

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

Writ Petition No.1446 of 2022

Hakim Khan and another.

Versus

Learned Additional Sessions Judge, East-Islamabad and 02 others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(02)	23.05.2022	Mr. Fahad Ali, learned State Counsel. Mr. Zaheer Ullah Jan, learned counsel for respondent No.2.

The petitioner, through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has challenged order dated 11.04.2022, passed by learned Additional Sessions Judge-III / Ex-officio Justice of Peace, East-Islamabad, whereby petition under Section 22-A Cr.P.C. filed by respondent No.2 was accepted and S.H.O concerned was directed to register F.I.R and proceed in accordance with law.

02. Succinctly stated facts of the

matter are that the petitioner No.1 is serving and the petitioner No.2 is retired officer of Islamabad Police; they have conducted raid and arrested son of respondent No.2 in a narcotics case; respondent No.2 filed an application before S.P (complaint), Islamabad for registration of case against the petitioners and other CTD officials; FIR was not registered; respondent No.2 filed an application u/s 22-A Cr.P.C. before the learned Additional Sessions Judge, East-Islamabad which was allowed vide impugned order dated 11.04.2022, hence the instant writ petition.

03. Learned counsel for the petitioners, *inter alia*, contends that allegations in the FIR are false and frivolous; petitioners are law abiding officers of Islamabad Police; they have conducted raid after getting permission from concerned the Magistrate; sons of respondent No.2 are hardened

criminals; they are involved in many cases registered against them u/s 9-C, CNSA, 1997; they are behind the bars and just as a counter-blast in order to pressurize the petitioners, respondent No.2 has filed the petition for registration of FIR.

04. Conversely, learned counsel for respondent No.2 states that sufficient evidence is available against the petitioners; proposed FIR constitutes a cognizable offence, hence the police is bound to register the case / FIR against the petitioners as provided in Section 154 Cr.P.C, and has prayed for dismissal of instant writ petition.

05. Arguments advanced by learned counsel for the petitioners and learned counsel for the respondent No.2 have been heard and record has been perused with their able assistance.

06. Proposed FIR / complaint for registration of case against the petitioners has been addressed to S.P

(complaint), Islamabad; respondent No.2 has not addressed any application to the S.H.O of concerned police station as it is mandatory under Section 154 Cr.P.C. that matter regarding the commission of cognizable offence must be reported to the concerned S.H.O.

07. When confronted, learned counsel for respondent No.2 has stated that an application was filed before the S.H.O but the police refused to receive the same; neither copy of application submitted to the S.H.O for registration of case was annexed with the petition, nor the said important fact was mentioned in the petition u/s 22-A Cr.P.C. filed by respondent No.2 for registration of FIR against the petitioners.

08. Another important factor of the case is that in the proposed FIR respondent No.2 has not mentioned any date, time and place of occurrence.

She has only mentioned that the accused alongwith police party forcibly entered into her house and stolen cash amount and one gold ring but no such details regarding date, time and place of occurrence are mentioned.

09. Learned trial Court while passing the impugned order has mentioned that proposed accused failed to produce search warrants for conducting raid upon the house of respondent No.2 before the Court but the petitioners has annexed copy of search warrant issued by learned Magistrate 1st Class, Secretariat Division ICT, Islamabad, whereby permission to enter in the subject premises was granted by the competent authority.

10. It is also admitted that sons of respondent No.2 are involved in number of criminal cases registered under Section 9-C, CNSA, 1997 as well as other sections of PPC; both of them

are behind the bars; challan has also been produced in some cases in the learned trial Courts.

11. Police has also submitted report in the Court of learned Additional Session Judge, East-Islamabad, wherein it is mentioned that family members of respondent No.2 are habitual drug peddlers; no any application for registration of case has been received by the police station Bhara Kahu, even no application has been received in the office of S.P (complaint); application for registration of case addressed to S.P (complaint) annexed with the petition filed u/s 22-A Cr.P.C., do not contain any date/diary number etc.; it is further mentioned in the report that sons of respondent No.2 are involved in 07 criminal cases registered under Section 9-C, CNSA; all proceedings of raid/arrest were conducted after obtaining search warrants and adopting all legal and

codal formalities.

12. Learned Additional Sessions Judge / Ex-Officio Justice of Peace, East-Islamabad while passing the impugned order has not mentioned any plausible reasons for not relying on the report, submitted by S.H.O Police Station Bhara Kahu, rather passed the impugned order in a mechanical manner.

13. Learned Ex-officio Justice of Peace once called for the police report, cannot ordinarily brush aside the same, in case he proposes to give his opinion contrary to the police report he was supposed to furnish tangible reasons for not relying upon the police report.

14. There is distinction in Sections 22-A(6) and 154 Cr.P.C, for convenience both the sections are reproduced here under:

➤ **Section-22-A(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 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."

➤ **Section 154 Cr.P.C Information in cognizable cases:**

Every information relating to the commission of a cognizable offence if given orally to an officer incharge of a police station, shall be reduced into writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf."

Supreme Court of Pakistan in a case titled as "**Younas Abbass and others Vs. Additional Sessions Judge, Chakwal and others**" (**PLD 2016 SC 581**), has held that:

"Functions performed by Ex-officio Justice of Peace under S.22-A (6) Cr.P.C.---Such functions being quasi-judicial in nature could not be termed as executive, administrative or ministerial.. Said functions were complementary to those of the police and thus did not amount to interference in the investigative domain of the police ... Khizar Hayat and others v. Inspector General of Police (Punjab), Lahore and others PLD 2005 Lahore. 470 and Muhammad Ali v. Additional I.G, PLD 2015 SC 753 dissented from.

Functions performed by the Ex-officio Justice of Peace not executive, administrative or ministerial as he did not carry charge or deal with mechanically. Such as described in (i), (ii) and (iii) of 22-A(6) Cr.P.C, were

quasi-judicial as Ex-officio Justice of Peace entertained applications, examined the record, heard the parties, passed orders and issued directions with due application of mind. Every lis before him demanded discretion and judgment. Functions so performed could not be termed as executive, administrative or ministerial on any account."

16. Proceedings before Justice of Peace are quasi-judicial and are not executive, administrative or ministerial to deal with the matters mechanically rather the same are quasi-judicial powers, every case before him demands discretion and judicial observations. Reliance is placed on a case titled as **"Muhammad Ashar Halim Quraishi vs. Ex-officio Justice of Peace/Additional Sessions Judge, East Islamabad and 03 others"** **(2022 PCr.LJ 534).**

17. Even respondent No.2 has alternative statutory remedies under Sections 156(3) & 190 Cr.P.C as well as remedy to file criminal / private complaint under Section 200 Cr.P.C to press and prove its allegations before the Court of Competent jurisdiction.

18. For the reasons, discussed above, the instant writ petition is **allowed**, the impugned order dated 11.04.2022, passed by learned Additional Sessions Judge / Ex-Officio Justice of Peace, East-Islamabad, is set-aside, further the respondent No.2 is at liberty to file a private compliant, if so advised, before the competent forum.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh