

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

Writ Petition No.2873 of 2021

Aisha Rita

Versus

Senior Superintendent of Police, Islamabad and 04 others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	13.06.2022	Mr. Abdul Haseeb Khan Afridi, Advocate for the petitioner. Ch. Sheraz Sohail, Advocate for respondent No.3. Mr. Fahad Ali, learned State Counsel. Sikandar Sadiq, A.S.I / I.O.

C.M No. 2150 of 2022

This is an application seeking permission to place additional documents on record. The same is allowed subject to all just and legal exceptions.

C.M No. 2151 of 2022

Exemption sought for is allowed subject to all just and legal exception.

Main Case

The petitioner, through the instant writ petition under Article 199

of the Constitution of Islamic Republic of Pakistan, 1973, has challenged order dated 10.07.2021, passed by learned Additional Sessions Judge-IX / Ex-officio Justice of Peace, West-Islamabad, whereby petition under Section 22-A Cr.P.C. filed by respondent No.3 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 case are that the petitioner is ex-wife of respondent No.3; the parties were blessed with three children; later on differences cropped up; in the year 2016, respondent No.3 transferred vehicle Toyota Vitz in the name of petitioner and gave open transfer letter of said vehicle on the basis of which the car was transferred; thereafter, respondent No.3 went to UAE to live with his second wife; the petitioner in

the year 2017 due to financial crises got the vehicle transferred in the name of Ms. Noreen Akhtar; respondent No.3 pronounced divorce upon the petitioner in the year 2020; the petitioner and her children filed a suit for maintenance against respondent No.3 on 01.06.2020; respondent No.3 filed an application before the S.H.O, P.S Industrial Area, Islamabad on 25.02.2021, for registration of criminal case against her ex-wife regarding transfer of car in her name and selling the same in the year 2017, by committing fraud and cheating; learned ASJ-IX/Ex-officio Justice of Peace vide impugned order dated 10.07.2021, accepted the petition of respondent No.3 and passed order for registration of criminal case against the petitioner, hence the instant writ petition.

03. Learned counsel for the petitioner, *inter alia*, contends that

respondent No.3 is ex-husband of the petitioner; he gave the alleged car to the petitioner which was got transferred in her name in the year 2017. Subsequently, the petitioner transferred the said car in the name of Ms. Noreen Akhtar; after pronouncement of divorce upon her by respondent No.3, she has filed a suit for maintenance against him; as counter-blast respondent No.3 filed an application for registration of false and frivolous case against her; learned Ex-officio Justice of Peace has not called comments / report from S.P (complaint) or concerned S.H.O and impugned order is erroneous, hence liable to be set aside.

04. Conversely, learned counsel for respondent No.3 has controverted the arguments advanced by learned counsel for the petitioner and stated that sufficient evidence is available

against the petitioner that she has fraudulently got the said car transferred in her name; this fact has been verified from the order dated 23.02.2021, passed by Excise & Taxation Officer / Motor Registering Authority, ICT, Islamabad wherein, transfer of ownership of vehicle in the name of petitioner as well as subsequent transfer of ownership in the name of Ms. Noreen Akhtar has been cancelled, hence the impugned order has rightly been passed in the light of decision made by ETO/MRA, Islamabad and has prayed for dismissal of instant writ petition.

05. Arguments advanced by learned counsel for the petitioner and learned counsel for respondent No.3 have been heard and record has been perused with their able assistance.

06. It is evident from record that the petitioner and respondent No.3 were

married to each other. From the wedlock, three children were born who are aged about 28, 24 & 22 years; the petitioner is aged about more than 65 years; she is the mother of young daughter having age of 22 years and two young sons; matter regarding transfer of car pertains to the year 2017; same was transferred in the name of petitioner. Subsequently, transferred to Ms. Noreen Akhtar in the year 2017; the petitioner filed a family suit against respondent No.3; prima facie it seems that as a counter-blast respondent No.3 filed an application in the Police Station I-9 Industrial Area, Islamabad for registration of criminal case against the petitioner.

07. Main ground/reason upon which learned Ex-officio Justice of Peace relied while accepting the petition filed u/s 22-A Cr.P.C. is the order dated 23.02.2021, passed by ETO/MRA,

Islamabad, wherein, transfer of ownership of vehicle in the name of the petitioner and subsequent transfer was cancelled. Now learned counsel for the petitioner has produced order dated 01.03.2022, passed by Excise & Taxation Officer, Islamabad, wherein appeal under Section 36 of the Motor Vehicle Ordinance was filed by the petitioner against order dated 23.02.2021, was accepted and the matter was remanded for decision afresh after hearing the parties.

08. Appeal against order dated 23.02.2021, has been accepted. Learned counsel for respondent No.3 has not given any plausible argument in support of his contention and failed to convince this Court that why order for registration of criminal case against an old lady / ex-wife having age of 65 years regarding the past and closed transaction has been passed. Learned

Justice of Peace has not called comments / report from S.P (Complaint) / concerned S.H.O.

09. Learned Justice of Peace in violation of decision of NJPMC, has not called the report from S.P (Complaint) before allowing the petition.

10. 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).**

11. Even respondent No.3 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.

12. For the reasons, discussed above, instant writ petition is **allowed**, the impugned order dated 10.07.2021, passed by learned Additional Sessions Judge-IX / Ex-Officio Justice of Peace, East-Islamabad, is set-aside, further the respondent No.3 is at liberty to file a private compliant, if so advised, before the competent forum.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh