HCJD/C-121

JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

WRIT PETITION NO. 3186/2012

MST. NASREEN AKHTAR

VERSUS

JUSTICE OF PEACE/LEARNED ADDITIONAL SESSIONS JUDGE & 2 OTHERS

Petitioner by	:	**Mr. Khurram Mehmood Qureshi Advocate.**
Respondent by	:	**Mr. Mansoor Khan Abbasi Advocate.** **Malik Zahoor Awan, Standing Counsel.**
Date of Hearing	:	**08-06-2015**

ATHAR MINALLAH, J.- The petitioner has assailed order dated 05-07-2012 passed by the learned Additional Sessions Judge, Islamabad, while exercising powers as Ex-Officio Justice of the Peace under Section 22-A (6) of the Code of Criminal Procedure 1898 (*hereinafter referred to as the 'Cr. P. C.'*).

2. The facts, in brief, are that the petitioner and her brothers were jointly eligible for monetary compensation, including the allotment of a plot by the Capital Development Authority, pursuant to their joint property having been acquired in 1985. Plot No.308-C in Sector F-11/2 Islamabad (*hereinafter referred to as the 'Property'*) was allotted in the joint names of the petitioner and her two brothers. It is alleged that the brothers, without the consent or knowledge of the petitioner, received the monetary compensation. It is alleged by the petitioner that her brothers sold and transferred the Plot on the basis of a forged/fake affidavit

purported to have been executed by her. The petitioner approached the officials of the Capital Development Authority but to no avail. On 20-04-2012 the petitioner submitted an application for the registration of a criminal case. It is alleged that the respondent No.2 sent her written complaint to the respondent No.3. The latter refused to fulfil his obligations under Section 154 of the Cr. P. C. The petitioner, thereafter, filed a petition under Section 22-A/22-B of the Cr. P. C. before the respondent No.1. Notices were issued by the respondent No.1. The respondent No.3 sought time so as to conduct an inquiry for determining the actual facts. The respondent No.1 dismissed the petition on the sole ground that the matter was pending before the Chairman of the Capital Development Authority, who was to conduct an inquiry. It was observed that if the petitioner did not feel satisfied with the inquiry, then she could apply for the registration of the case.

3. The learned counsel for the petitioner has contended that; it is settled law that respondent No.3 was obligated to enter the complaint as required under Section 154 of the Cr. P. C.; no authority is vested in the officer incharge of the police-station to hold an inquiry prior to fulfilling the obligations prescribed under Section 154 of the Cr. P. C.; under the scheme of the Cr. P. C. there is no concept of an inquiry to be conducted prior to entering the complaint as envisaged under Section 154 of the Cr. P. C.; reliance has been placed on the case of *'Muhammad Bashir v. Station House Officer, Okara Cantt and others'* [PLD 2007 SC 539]; Section 24.4 of the Police Rules 1934 further supports the said contention; the impugned order is without authority and jurisdiction.

4. The learned counsel for the respondent has argued that the petitioner had filed a representation before the Chairman Capital Development Authority for conducting an inquiry; without completion of the said inquiry, the registration of a criminal case was not warranted; the respondent No.3 had also carried out an inquiry and, therefore, he had come to the conclusion that a case is not made out for registration of a case; the impugned order is just, proper and in accordance with law; no legal infirmity has been pointed out so as to require interference by this Court.

5. The learned counsels have been heard and the record perused with their able assistance.

6. It is not in dispute that the petitioner was a joint owner of the plot. It is also not in dispute that the other joint owners i.e. the brothers of the petitioner sold the plot. The plot was sold on the basis of an affidavit submitted on behalf of the petitioner, which the latter alleges to be forged/fake. The questions for consideration by this Court are, firstly whether the respondent No.3 is conferred with the power to undertake an inquiry before complying with the provisions of Section 154 of the Cr. P. C., secondly, whether the respondent No.3 could have refused to fulfil the obligations prescribed under Section 154 of Cr. P. C., and lastly the scope and powers of the learned Justice of the Peace pursuant to the powers vested under sub-section (6) of Section 22-A of the Cr. P. C.

7. Section 154 of the Cr. P. C. prescribes the procedure required to be followed when an information relating to the commission of a cognizable offence is received by the officer in charge of the police-station. It provides that if the information is given orally then it shall be reduced to writing by the officer in charge or under his direction and be read over to the informer. In case of an information given in writing or reduced to writing, it shall be signed by the person giving it. The substance of the information given in writing or reduced to writing shall then be entered in a book to be kept by the officer in charge in such form as may be prescribed. The act of entering the information in a book at the police-station is known as registration of the First Information Report. A plain reading of Section 154 of the Cr. P. C. makes it obvious that the obligations imposed therein are mandatory in nature, as the legislature has used the word 'shall'. The procedure to be adopted in case of non-cognizable cases is provided under Section 155 of the Cr. P. C. By now it is settled law that compliance with Section 154 of the Cr. P. C. is a mandatory obligation, and can neither be refused nor delayed on the ground of conducting an inquiry.

8. In the case of *'Syed Saeed Muhammad Shah and another v. The State'* [1993 SCMR 550], the august Supreme Court observed and held as follows.-

> *"In Part V of the Criminal Procedure Code there is Chapter XIV containing sections 154 to 176 which relate to*

information to the police and their powers to investigate. These provisions cover information in cognizable cases as well as in non-cognizable cases. Under Section 154, Cr. P. C. it is mandatorily bounden duty of the police officer to register F.I.R. of a cognizable offence. Under section 157, Cr.P.C. he has to send his report to the Magistrate and if he does not want to investigate a case for reason of insufficient grounds then also he has to send his report to the Magistrate with reasons for his such conclusion."

9. In the case of *'Muhammad Bashir v. Station House Officer, Okara Cantt. and others'* [PLD 2007 SC 539] the august Supreme Court, after thoroughly examining the scope of the Cr. P. C, elucidated the law and the principles relating to the nature of obligations under Section 154 of the Cr. P. C, and the scope of the powers conferred on a Justice of the Peace under Section 22-A of the Cr. P. C. It has been held that upon receiving the information, the incharge of the police-station must first determine whether the offence disclosed in the information received falls in the category of a cognizable or non-cognizable offence. After having determined the category of the offence, as disclosed from the bare perusal of the information received, it becomes a mandatory obligation to reduce the said information to writing in the prescribed register. In the event that the determination leads to the conclusion that a non-cognizable offence has been committed, then it is mandatory to follow the procedure prescribed under Section 155 of the Cr. P. C. The Hon'ble Supreme Court emphasised the use of the expression 'shall' by the legislature in Section 154 of the Cr. P. C. It is to be noted further that the question whether the officer concerned is conferred with the power to hold an inquiry so as

to assess the correctness or falsity of information, was answered as follows.-

> *"It may be reiterated and even emphasized that there was no provision in any law, including the said section 154 or 155 of the Cr. P. C. which authorized an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or the falsity of the information received by him before complying with the command of the said provision which obliged him to reduce the same into writing irrespective of the fact whether such an information was true or otherwise."*

10. The august Supreme Court succinctly explained the rationale of the legislative intent behind the procedure prescribed under section 154. The rationale was explained as to ensure that the officer incharge of the police-station does not assume the authority to adjudicate or determine the truthfulness or falsehood of the information received. It was observed that if such a power was to be assumed as having been conferred on the officer in charge of the police-station, then it would tantamount to bestowing the power to decide the guilt or innocence of an accused person, which otherwise is within the exclusive domain of the courts of law. The august Supreme Court in the said judgment summarized the conclusions in paragraph-27 and the same are reproduced as follows.-

> *"The conclusions that we draw from the above, rather lengthy discussion, on the subject of F.I.R. are as under:---*

(a) no authority vested with an Officer Incharge of a Police Station or with anyone else to refuse to record an F.I.R. where the information conveyed, disclosed the commission of a cognizable offence-

(b) no authority vested with an Officer Incharge of a Police Station or with any one else to hold any inquiry into the correctness or otherwise of the information which is conveyed to the S.H.O. for the purposes of recording of an F.I.R.

(c) any F.I.R. registered after such an exercise i.e. determination of the truth or falsity of the information conveyed to the S.H.O. would get hit by the provisions of section 162, Cr.P.C.

(d) existence of an F.I.R. is no condition precedent for holding of an investigation nor is the same a prerequisite for the arrest of a person concerned with the commission of a cognizable offence;

(e) nor does the recording of an F.I.R. mean that the S.H.O. or a police officer deputed by him was obliged to investigate the case or to go through the whole length of investigation of the case mentioned therein or that any accused person nominated therein must be arrested; and finally that,

(f) the check against lodging of false F.I.Rs. was not refusal to record such F.I.Rs, but punishment of such informants under S.182, P.P.C. etc. which

should be, if enforced, a fairly deterrent against misuse of the provision of S. 154, Cr. P.C."

11. It is obvious from the above that upon receiving an information regarding an offence, the officer incharge of the police-station has to determine at the first instance regarding the nature of the offence i.e. whether it falls in the category of a cognizable or non-cognizable offence . After such a determination has been made, it places a mandatory obligation to strictly comply with the requirements of Section 154 or 155 of the Cr. P. C, as the case may be. Conducting an inquiry or investigation prior to carrying out the mandatory obligations under Section 154 or 155 of the Cr. P. C is neither envisaged, nor is such a power conferred under the scheme of the Cr. P. C. As a corollary, an inquiry to be conducted by any other authority is also neither provided, nor can the incharge of the police-station refuse compliance with the procedure prescribed under Section 154 of the Cr. P.C on such ground. In the instant case, the respondent No.3 refused to fulfill the mandatory obligations under Section 154 of the Cr. P. C on the ground that the Chairman of the Capital Development Authority was to first conduct an inquiry. The same ground also prevailed on the learned Justice of the Peace. Such ground was neither tenable nor in consonance with the scope of jurisdiction vested in the respondent No.3 or the learned Justice of the Peace.

12. In the same judgment the august Supreme Court has also referred to another crucial aspect i.e. the effect of the registration of a First Information Report. In the case of the registration of a criminal case,

the apprehension or fear of being arrested even when a person is innocent, is misconceived. This aspect has also been dealt by the august Supreme Court in paragraph-24 of the judgment. It would be pertinent to reproduce the same as follows.-

> *"It must, therefore, be kept in mind that mere registration of an F.I.R. could bring no harm to a person against whom it had been recorded. No one, consequently, need fear a false F.I.R. And if a police officer arrested a person in the absence of the requisite material justifying the same and only one the pretext of such a person being mentioned in an F.I.R., then such would be an abuse of power by him and the remedy for such a misuse of power would not be to permit another abuse of law by allowing an unlawful exercise of collection of evidence to assess the veracity of allegations levelled through the information conveyed to a S.H.O. before recording of an F.I.R. The remedy lies elsewhere."*

13. The scope of the powers and functions of the Justice of the Peace under Section 22 of the Cr. P. C have also been examined, and the principles relating thereto were eloquently elaborated by the august Supreme Court in the case of Muhammad Bashir (supra). The same have been summed up in paragraph-40 of the judgment and are reproduced as follows.-

> *"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."

14. It is evident from the above that the learned Justice of the Peace was only required to examine whether the information received disclosed a cognizable offence or not. If the answer was in the affirmative, then the only course left was to direct the concerned in charge of the police-station to record the F.I.R. The learned Justice of the Peace, instead of taking relevant matters into consideration, dismissed the petition on the ground that the Chairman of the Capital Development Authority was to conduct an inquiry regarding the affidavit filed on behalf of the petitioner, which the latter alleges to be forged/fake. I am afraid that in the light of the settled law this power was not vested in the learned Justice of the Peace.

15. The law elucidated by the august Supreme Court in the case of Muhammad Bashir (supra) is by now firmly imbedded and reflected in the precedent law. Reference in this regard may be made to *'Asal Jan Khan v. The State through Additional Advocate General, Bannu and 8 others'* [2012 P. Cr. L. J. 1797], *'Haji Rehmatullah and another v. The State'* [2012 P. Cr. L. J. 288], *'Mst. Bhaitan v. The State and 3 others'* [PLD 2005 Karachi 621], *'Muhammad Yousuf v. Inspector-General of Police & 4 others'* [PLD 1997 Lahore 135], *'Muhammad Ameer Khan v. Khisro Pervez and 2 others'* [2012 P. Cr. L. J. 981], *'Dr. Inayatullah Khilji*

and 9 others v. Ist Additional District & Sessions Judge (East) at Karachi and 2 others' [2007 P. Cr. L. J. 909], *'Ghulam Fareed v. Station House Officer, Police Station Sangi and another'* [2013 P. Cr. L. J. 117].

16. The upshot of the above is that the impugned order dated 05-07-2012 has been passed without taking into consideration the settled law. Consequently the impugned order is set aside. The petition under Section 22-A of the Cr. P. C shall be deemed to be pending before the respondent No.1. The respondent No.1, after affording an opportunity of hearing to the parties, shall decide the petition keeping in view the law and principles as discussed above. The petition is, therefore, allowed and the parties are left to bear their own costs.

(ATHAR MINALLAH)
JUDGE

Announced in open Court on _____

JUDGE

Approved for reporting.

*Luqman Khan/