.O. to record an FIR, without going into the veracity of the information in question, and no more. Offering any other interpretation to the provisions in question would be doing violence to the entire scheme of the Cr.P.C. which could not be permitted.

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. In view of the above legal position, I am clear in my mind to observe that Ex-Officio Justice of Peace under section 22-A(6), Cr.P.C. have to examine whether the information disclosed by the petitioner did or did not constitute a cognizable offence and if it did then to direct the concerned S.H.O to register F.I.R. In the facts and circumstances of this case, the learned Ex-officio Justice of Peace was satisfied that a case for issuance of a direction for registration

of a criminal case was not made out and, therefore, rightly dismissed the application under section 22-A of Cr.P.C. filed by the petitioner.

9. For what has been discussed above, the learned counsel for the 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 hereby **dismissed**.


(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 09th day of July, 2020.

Λ


JUDGE

*Ram. M. 9/6**