JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No.929 of 2020

Noor Rehman
Vs
Justice of Peace, West-Islamabad & others.

Petitioner By:	Mr. Sajjad Haider Malik, Advocate.
Respondent No.3 By:	Mr. Farhatullah Jan Advocate
State By:	Mr. Zohaib Hassan Gondal, State Counsel with Asif Riaz ASI.
Date of Hearing:	29.04.2020

GHULAM AZAM QAMBRANI, J. The petitioner has filed the instant writ petition with the following prayer:-

> *"In these circumstances, it is most humbly prayed that instant writ petition may kindly be accepted and impugned order dated 16.03.2020 may kindly be set aside and the respondent No.2 may kindly be directed to proceed in accordance with law and to register the case on the complaint of petitioner, in the best interest of justice.*
>
> *Any other relief this honourable court may deems fit and proper may also be awarded."*

2. Briefly stated facts of the case are that the petitioner submitted an application under section 22-A Code of Criminal Procedure (hereinafter be referred as ***"Cr.P.C"***) before respondent No.1 for registration of F.I.R which was dismissed vide order dated 16.03.2020, hence this petition.

3. Learned counsel for the petitioner contended that the impugned order passed by respondent No.1 is based on surmises and conjectures and that the same is illegal and against the facts, therefore, the same is not maintainable in the eyes of law.

4. Conversely, learned State Counsel vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned order.

5. Arguments heard, record perused.

6. Minute perusal of the record reveals that the petitioner reported that, he alongwith Dr. Iqbal Khattak established a Clinic at Bhadhana Kalan, Islamabad, and the proposed accused Mst. Nazia, Imran and Faisal were entrusted over the said Clinic on monthly salary. It was also the case of petitioner that for establishing the said Clinic and necessary equipment/ medicines, he spent an amount of Rs.5,50,000/- (five lac fifty thousand). After lapse of four-five months, they came to know that all items were missing and the said Nazia etc. have committed theft of the items with the connivance of each other. The matter was probed by the Superintendent of Police Investigation/ Complaints, Islamabad, through Arshad Pervez A.S.I of Police Station, Tarnol, Islamabad, who reported that the petitioner became furious upon demand of the pharmacy certificate and registration of the Clinic, however, preventive measure under section 107 & 151 Cr.P.C were initiated against the petitioner.

7. For better understanding Section 154 of Cr.P.C is reproduced herein below.-

> *"**154. Information in cognizable cases**: information relating to the, commission of a cognizable offence if given orally to an officer incharge of a police station, shall reduced to writing by him or under his direction and then 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:"*

8. The provisions of Section 154 Cr.P.C are mandatory in nature, in case a cognizable offence is made out from the facts given by the complainant. The procedure which is to be followed on receipt of complaint by the officer incharge of police station and also the scope and powers of the Justice of Peace under Section 22-A and 22-B Cr.P.C have been laid down by the Hon'ble Supreme Court of Pakistan in the case titled as *'Syed Saeed Muhammad Shah and another v. The State'* [1993 SCMR 550] and observed and held as under.-

> *"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 vs. Station House Officer, Okara Cantt and others'* [PLD 2007 SC 539] the august Supreme Court, after thoroughly examining the scope of the Criminal Procedure Code,1898, 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 the 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 of Cr.P.C. 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.

12. The august Supreme Court further laid down as under:-

> *"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. In the instant case the respondent No.1 failed to take into consideration the relevant principles laid down by the superior Courts while dismissing the application under Section 22-A & B Cr.P.C in arbitrary manner, filed by the petitioner.

15. From bare perusal of the contents of the application, prima facie, a cognizable offence is made out, the S.H.O had to lodge the F.I.R against the proposed accused persons and during the investigation, if it was found that a false information has been given, then proceedings under Section 182 P.P.C should be initiated for misuse of taking into motion the law.

16. In view of above, instant petition is **allowed** and the impugned order, dated 16.03.2020 passed by respondent No.1 is set-aside. Respondent No.2 is directed to register F.I.R on the first complaint lodged by the petitioner and take action strictly in accordance with law.

Ghulam Azam Qambrani
Judge

Announced in Open Court, on 30th of April, 2020.

Judge

S.Akhtar