

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

W.P No.2159 of 2020

Qaiser Mehmood
Versus
Learned Justice of Peace (ASJ), etc

Petitioner By: M/S Raja Ghaneem Aabir Khan & M.
Ilyas Khan Advocate
Respondents 2 to 4 by: Mr. Muhammad Junaid Khokhar
Advocate
State by: Zohaib Hassan Gondal, State
Counsel with Tanveer SI.

Date of Hearing: 11.09.2020

Ghulam Azam Qambrani, J: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has invoked the jurisdiction of this Court, with the following prayer;-

"It is most graciously prayed that the instant Writ Petition may kindly be accepted and impugned order dated 08.08.2020 be declared illegal, void, unlawful and without lawful authority/jurisdiction, therefore, has no legal effect, and same may please be quashed/set aside in the best interest of justice."

2. Briefly stated facts of the case as per contents of the petition are that respondent No.4 moved an application under Section 22-A Cr.P.C before the learned Justice of Peace for registration of FIR by levelling false, frivolous and concocted allegation against the petitioner and others with malafide intention. The real story of the matter is that real brother of respondent No.4, namely Rizwan Khizar, in drunk condition made aerial firing towards official vehicle of police as well as towards private persons and as a consequences whereof, one person namely Saleem Shah sustained fire arm injury and an FIR No.172/2020, under Sections 324, 34, 452 PPC, got registered against him. Due to political rivalry inter se the parties and other allied reasons, petitioner has been dragged in false and baseless case without any reason and lawful justification despite the

fact that respondent No.4 was not present at the place of occurrence. The learned Justice of Peace allowed the said application in an arbitrary and fanciful manner without considering any reason vide order dated 08.08.2020, hence, this petition.

3. Learned counsel for the petitioner contended that impugned order is illegal, unlawful and without any lawful authority; that the innocent persons are arrayed in application for registration of FIR; that while passing impugned order, learned Ex-Officio Justice of Peace did not advert to real and actual facts. Next contended that the impugned order is non-speaking and same is passed without furnishing any cogent and plausible reasons; that the impugned order is based on presumption, supposition, surmises and conjectures. Lastly prayed for acceptance of instant petition and setting aside of the impugned order.

4. Conversely, learned counsel for the respondents have opposed the contention of learned counsel for the petitioner and contended that the petitioner is convicted in ten FIRs; that the cognizable offence is made out against the petitioner. Next contended that there is evidence on record to connect him with the commission of offence and that this petition is not competent and is liable to be dismissed. Learned State Counsel also supported the impugned order and stated that the impugned order is in accordance with law.

5. I have heard the arguments of learned counsel for the parties and have perused the record with their able assistance.

6. The arguments advanced by learned counsel for the petitioner is that this case is based on malafide and animosity on the part of the respondent/ complainant and it is a case of no evidence, therefore, the impugned order may be set aside. As per police record the petitioner is involved in more than ten cases. The application submitted by respondent No.4 to the SHO, Police Station Nalore, Islamabad, prima facie, discloses commission of cognizable offence and the SHO was bound to lodge the FIR of the incident under Section 154 Cr.P.C. In the renowned judgment, reported as

Muhammad Bashir Vs. Station House Officer, Okara Cantt and others (PLD 2007 S.C. 539), it has been observed that the only jurisdiction, which could be exercised by an Ex-officio Justice of the Peace under S.22-A(6), Cr.P.C. is 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 F.I.R. without going into the veracity of the information in question, and no more and offering any other interpretation to S.22-A(6), Cr.P.C. would be doing violence to the entire scheme of Criminal Procedure Code, 1898, which cannot be permitted. It has been further held as under:-

"The same amending Ordinance No.CXXXI of 2002 added a new subsection i.e. subsection (6) of section 22-A of the Cr.P.C. and this newly added subsection (6) conferred certain powers on the Ex-officio Justices of the Peace in the following terms;--

"22-A -----

(6) An ex-officio Justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding--

(i) non-registration of a criminal case;

(ii) transfer of investigation from one police officer to another; and

(iii) neglect, failure or excess committed by a police authority in relation to its functions and duties."

The result is a major departure, from the scheme heretofore in vogue regarding the administration of justice relating to crimes as it was for the first time that through the said amending Ordinance, the Sessions Judges and the Additional Sessions Judges who were the trial and the Appellate Courts on the criminal side, had been called upon to also supervise what were, purely and essentially, the police functions i.e. the registration and investigation of criminal cases.

For the purposes of this petition, we are concerned, primarily, with clause (i) of the above quoted provisions of subsection (6) of the section 22-A of the Cr.P.C. These provisions create a new forum to rectify a wrong done by an Officer Incharge of a Police Station by refusing to register a criminal case i.e. not recording an F.I.R. We

have held above that the provisions of section 154, Cr.P.C. command a S.H.O. to lodge an F.I.R. if the information conveyed to him disclosed the commission of a cognizable offence irrespective of the information being correct or incorrect. Undoing this wrong of non-registration of a criminal case would mean only an order to the S.H.O. to register the case. The provisions of the said subsection (6) of section 22-A, Cr.P.C. confer no additional powers on an Ex-officio Justice of the Peace to hold any enquiry to assess the credibility of such an information communicated for the purpose in question nor do the said provisions give any extra authority to the said Ex-officio Justice of the Peace to refuse registration or order non-registration' of an F.I.R. in violation of or beyond the mandatory requirements of section 154, Cr.P.C.

7. In the case reported as "Maqbool Rehman Vs. State" (2002 SCMR 1076), it has been held as under:-

"High Court does not exercise inherent jurisdiction unless there is gross miscarriage of justice and interference by the High Court seems to be necessary to prevent abuse of process of Court or to secure the ends of justice. Jurisdiction under Section 561-A, Cr.P.C is neither alternative nor, additional in its nature and is to be rarely invoked only to secure the ends of justice so as to seek redress of grievance for which no other procedure is available and that the provisions should not be used to obstruct or direct the ordinary course of Criminal Procedure. This kind of jurisdiction is extraordinary in nature and designed to do substantial justice. It is neither akin to appellate nor the Revisional Jurisdiction."

In this regard, I am also fortified by the law laid down in the case reported as "Younas Abbas and others Vs. Additional Sessions Judge, Chakwal and others" (PLD 2016 Supreme Court 581), wherein it has been held as under:-

"There is no denying the fact that at times false and frivolous cases are got registered just to humiliate and harass the opposite party. In such a milieu, powers given to an ex-officio Justice of the Peace under subsection (6) of Section 22-A, Code of Criminal Procedure, to issue appropriate directions on a complaint filed by an aggrieved person for registration of a criminal case.

The ex-officio Justice of the Peace, before issuance of a direction on a complaint for the non-registration of a criminal case under subsection (6)(i) of section 22-A, Code of Criminal Procedure must satisfy himself that

sufficient material is available on the record, such as application to the concerned SHO for registration of the criminal case and on his refusal or reluctance, complaint to the higher police officers i.e. DPO, RPO etc., to show that the aggrieved person, before invoking the powers of ex-officio Justice of the Peace, had recourse to the high ups in the police hierarchy."

8. In the light of above, I do not find any illegality or irregularity while passing the impugned order dated 08.08.2020, calling for interference by this Court. The learned Justice of Peace, Additional Sessions Judge, after properly considering all the material available on record, has rightly passed the impugned order. This petition being devoid of any force is, therefore, **dismissed**.

(Ghulam Azam Qambrani)
Judge

Announced in Open Court, on this 25th day of September, 2020.

S.Akhtar

Judge