

**ORDER SHEET.**

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

Crl. Misc. No.211-M of 2011

Khurram Irshad Khan

**VS.**

SHO, Kohsar etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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**03.01.2012**

**Raja M. Afsar Advocate, for petitioner.**

**Mr. Shabbir Abbasi, Standing Counsel alongwith  
Saif Ullah S.I.**

**Malik Tahir Saleem Awan, respondent No.2 in  
person.**

Mr. Khurram Irshad Khan, Manager (Under Writing) National Insurance Company, NIC Building 63-Jinnah Avenue, Blue Area Islamabad, hereinafter referred to as petitioner has instituted the present petition u/s 561-A Cr.P.C. against order dated 25.11.11, passed by learned Additional Sessions Judge, (Justice of Peace) Islamabad, whereby application of petitioner u/s 22-A (6) Cr.P.C. was dismissed.

2. Crux of the petition are that Malik Tahir Saleem Awan, ex-tenant hereinafter referred to as respondent No.2 alongwith others including a police inspector arrived in three police vehicles and intruded into the building of NIC located at 63-Jinnah Avenue, Blue Area, Islamabad. That they intend to go upstairs but upon being challenged by the security guard, the respondent No.2 informed him that he had a Court order and intend to collect his belongings from cafeteria. That respondent No.2 and others withdrew from stance when the security guard offered resistance. That the incident was reported to SHO respondent No.1, but the same turned a futile exercise, hence petition u/s 22-A (6) Cr.P.C. was

submitted for registration of a criminal case under Sections 448/451 PPC r/w 379 PPC. That the petition was dismissed vide impugned order dated 25.11.11 and hence the instant petition.

3. Learned counsel for the petitioner has argued that the respondent No.2 was tenant of NIC for one year and that the term of agreement expired on 23.5.11. That the respondent No.2, then instituted a civil suit after two months. That he was neither authorized nor justified to enter into the premises of the petitioner and, by doing so, committed criminal trespass punishable u/s 441/448 PPC. In support of his arguments, he placed reliance on Muhammad Bashir case reported as PLD 2007 Supreme Court 539.

4. On the other hand, learned Standing Counsel for respondent No.1 argued that the occurrence is of civil nature and the same does not constitute any offence and as such the respondent No.1 was not obliged to register a criminal case against respondent No.2.

5. Arguments of learned counsel for the parties heard and record perused.

6. According to the written report of the security guard, respondent No.2 alleged ex-tenant of canteen brought certain persons in two vehicles of police and the respondent No.2 and a Police Inspector also accompanied them in a third vehicle. That when the respondent No.2 alongwith Police Inspector started entering the premises through stairs, having a file in his hand, the security guard intercepted them and enquired as to why they were going in. In response thereto, respondent No.2 informed him that they were to collect their belongings from canteen on the strength of the orders of the Court and that the Inspector was accompanying him in pursuance of the orders of the Court. That the security guard dissuade them from entering NIC and asked them to come on Monday in office hours for meetings with the

concerned officer. That the respondent No.2, after consulting the Inspector, agreed to come to the office on Monday and went away.

7. Sections 448 and 451 PPC prescribe punishment for committing house trespass, while Section 441 PPC lays down the parameters essential for constitution of criminal trespass. According to section 441 PPC, whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult, or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

8. Perusal of report of the security guard would suggest that respondent No.2 alongwith police inspector has allegedly entered into the premises of NIC, but as evident from the narrations in the said report, they had offered no insult or annoyance to any person nor committed any offence. Similarly there are no narrations that the respondent No.2 intimidated the security guard or unlawfully remained there with any such intention. According to the narrations, they left the premises when so asked by the security guard meaning thereby that no offence of criminal trespass is emanating from the written report of the security guard.

9. In Muhammad Bashir case (PLD 2007 Supreme Court 539) it was laid down that no authority was vested with an Officer In-charge of the Police Station or with any one else to refuse to record an F.I.R. where the information conveyed, would disclose the commission of a cognizable offence. That the police officer deputed for investigation would be obliged to investigate the case and would have no authority to refuse registration of the case or investigation by terming the allegations as false. Touch-stone

embodied in the reported case nullify the authority of a police officer by prejudging an episode and terming the same as false without investigation inspite of the fact that narrations made constitute a cognizable offence. The facts of the case in hand do not unfold the commission of a cognizable offence as such refusal of the police officer to register a criminal case or dismissing the petition u/s 22-A (6) Cr.P.C. by the Court is in harmony and conformity with the law and case law referred to and relied upon by the learned counsel for the petitioner.

10. In view of the above, there is no merit in the instant petition, the same is, therefore, dismissed.

**(MUHAMMAD AZIM KHAN AFRIDI)**

**JUDGE**

03.01.12

\*Qamar Khan\*

**Approved for reporting**