

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP-1451-Q-2012

MAKHDOOMZADA SYED MUSHTAQ HUSSAIN SHAH

Titled

Vs

ADDITIONAL DIST & SESSION JUDGE ETC.

(a) Judgment approved for reporting

☒ Yes / ☐ No

(b) Judgment any comment upon the Conduct of the
Judicial Officer for Quality of the impugned
judgment is Desired to be made.

Yes / ☒ No

(In case the answer is the affirmative Separate
confidential note may be Sent to the Registrar
drawing his Attention to the particular aspect).

Impr
Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO.: WRIT PETITION NO.1451-Q OF 2012.

MAKHDOOMZADA SYED MUSHTAQ HUSSAIN SHAH

VERSUS

ADDITIONAL SESSIONS JUDGE, ISLAMABAD AND 6 OTHERS.

SERIAL NO. OF ORDER OF PROCEEDINGS	DATE OR ORDER OF PROCEEDINGS	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

26.06.2012

Mr. Sher Afzal Khan, Advocate for the
petitioner.

The petitioner through the instant writ petition, seeks quashment of FIR bearing crime No.06, dated 11.3.2011, registered under Sections 409, 420, 468, 471/109 PPC read with section 5(2) 47 PCA, Police Station FIA Crime Circle, Islamabad.

2. The petitioner has been cited as accused in the above referred FIR, which was registered on an application moved by respondent No.2 to the learned District & Sessions Judge, Islamabad/Ex-officio Justice of Peace initially showing SHO, P.S. Margalla, Islamabad as respondent No.2, for which, directions were sought to register FIR. On the said application report was called for from the police, to which concerned SHO sought time to submit a complete report. On the next date of hearing, SHO, FIA did not appear. However, final order dated 17.12.2010 was passed suo-moto requiring the FIA to probe the matter and would proceed against

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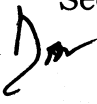
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culprits accordingly. The petitioner, therefore, preferred the instant writ petition seeking quashment of FIR inter alia on the following grounds:

3. Direction for registration of FIR to FIA by Justice of Peace is without jurisdiction. Ex-Officio Justice of Peace is not competent to issue such direction as FIA having its own procedure to make preliminary inquiry and then to register a case. Jurisdiction of Ex-Officio Justice of Peace is only to the extent of local police, FIA is not included therein. It is also contended that the learned Justice of Peace initially entertained the application, for which, SHO, was respondent, but subsequently, switch over the same proceedings towards FIA by calling its officer and thereafter direction for registration of the FIR, such direction adopted by learned Justice of Peace is illegal. Moreover, by virtue of Section 22 Cr.P.C, learned Justice of Peace is to be notified by the Provincial Government and Islamabad Capital Territory has since not been declared as Province, therefore, there is no Provincial Government, hence the powers exercised by Ex-Officio Justice of Peace without notification is illegal. Moreover, the learned Additional Sessions Judge, cannot exercise such powers until nominated. Therefore, such relief sought that not only the registration of case with FIA Crime Circle, but proceedings initiated are illegal.



4. Learned counsel for the petitioner submitted the averments of the petition while referring Section 22 Cr.P.C., which envisages the powers of Provincial government to appoint Justice of Peace for the local area. He also referred sub rule 2 of Rule 5 read with Rule 11 of Federal Investigation Agency (Inquiries and Investigations) Rules, 2002, providing a procedure for registration of the FIR includes a preliminary inquiry under the order of competent authority, same has since been disregarded. Therefore, the entire proceedings are nullity in the eyes of law. He also argued that the FIA is not the police nor running Police Station, therefore, directions cannot be issued in view of Section 22(6) Cr.P.C. by the Ex-Officio Justice of Peace, which can only be issued to the Police Authority concerned on a complaint regarding non-registration of criminal case. He, therefore, requests for quashment of the FIR bearing crime No.06, dated 11.3.2011, registered under Sections 409, 420, 468, 471/109 PPC read with section 5(2) 47 PCA, Police Station FIA Crime Circle, Islamabad, under the direction of Ex-Officio Justice of Peace/Additional Sessions Judge, Islamabad. He also referred Article 1 of the Constitution of Islamic Republic of Pakistan and amendment vide Ordinance No. XLV of 2001, whereby Islamabad Capital Territory is excluded in Section-1 of Ordinance XXXVII of 2001 (Code of



Criminal Procedure (Amendment) Ordinance, 2001,
which is reproduced herein below:-

"In Section 1, in subsection (2), after the figure "2001", at the end, the words and commas "except in Islamabad Capital Territory where it shall come into force on such date as the Federal Government may, by Notification in official Gazette, specify" shall be added."

5. The further amendment by Ordinance XXXVII of 2001 is also reproduced herein below:-

1. Short title and commencement.-

(1) this Ordinance may be called the Code of Criminal Procedure (amendment) Ordinance, 2001.

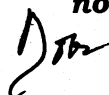
(2) It shall come into force on the fourteenth day of August, 2001."

6. After hearing arguments and going the relevant provisions of law and considered the following scheme of law.

7. The first contention of learned counsel for the petitioner with regard to the notification for appointment of Justice of Peace as envisaged by Section-22 Cr.P.C., I am of the view that it is the power vested to the Provincial Government for appointment of Justice of Peace for a local area to be specified in the notification not as a whole. Section 22 is therefore, reproduced herein below:-

"Appointment of Justices of the Peace.

The Provincial government may, by notification in the official Gazette,



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appoint for such period as may be specified in the notification, and subject to such rules as may be made by it any person who is a citizen of Pakistan and as to whose integrity and suitability it is satisfied, to be a Justice of the Peace for a local area to be specified in the notification, and more than one Justice of the Peace may be appointed for the same local area."

8. The scheme of law further elaborates with regard to the exercise of powers by the Ex-Officio Justice of Peace as provided by Section 25. Cr.P.C. envisages the Sessions Judges by virtue of their respective offices, are Justice of Peace within whole of the District of the Province, in which they are serving, whereas Additional Sessions Judges are on nomination by them are Justice of Peace in the same manner as the Sessions Judges are. Section 25 Cr.P.C. is therefore, reproduced herein below:-

"Ex-officio Justice of the Peace. By virtue of their respective offices, the Sessions Judges and on nomination by them, the Additional Sessions Judges, are Justices of the Peace within and for whole of the District of the Province in which they are serving."

9. From the bare perusal of above provisions of law, it become crystal clear that Sessions Judge by virtue of his office is Ex-Officio Justice of Peace, but only the technical hurdle comes for whole district or province, in which, they are serving is required to be interpreted in this regard while going through the amendment in Section 22-A Cr.P.C, whereby Subsection 6 was added by Federal Amendment

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Ordinance CXXXI of 2002. Since Federal Ordinance prevails over Provincial enactment in view of Article 143 of the Constitution if any inconsistency between Federal and Provincial if occurred.

10. Another point with regard to the Additional Sessions Judge as Justice of Peace by nomination clarifies the position while referring Section 17 of the Cr.P.C. empowers Sessions Judge refers the matter to any Additional Sessions Judge. In case if Additional Sessions Judge is nominated generally as Justice of Peace, such powers can be exercised by him. But in individual case, if are referred under Section 17 that can also be deemed to be a nomination.

11. Otherwise, Section 9 defines Court of Session that includes Additional Sessions Judges and Assistant Sessions Judges as provided by subsection 3 of Section 9 Cr.P.C. Therefore, exclusion of Islamabad Capital Territory by referring both the Ordinance of 2001, does not mean that Sessions Judge or Additional Sessions Judge appointed in their offices in such capacity as Sessions Judge cannot be included from exercising powers as Justice of Peace by virtue of their respective offices.

12. So far the concern of another point raised by learned counsel that Justice of Peace cannot issue direction to FIA for registration of FIR. In this regard

I while relying upon **2010 MLD 1346**, whereby it



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has been specifically discussed the powers of Justice of Peace for issuance of direction to register a case by FIA have also been discussed.

13. I have further been guided by very Act of Federal Investigation Act. Section 5(4) of Federal Investigation Agency Rules, 2002 provides status and powers of the members of the Agency (FIA), which particularly includes the powers of an officer Incharge Police Station are to be exercised by member of the Agency. Further elaborate Police Station includes any place declared generally and specially, by the Federal Government to be a Police Station. Subsection 4 is reproduced herein below:-

"For the purpose of the exercise by the members of the Agency of the powers of an officer in charge of a police station. "Police Station" includes any place declared, generally or specially, by the Federal Government to be a police-station within the meaning of the Code."

14. Though by Section 10 of the Act, the Pakistan Special Police Establishment Ordinance, 1948 was repealed on promulgation of Federal Investigation Agency Act, 1974, therefore, there remained no ambiguity to concerned agency (FIA) and powers exercised by its members as officer Incharge of the Police Station. Therefore, status of the FIA defines as Police Station and Incharge whereof is officer



Incharge of the Police Station as Station House Officer, therefore as defined being Police Station and Officer Incharge of the said Police Station. The Ex-Officio Justice of Peace can issue such direction while exercising powers under Section 22-A Cr.P.C., which includes the appropriate direction to the Police Authority concerned. For such purpose FIA being Agency is a Police Authority comes within such definition.

15. Such contention with regard to the procedure to be adopted by FIA under the Rules, 2002 particularly Sections 5 & 11, which define initiation of inquiry and registration of criminal case and competent authority in cases where senior public servant is involved alongwith junior public servant.

16. From perusal of order dated 05.3.2011 passed by learned Additional Sessions Judge, Islamabad/ Justice of Peace, it appears that under the order of the Court an inquiry was conducted, which is deemed to be an inquiry covering Section 5 of FIA Rules, 2002, report whereof was presented before Justice of Peace for perusal, whereupon directions were issued and subsequently a criminal case was registered. Therefore, apparently, neither procedure nor working system of FIA was violated while registration of the FIR.

17. So far the concern of switching over the procedure from old one to new, whereby earlier only



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SHO, Police Station Margalla, Islamabad was respondent requiring to register the FIR, but allegedly, during such proceedings, FIA officials were summoned and subsequently, directions were issued to them.

18. From perusal of order dated 07.12.2010, it transpires that earlier petition was disposed of when petitioner was ordered to approach FIA, accordingly, if advised, but subsequently on another application moved to the learned Additional Sessions Judge, Islamabad, who issue notice to FIA, subsequently proceedings initiated, finally resulted, directions were issued to the SHO, FIA/Inspector Anti Corruption Circle, Islamabad to register a criminal case and to proceed further in accordance with law.

19. Entirely the procedure laid down by law has been followed by all the authorities concerned and no any illegality has been observed. Therefore, there is no exceptional ground exist to quash the FIR. Hence request for quashment of FIR in the instant petition is **declined**.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

*AR.ANSARI/

ANNOUNCED IN THE OPEN COURT ON: 05-07.2012

JUDGE

Approved for reporting.

Blue Slip added.
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