

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.1648/2020
Mst. Saira
Vs
SSP, Islamabad and others, 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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(1) 24.06.2020 Mr. Shah Noor Khan Khattak, learned ASC.

Through the instant writ petition, petitioner (*Mst. Saira*) calls in question an inaction on the part of respondents 1&2 (*SSP, ICT and SHO P.S. Tarnol*), whereby on her application, the latter refused to register an FIR against the proposed accused/ respondents 3 to 5.

2. The facts, relevant for adjudication of instant writ petition, are that petitioner filed an application to the respondent No.2 (SHO P.S. Tarnol) with the allegations that on 20.06.2020 at about 8:15 am, respondents 3 to 5/police officials of P.S. Tarnol trespassed in the house; conducted search without any warrant and in that pursuit took away Rs.80,000/- lying in the house and also Rs.20,000/- from her purse; that the proposed accused also gave severe beating to her spouse and took him away to the police station, where he was kept in illegal confinement and was released after about three hours after taking illegal gratification of Rs.30,000/-. The petitioner alleged that the proposed accused not only transgressed their authority but also ruined the sanctity of the abode which has duly been reported to the high-ups/respondents 1&2 but to no avail, hence the instant writ petition.

3. Learned counsel contends that during the occurrence, the proposed accused also extended threats to involve family of the petitioner in fake cases if she avails legal remedies against them. Learned counsel prays for acceptance of writ petition in terms of the relief prayed therein.

4. Heard and examined the record.

5. At the very outset, question arises as to whether in presence of an alternate and efficacious remedy under Section 22-A (6) of the Criminal Procedure Code, 1898 (“the Code”), direct resort to writ petition for the registration of an FIR is competent. When confronted, the learned counsel submits that in the light of judgment reported as NLR 2006 79, the petitioner can approach the High Court directly instead of availing remedy before the learned Justice of Peace at the first instance, as contained in Section 22 A & B of the Code.

6. Before insertion of Section 22-A(6) of the Code, there were number of applications/petitions pending before respective High Courts against inaction, negligence and delay on the part of police authorities, particularly against the office of the SHO for non-registration of criminal cases. The general public was constrained/ compelled to approach the respective High Courts for redressal of their grievances and in many cases people could not approach the High Court due to the fact that the High Courts were/ are in provincial headquarters and in some big cities their respective Benches were also available. It was not feasible for every citizen to reach the respective High Court, its Benches due to hazards of long travelling.

7. The legislature by realizing this fact, keeping in view the difficulties of the citizens, introduced an amendment through Ordinance CXXXI of 2002, whereby Section 22-A (6) of the Code was inserted which, for ease of reference is reproduced below:-

[(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.]

Under the scheme *ibid*, the learned Sessions Judges in every district, the Additional Sessions Judges/Duty Judges in the Tehsil headquarters were bestowed with powers to entertain and decide the applications and to pass appropriate directions to the police authorities in terms of Section 22-A (6) *supra*. To that extent, the beneficial and purposeful legislation provided remedy to the citizens at their door steps instead of approaching the provincial headquarters or the respective Benches. The purpose was very obvious, that if any criminal act is committed with any citizen and on his/her report police remained negligent or show inaction, then remedy to said individual/citizen is available at the door step i.e. the District/(Tehsil level).

8. Now coming to the case at hand and applying above stated legislative intent, if in the year 2020, a High Court exercises its constitutional jurisdiction directly regarding inaction on the part of police authorities, it would amount to travel back in the past, therefore,

instead of moving/regressing towards the past, it is most appropriate, being constitutional court, to follow the intent behind the edict of the legislature. Therefore, a remedy is available to the petitioner to approach the forum of the Justice of Peace instead of moving the High Court directly.

If this Court assumes jurisdiction, same is not legally warranted rather would amount to abridge the wisdom and intention of the legislature.

9. Even otherwise, for availing remedy before this Court in terms of Article 199 of the Constitution, there is a mandatory requirement for the petitioner to show, that there is no alternate efficacious and adequate remedy and when the remedy by way of an application under Section 22- A (6) of the Code is available, which is not only efficacious but adequate as well, then writ petition is not maintainable. In this respect, reliance is placed upon case of Malik Khalid Mehmood Vs Inspector General of Police Punjab and others (2002 PCr.LJ 1613), Fida Hussain Vs The State (1975 SCMR 150) and Abdul Wahid Khan Vs Government of the Punjab and others (PLD 1989 SC 508).

10. The case law relied upon by the learned counsel relates to a dispute of civil nature and was not a criminal case. It was also held in the said case that in presence of alternate efficacious remedy writ petition is not maintainable, therefore, the referred citation does not extend any help to the petitioner rather is in negation of the argument put forth by learned counsel for the petitioner.

11. In the light of aforementioned reasons, there is no force in the instant writ petition, hence, same is dismissed in limine, however, the petitioner shall be at liberty to avail other remedies, available to her under the law, if so advised.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Approved for reporting.

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