ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1182 of 2021
Shah Jehan
Versus
The Justice of Peace / Learned Additional Sessions Judge (East), Islamabad and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	14.12.2021	**Mr. Abdul Rahim Wazir, Advocate for the petitioner.** **Mr. Azhar Hussain, S.I. Police Station Bhara Kahu, Islamabad.**

Through the instant writ petition, the petitioner, Shah Jehan, impugns the judgment dated 22.12.2021 passed by the learned Additional Sessions Judge (East) / *Ex-officio* Justice of Peace, Islamabad whereby his application under Sections 22-A and 22-B of the Code of Criminal Procedure, 1898 ("Cr.P.C."), was dismissed.

2. The petitioner had approached the learned *Ex-officio* Justice of Peace after the police refused to entertain his complaint and register F.I.R. against proposed accused Munir Hussain resident of Quetta. In the petitioner's complaint, it was essentially alleged against the proposed accused that he had forged auction documents of the vehicle and then on the basis of the same fraudulently sold a bogus and illegally imported vehicle to the petitioner which was impounded by the Custom Authorities at Islamabad. Vide the impugned order dated 22.12.2021, the learned *Ex-officio* Justice of Peace had dismissed the petitioner's application on the ground that the agreement for the purchase of the vehicle between the petitioner and the proposed accused was executed at District Layyah, Punjab therefore, criminal case ought to be registered in the said District.

3. Learned counsel for the petitioner submitted that the petitioner purchased an imported vehicle from the proposed accused on 17.01.2018; that on 16.07.2019, the vehicle was taken into custody by the Custom Authorities at Islamabad; that subsequently, the Additional Collector Customs vide order dated 05.09.2019 held the import and auction documents of the vehicle to be bogus, consequently, the vehicle was impounded; that the proposed accused had committed offences of fraud and forgery with the petitioner; that the said offences may have been committed outside the territorial limits of Islamabad but their consequence in the shape of impounding order dated 05.09.2021 had been passed at Islamabad; that under Section 179 Cr.P.C., when a person is accused of an offence by reason of anything, which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by either a Court within the local limits of whose jurisdiction any such thing has been done, or the consequence has ensued; that the learned *Ex-officio* justice of Peace did not advert to the applicable provisions of law while dismissing the petitioner's application under Sections 22-A & 22-B Cr.P.C.; and that the impugned order suffers from a legal error. Learned counsel for the petitioner prayed for the petition to be allowed in terms of relief sought therein.

4. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

5. Learned counsel for the petitioner did not contest the factual plane of the impugned order that the agreement for the purchase of vehicle to have been executed, the vehicle received and

consideration having been paid beyond the territorial limits of District Islamabad. Now, the complaint lodged by the petitioner shows that essentially offences of forgery and cheating are alleged against the proposed accused. An analysis of the provisions of Sections 415 and 463 of the Pakistan Penal Code, 1860 **("PPC")** which define "cheating" and "forgery", respectively, would show two common essential ingredients of the offences of cheating and forgery; firstly, deceiving a person and making of a false document; and secondly, doing it with a fraudulent intention to cause damage or injury to any person, to support a false claim or title or to cause a person to part with the property. In the instant case, none of these essential ingredients of the above said offences *i.e.,* deception, forgery or the consequential delivery of property had happened at Islamabad.

6. The petitioner relied upon Section 179 of Cr.P.C. to assert that Custom Authorities' impounding of the vehicle sold by the proposed accused was a consequence of continuing offence, therefore, jurisdiction of the Court at Islamabad is attracted. The said Section 179 Cr.P.C. reads as follows:-

> ***"179. Accused triable in district where act is done or where consequence ensues:*** *When a person is accused of the commission of offence by reason of anything, which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued."*

7. A bare reading of the above-mentioned provision would show that in order to attract the said provision the act which has been done and the consequences which had ensued should be inseparable and the ensuing consequence should

be a necessary ingredient of the offence. Where the act itself is a complete offence and the ensuing consequence is mere result of it, Section 179 Cr.P.C. is not attracted. In the case of "Kashi Ram Mehta Vs. The Emperor" (AIR 1934 All 499), the Full Bench of the Allahbad High Court, while interpreting Section 179 Cr.P.C., had held as follows:-

> ***"8. But the main question for our consideration is not whether if Section 179 applies, it has been overridden by Section 181, Sub-section (1), but whether Section 179 at all applies to this case. The expression "of any consequence which has ensued" in that section obviously means 'by reason of any consequence etc." The repetition of the word "of" leaves no doubt that the prepositional phrase "by reason of" governs "consequence" as well. In this view the section can have only one meaning, namely, that the commission of the offence must be "by reason of anything which has been done and by reason of any consequence which has ensued." Another noteworthy fact is that the word "and" has been used instead of the word "or". Indeed, if the doing of anything were in itself sufficient to constitute the offence contemplated in this section, there would have been no occasion to use the expression of any consequence which has ensued" at the place at which it occurs; it would have been quite sufficient to mention it at the end of the section where it is already mentioned. If therefore the act done and the consequence which has ensued are to be taken as together amounting to the offence, the commission of which is complained against, then it necessarily follows that the consequence must be a necessary ingredient of the offence in order that Section 179 be applicable. If the offence is complete in itself by reason of the act having been done and the consequence is a mere result of it which was not essential for the completion of the offence, then Section 179 would not be applicable. The illustrations to the section also make it clear that the consequence contemplated in the section is a consequence which coupled with the act done constitutes the offence. But if the two can be separated and the act itself is***

sufficient to constitute the offence, it would make the section inapplicable."

8. The general principle with regard to place of trial is contained in Section 177 Cr.P.C. whereby an offence is to be tried at the place where it is committed while the subsequent provisions contained under Sections 178 to 186 Cr.P.C. constitute exceptions to the said general principle. In the instant case as has already been observed the acts of cheating the petitioner and forging the documents have not been committed at Islamabad. The said acts as alleged against the proposed accused constitute offences which are complete without ensuing consequence of the impounding of the vehicle by the Custom Authorities at Islamabad. The impounding of the vehicle as a consequence is neither necessary to constitute the offences complained against nor form a separate offence, therefore, provisions of Section 179 Cr.P.C. are not attracted in the instant case.

9. In view of the above, I do not find any legal infirmity in the impugned order dated 22.12.2021 passed by learned *Ex-officio* Justice of Peace. Consequently, the instant writ petition, being without merit, is dismissed *in limine*.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*