

FORM NO:HCJD/C

ORDER SHEET

**IN THE ISLAMABAD HIGH COURT,
ISLAMABAD
JUDICIAL DEPARTMENT**

W.P. NO. 468 OF 2015

IMRAN ALI MUGHAL

VERSUS

**S.H.O. POLICE STATION
MARGALLA ETC.**

S.NO. OF ORDER/ PROCEEDINGS	DATE OF ORDER/ PROCEEDINGS	Order with signature of judge and that of parties or counsel where necessary.
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01-11-2019

**Mr. Fahad Ali Advocate for the petitioner.
Ms. Saima Naqvi, State Counsel.
Nawaz, S.I. P.S. Margalla, Islamabad.**

Through the instant writ petition, the
Petitioner is seeking direction for registration
of FIR against the proposed accused.

2. The petitioner has alleged that on
10-11-2014 he was coming to F-8 Katchery in
order to discuss some matter with his counsel
and when he parked his vehicle in front of
chamber of his counsel, two accused persons
namely Zaman and his brother stopped his
vehicle and tried to abduct her forcefully by
putting him in their car whereupon the
petitioner ran away and took shelter in the
chamber of petitioner's counsel but accused
persons entered in the chamber of his counsel
while they were armed with .30 bore weapon
and they started beating the petitioner,
extended life threats and snatched files and

personal documents of the petitioner on gun point in presence of counsel of the clerk and managed to run away from the scene. The petitioner filed an application before respondent No.1 for legal action against proposed accused persons but unfortunately respondent No.1 took no action, whereupon, the petitioner filed an application U/S 22-A Cr.P.C. to seek direction for registration of FIR, however, the same was dismissed vide order dated 09-01-2015, hence, the instant writ petition.

3. Learned counsel for the petitioner has argued that the respondent No.1 is bound to register FIR under Section 154 Cr.P.C. on receiving information regarding commission of cognizable offence; that prima facie the allegations leveled in the application filed by the petitioner disclose the commission of cognizable offence. Learned counsel has prayed for issuance of direction to respondents No.1 for registration of FIR.

4. Conversely learned State Counsel has vehemently opposed the instant writ petition.

5. I have heard the learned counsel for the petitioner as well as learned State Counsel and perused the record.

6. It is evident from the record that the learned Justice of Peace on the application of

the petitioner filed U/S 22-A Cr.P.C. directed S.H.O. Margalla Islamabad to submit his para-wise comments. Respondent No.1 filed para-wise comments before the learned Justice of Peace/Addl: Sessions Judge-V (West), Islamabad wherein it was mentioned that a qalandra was registered on the application of petitioner and Qalandra proceedings were submitted before the concerned Illaqa Magistrate which are pending before the said Illaqa Magistrate.

7. Keeping in view the facts and circumstances discussed above coupled with the report submitted by SHO P.S. Margalla, Islamabad, inference can safely be drawn that information regarding commission of offence has already been registered in the shape of Qalandra Proceedings, as such, legal action has already been taken by the SHO concerned on the application of petitioner.

8. The Hon'ble Supreme Court of Pakistan in the case reported as **Habibullah versus Political Assistant, Dera Ghazi Khan and others (2005 SCMR 951)** has observed that:-

"The High Court was under no obligation to issue direction for registration of F.I.R. as the matter with regard to the issuance of direction for registration of case

entirely rests with the Court and we have not been pointed out that the discretion of refusing to issue such direction was improperly exercised. The impugned judgment has also not shut the door of the petitioner to initiate criminal proceedings by lodging complaint and this Court normally would not interfere in the exercise of discretionary Constitutional jurisdiction of High Court except in case of grave injustice. It may be observed that filing of private complaint could provide an equal adequate relief to the petitioner because he could lead the entire evidence himself before the trial Court and his grievance could be adequately redressed considering also the fact that respondent/S.H.O., who in the report and para-wise comments has mentioned adverse to the petitioner's case, therefore, it could not be expected from the concerned S.H.O. that he would carry independent and impartial investigation in the case. **It may be stated that under the provisions of Article 199 of the Constitution of the Islamic Republic of Pakistan it was not obligatory for the High Court to issue writ in each case irrespective of the facts and circumstances which could call for exercise of judicial restraint in turning down the request for registration of F.I.R.**

in view of the conduct of the party besides considering that adequate remedy in the form of private complaint being available to the petitioner.”

(Under lining and emphasizing is mine)

In the aforementioned case, the petitioner Habibullah had filed Constitution Petition under Article-199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking direction from the High Court that respondent No.2, S.H.O., P.S. B.M.P. Post Satta, Tribal Area, Dera Ghazi Khan, be directed to register criminal case against respondents Nos. 3 to 14 for the commission of offence in which report and para-wise comments were called from the S.H.O. and after perusal of the report and para-wise comments, which were to the effect that the allegations leveled in the petition were false and a counterblast of another case, the petition was dismissed, which order was assailed through a petition for leave to appeal before the Apex Court, which, too, was dismissed by the Hon'ble Supreme Court of Pakistan.

9. It would also not be out of place to mention here, that a larger Bench of the Lahore High Court, Lahore in the case reported as **Khizer Hayat and others versus**

**Inspector-General of Police (Punjab),
Lahore and others (PLD 2005 Lahore 470)**

has observed that:-

"We may also add that in an appropriate case, depending upon the circumstances thereof, an ex-officio Justice of the Peace may refuse to issue a direction regarding registration of a criminal case and may dismiss the complaint under Section 22-A(6), Cr.P.C. reminding the complaining person of his alternate statutory remedies under sections 156(3) and 190 Cr.P.C.

Experience shows that there are cases where the complainant party may be better off in pressing its allegations and remaining in control of its case by filing a private complaint rather than forcing the police to register a criminal case and to investigate when the police is itself not convinced of the complaint party's allegations being correct.

(Under lining, emphasizing is mine).

10. Keeping in view the peculiar facts and circumstances discussed above, I am of the considered view that the impugned order dated 09-01-2015 has been passed by the learned Ex-Officio Justice of Peace/Addl: Sessions Judge-III (West), Islamabad with full application of judicious mind after getting the report/comments of the local police and the

same is a speaking/ well reasoned order, based on material facts and, as such, calls for no interference by this Court in exercise of Constitutional jurisdiction under Article-199 of the Constitution of the Islamic Republic of Pakistan, 1973.

11. For what has been discussed above, the instant writ petition having no merits is hereby **dismissed**. However, petitioner may avail alternate remedy by filing private complaint, if so advised.

(MOHSIN AKHTAR KAYANI)
JUDGE

M. Abid Khan