

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

Writ Petition No.4531/2019

Agha Muhammad Jaffar Abbas
Versus
S.P Complaint, Islamabad, etc.

Petitioner By: Imran Feroze Malik, Advocate.
State by: Malik Mazhar Javed, State counsel with
Ghulam Shabir, Sub- Inspector.
Respondent by: Asif Majeed, Faisal Iqbal, Aamir Sheraz
proposed accused in person.
Date of Hearing: 06.02.2020.

GHULAM AZAM QAMBRANI :- Through the instant

Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, read with Section 561-A Cr.P.C, the petitioner seeks setting aside order dated 02.12.2019, and issuance of direction to respondent No.2 to lodge an F.I.R.

2. Briefly, facts of the case are that the petitioner is an authorized agent of SHAN DISTRIBUTORS PRIVATE LIMITED to deal on behalf of the Company. He filed an application for registration of an F.I.R stating therein that the respondents, who were working with the company on different posts, embezzled 4170 empty bottles of the company causing huge loss. The matter was reported to the local police but till date, no F.I.R has been lodged. He submitted an application before the learned Justice of

Peace, under Section 22-A/B Cr.P.C which was dismissed vide order dated 02.12.2019, hence, the instant petition.

3. Learned counsel for the petitioner submits that the accused persons, mentioned in the application, have committed heinous offence but the police has not taken any action against the accused persons. The contents of the application discloses commission of offence, therefore, police is duty bound to register a case on the application of the petitioner; that the impugned order passed by the learned Ex-Office Justice of Peace, is contrary to the facts and circumstances of the case; that there were various illegalities, irregularities and improprieties, on the basis whereof the impugned order is not sustainable and liable to be set-aside and direction should have to be issued to the S.H.O Industrial Area, Islamabad/ respondent No.2 to register an F.I.R against the proposed accused/ respondents No. 3 to 6.

4. Conversely, learned State counsel submitted that learned Justice of Peace sought report form S.H.O on which, the matter was investigated by Dawood Sabir, Sub-Inspector who submitted his report, according to which on 01.11.2019, the petitioner called the above said accused persons namely Asif Majeed (Store Keeper), Faisal Iqbal (Assistant Store Keeper), Aamir Shahzad (Salesman) and Rehan Ahmed (Driver) in his company office and they were illegally detained there. On receiving information of the incident, he visited the spot and recovered above four persons

and accordingly lodged F.I.R No. 558 dated 02.11.2019, under Section 342, 384, 506 P.P.C at Police Station Industrial Area, Islamabad, was registered against the petitioner Agha Muhammad Jaffar and that the petitioner was arrested in that case and sent to judicial custody. Now, he has moved the instant application for registration of a case against the above said persons to take revenge. He further submitted that the alleged accused persons stated in their statements that the petitioner was inducted as Manager 7/8 days prior to the day of occurrence and he wanted to get induct his own persons in the company to replace them and that their salaries and other dues were pending with him but he was reluctant to pay the same and due to this reason, the petitioner has leveled the allegation of theft against them. Further submitted that during the probe by the Sub-Inspector, the petitioner failed to substantiate his version, and also failed to produce any proof or witness in support of his version. Lastly, argued that the instant petition is liable to be dismissed.

5. Arguments heard. Record perused.

6. Perusal of the reports submitted by respondents No.1 & 2 reveal that on 01.11.2019 the petitioner illegally detained the alleged accused persons namely Asif Majeed (Store Keeper), Faisal Iqbal (Assistant Store Keeper), Aamir Shahzad (Salesman) and Rehan Ahmed (Driver), in a room of the Company and also got their thumb impression on white papers, thereafter, with the

intervention of the police; they were recovered and set free. In this regard, F.I.R 558 dated 02.11.2019 under sections 342, 384 & 506 P.P.C at Police Station Industrial area, Islamabad, was registered against present petitioner.

7. It is necessary to mention here that in the case of Muhammad Bashir Versus Station House Officer, Okara Cantt. and others (PLD 2007 SC 539), the Hon'ble Supreme Court of Pakistan has been pleased to observe as under:-

"40. Therefore, in our opinion, the only jurisdiction which could be exercised by an Ex-officio Justice of the Peace under section 22-A (6), Cr.P.C. was to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence and if it did then to direct the concerned S.H.O. to record an F.I.R. without going into the veracity of the information in question, and no more. Offering any other interpretation to the provisions in question would be doing violence to the entire scheme of the Cr.P.C. which could not be permitted.

41. We are conscious of the fact that in pursuance of petitions filed under Article 199 of the Constitution, the High Courts, at times, did refuse to issue writs directing recording of F.I.Rs. Suffice it to say that the exercise of discretion under the said jurisdiction was not dependent only on an illegality committed by a competent authority but was also controlled by some other important considerations such as the seeker of a writ being an aggrieved person; availability of alternative remedies such as filing of a complaint etc. in criminal matters and the applicant being qualified, in equity, for the grant of the sought relief. The powers of the Ex-officio Justice of the Peace under section 22-A(6) of the Cr.P.C. could, therefore, not be equated with the constitutional jurisdiction vesting in a High Court."

8. In view of the above legal position, I am clear in my mind to observe that Ex-Officio Justice of Peace, under Section 22-A (6) Cr.P.C have to examine whether the information disclosed by the

petitioner did or did not constitute a cognizable offence and if it did, then to direct the concerned S.H.O to register an F.I.R.

9. Record further reveals that *prima facie* the salaries and dues of the alleged accused persons are pending with the petitioner, who is reluctant to pay the same, trying to usurp the same and to involve respondents No.3 to 6 in a false criminal case with malafide intention and the petitioner has failed to produce any proof in support of his version.

10. In the instant case, as per impugned order, which was based on the report of S.H.O, is a well reasoned order. Further, it is settled principle of law that the Ex-Officio Justice of Peace while seized of a petition under Section 22-A/22-B Cr.P.C is not to act mechanically by issuing a direction for registration of a criminal case in each and every case, which has to be decided on its own peculiar facts and circumstances as has been held by the Hon'ble Lahore high Court, Lahore in case Mian Abdul Waheed vs. Additional Sessions Judge, Lahore and seven others (2011 P.Cr.L.J 438). In any case, the allegations leveled against the accused persons by the petitioner cannot be adjudicated upon by this Court while exercising its extra ordinary constitutional jurisdiction, as the same entails a detailed factual inquiry.

11. For what has been discussed hereinabove, learned counsel for the petitioner has failed to point out any illegality or irregularity in the impugned order calling for interference by this

Court in its constitutional jurisdiction. Resultantly, the instant petition having no force, is **dismissed**.

~~(GHULAM AZAM QAMBRANI)~~
~~JUDGE~~

ANNOUNCED IN OPEN COURT ON 18th FEBRUARY, 2020.

~~JUDGE~~

"Rana.M.Ift"