

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. NO.3728/2020

Major (R) Sardar Sajjad Ahmed

Vs

ASJ, Ex-Officio Justice of Peace & others

Serial No. of order/ proceeding	Date of order/ proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
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16.03.2021

Barrister Suleman Khan, Advocate for the petitioner.
M/s Muhammad Inam Mughal, and Qandeel Ali Kazmi,
Advocate for respondent No.2.
Mr. Zohaib Hassan Gondal and Ms Sadia Sikandar, State
Counsel with Muhammad Shahbaz SI.

Through the instant petition the petitioner has sought setting aside of the impugned order dated 05.12.2020 passed by respondent No.1, Ex-Officio Justice of Peace/ Additional District Judge-West, Islamabad.

2. Briefly stated facts of the case are that the respondent No.2 submitted an application to respondent No.3 for registration of F.I.R. against the petitioner stating therein that on 08.11.2020 at about 10:19 a.m. he received a call from PTCL No.051-9252318, who stated that he is speaking from Special Branch and asked his name and when he told his name, the person on the call asked respondent No.2 to come to his office in the morning; that when respondent No.2 inquired about the matter, he threatened him of dire consequences and used filthy language against him, but respondent/SHO did not take any action on the said application; that respondent No.2 submitted an application against the petitioner for registration of F.I.R to respondent No.4 but failed, hence, respondent No.2 approached respondent No.1 through the application under Section 22-A Cr.P.C for registration of F.I.R against the petitioner. The learned Additional Sessions Judge/Justice of Peace issued direction to respondent No.3 for registration of F.I.R vide impugned order dated 05.12.2020, hence this petition.

3. Learned counsel for the petitioner has contended that the impugned order is against the law and facts of the case; that the impugned order is result of misreading and non-reading of available record. Further contended that no cognizable offence has been made out against the petitioner and respondent No.1 has no jurisdiction to issue direction for registration of F.I.R; that

the impugned order is illegal, against the law and facts and is liable to be set aside.

4. On the other hand, learned counsel for respondent No.2 opposed the contentions raised by the learned counsel for the petitioner contending that the impugned order is in accordance with law and no illegality has been committing by respondent No.1 while passing the impugned order. Lastly urged for dismissal of the instant petition. Learned State counsel does not support the impugned order.

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 filing the petition under Section 22-A Cr.P.C, respondent No.1 called for a report from the police wherein it is stated that Sardar Shoaib and Sajjad Ahmed are close relatives and that there is a dispute of partition of house between their brother-in-law namely Khalid Khalil and his brothers namely Riaz etc at Nathia Gali, Abbottabad and that both the parties had been filing applications against each other. Further stated that there is no truth in the instant application but the learned Additional Sessions Judge without considering the police report, mechanically directed the SHO to register criminal case under Section 25D of Telegraph Act read with Section 506 P.P.C, without furnishing any cogent reason for not relying upon the police report even without issuing notice to the petitioner/proposed accused although he was arrayed as respondent No.2 in the said petition.

7. It is transpired from the record that the SHO inquired into the matter and submitted a detailed report. The inquiry was conducted and the police reached the conclusion that the parties are close relatives and there is dispute of distribution of a house. Keeping in view the facts and circumstances of the case, respondent No.3 is directed to proceed in accordance with law with a further direction that if the information given by the respondent No.2 is found false then respondent No.3 would be at liberty to take action against respondent No.2 in accordance with law. However, it has been observed that the learned Addl. Sessions Judge, while passing the impugned order has directed the SHO to register criminal case under Section 25-D of Telegraph Act read with Section 506 P.P.C. In this regard it is stated that the learned Ex-officio Justice of Peace, under no

provision of law can direct or even observe with regard to the nature of the offence, the commission of the offence or addition or deletion of relevant provisions of Pakistan Penal Code, as the same conclusively falls within the jurisdiction of Investigating Officer/ Prosecution Agency or the learned Trial Court, at the time of framing of the charge.

8. The respondent No.4/ S.P Investigation, Islamabad, is also directed to depute an independent and impartial investigation officer not below the rank of D.S.P, who shall proceed with the case strictly in accordance with law without any favour or fear and shall conclude the investigation within the period of fifteen days. The proposed accused shall not be arrested unless and until the investigation officer has collected any tangible/concrete evidence against him, warranting arrest of the accused. If it was found that false information has been given, then proceedings under Sections 182 and 211 P.P.C should be initiated against respondent No.2 for misuse of taking the law into motion.

9. With the above observations, this petition stands disposed of.

(GHULAM AZAM QAMBRANI)
JUDGE

S.Akhtar