

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

W.P No.2281 of 2020

Babar Zameer
Vs
The Additional Sessions Judge (East) Islamabad & others

Date of Hearing: 09.09.2020

Petitioner By: Mr. Zahid Asif Chaudhary Advocate

Respondents 5 & 6 by: Rana Ali Raza Advocate.

State by: Zohaib Hassan Gondal, State
Counsel with Idrees SI.

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

“ It is, therefore, respectfully prayed that the writ petition may please be accepted and the following relief may very graciously be granted/awarded to the petitioner,

1. That the impugned order dated 04.06.2020 passed by the respondent No.1 may very kindly be set aside and resultantly, the petition under Section 22-A Cr.P.C may very graciously be accepted and the respondent No.2 may very graciously be directed to register the case/FIR against the respondents 5 & 6 as per the contents of the application submitted by the petitioner.
2. That the respondent No.2 may very kindly be ordered/directed to conduct

fair, impartial departmental inquiry against the respondents 5 & 6 being public servant/police officials against their illegal acts committed by them and thereafter legal action may also be taken against the respondents 5 & 6 in the best interest of justice.

3. Any other relief which this Hon'ble Court deems fit and proper may also be awarded."

2. Briefly stated facts of the case are that the petitioner went to Police Station Sihala, Islamabad, on 01.05.2020 at about 3: 00 PM alongwith Qari Mehfooz and Ch. Mudassar Nazar etc, but surprisingly due to malafide intentions and for personal motives and gains, respondent No.1/ Malik Bashir SHO, P.S Sihala, Islamabad, directed his subordinates official/ respondent No.6 Moharrar, Amjad Ali, P.S Sihala, Islamabad, to detain the petitioner in the police lock-up without any legal or moral justification as well as without registration of any FIR or without getting warrants and on 01.05.2020 at about 11: 00 PM, the petitioner was released out of the police lock-up after giving threats of dire consequences. On the next day, due to this illegal conduct of respondents^{No. 5 & 6} 5 & 6, the petitioner moved three applications on the same day before respondents 1 to 3 for registration of case as well as necessary action, but no action was taken. Feeling aggrieved, the petitioner moved a petition under Section 22-A Cr.P.C for registration of FIR against respondents No. 5 & 6 before the learned Additional Sessions Judge, Islamabad-East, who directed the SSP, Islamabad/respondent No.4 to file parawise comments, but on 04.06.2020 the application of petitioner under Section 22-A Cr.P.C was dismissed, hence this petition.

3. Learned counsel for the petitioner has contended that the application for registration of case was against the police officials and no probe/inquiry was conducted by the high-ups of the police officials; that the SHO/respondent No.5 himself admitted this fact that the present petitioner alongwith other were detained/confined in

Police Station and they were released on oral/telephonic order by respondent No.7/Assistant Commissioner, Rural, Islamabad. Further contended that three different reports of SSP, Islamabad, SHO, P.S Sihala, Islamabad, and Investigation Officer of the case, P.S Sihala, Islamabad, negates their version because the petitioner was neither legally arrested nor his arrest was shown in police diary/roznamcha kept in police station as per Police Rules, 1934; that the impugned order passed by respondent No.1, is in violation of facts and circumstances of case; that the impugned order is result of misreading or non-reading of record. Lastly prayed for acceptance of writ petition.

4. On the other hand, learned counsel for respondents No. 5 & 6 has strongly opposed the contentions of learned counsel for the petitioner and stated that an application was entrusted to Muhammad Idrees Sub-Inspector for inquiry and probe. The said officer reported that on 01.05.2020, after Jumma prayer, a call was received from Rescue-15 that one Qabza Group namely Chaudhary Mudassar Nazar was trying to illegally occupy the possession of Masjid Al-Azam, Azeem Town, Sihala, Islamabad, and a quarrel had started in the Masjid. Muhammad Idrees, SI alongwith officials reached at the spot. The Investigation Officer brought both parties i.e Qari Muhammad Mehfooz s/o Muhammad Ayub alongwith five others and Chaudhary Nazar Hussain alongwith four others at the police station. During probe, both the parties exchanged harsh words and started quarrelling with each other. Action under section 151 Cr.P.C was taken against both the parties. Further contended that the petitioner Babar Zameer is a member of qabza group headed by Ch.Mudassar Nazar and during probe, Babar Zameer tried to create rift between the parties and eventually preventive action under section 107/151 Cr.P.C was initiated against both the parties. Next contended that the petitioner is filing applications based on concocted facts in order to pressurize the local police. Learned State counsel also opposed the contentions of the petitioner and supported the impugned order. Lastly urged for dismissal of the petition.

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

6. Perusal of the record reveals that after Jumma prayers, a call was received from Rescue-15 that one Qabza Group is trying to occupy the possession of Masjid Al-Azam Azeem Town, Sihala, Islamabad. The police of Police Station, Sihala, Islamabad, reached at the spot and rescued both the parties from the quarrel. Action under Section 151 Cr.P.C was taken against both the parties including the present petitioner Babar Zameer who is allegedly a member of qabza group headed by Ch. Mudassar Nazar and during probe, he tried to create rift between the parties and eventually preventive action under section 107/151 Cr.P.C was initiated against both the parties and thereafter they were released on the direction of the learned Area Executive Magistrate whereas the parties also submitted their surety bonds on 02.05.2020 with regard to keeping peace amongst themselves. Prima facie, no cognizable offence is made out, as such, the learned Ex-Officio Justice of Peace keeping in view the entire facts and circumstances of the case and after perusing the police report, has rightly passed a well-reasoned order. Although Section 22-A, Cr.P.C. empowers the Justice of Peace for issuance of directions for registration of case, but this power, is never supposed to be exercised in a mechanical manner, without application of an independent mind. All such powers were vested in the authority for dispensation of justice and are not meant to be exercised in aid of injustice, Courts are never supposed to shut their eyes from other aspects of the case and to pass orders for registration of case on a false report of any complainant, when mala fide of a complainant is floating on the record and his tricky design is visible, then exercise of powers under section 22-A(6), Cr.P.C. by issuance of direction for registration of case, would be an exercise in aid of injustice, which had never been the intention of the legislatures, in enactment of such provisions. By invoking the provisions of Section 22-A, Cr.P.C, the Court in mechanical manner should not allow application under Section 22-A, Cr.P.C; but should have to apply its independent mind as to whether the applicant had

approached the court with clean hands or it is tainted with malice, unless such practice is discouraged, it would have far-reaching effects on the Public Officials, who in discharging of their duties take actions against them. Law had to be interpreted in a manner that its protection extends to everyone.

7. It is pertinent to mention here that in the case of "Muhammad Bashir v. Station House Officer, Okara Cantt and others" (PLD 2007 SC 539), the Hon'ble Supreme Court of Pakistan has held as under:-

"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.

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. 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 have 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.L.J 438). In any case, the allegations levelled 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.

9. For what has been discussed hereinabove, 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, instant petition having no force is dismissed.

(Ghulam Azam Qambrani)
Judge

Announced in Open Court, on this 16th day of September, 2020.

Judge

S.Akhtar