

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

**Writ Petition No. 522 of 2020**

**Wazir Khan**

Versus

**Ex-Officio Justice of Peace, etc.**

Date of Hearing	:	14.03.2022
Appellant by	:	Mr. SherAfzal Khan, Advocate.
Respondents by	:	Mr. Zulfiqar Ali Malik, Advocate for Respondent No.4 Syed Shahbaz Shah, State Counsel with Rafaqat Gujjar, ASI.

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**ARBAB MUHAMMAD TAHIR, J:** The instant writ petition is arising out of order dated 14.02.2020, passed by the learned Addl. Sessions Judge-IV/Ex-Officio Justice of Peace, Islamabad (East), whereby application under section 22-A&B Cr.P.C, filed by the respondent No.4 for the registration of FIR against proposed accused including the petitioner was allowed and the SSP Complaint Cell and the respondent No. 3 (*SHO P.S. Bhara Kahu, Islamabad*) were directed to strictly proceed in accordance with law.

2- Relevant facts are that respondent No. 4 moved an application to the respondent No.3 (*SHO, P.S. Bhara Kahu, Islamabad*), for the registration of FIR against the petitioner and 10-11 unknown persons. It was alleged in the complaint that he was owner in possession of a house comprising land measuring 1-Kanal 14 Marla (**‘subject property’**); that he had purchased the said property along with its possession from one Khalid Mahmood and Nawab Jan through sale agreement; that on 19.03.2019 at about 8:19 his servant Muhammad Akhtar informed him through cell phone about trespass and demolition of the subject property by some persons; that in response, he rushed to the subject property and reached there at about 1:30 along with one Shahid Khan and Shahzad; that on entering into the subject property,

they witnessed 10-11 persons armed with fire-arms while the two had sticks in their hands; the accused persons directed them to go out otherwise they would be done to death; that the assailants also held scuffle and expelled them from the subject property at gun point and had taken over its possession. He submitted an application to respondent No. 3 for registration of case against assailant but finding no response from the local police/respondent No.3, respondent No. 4 then filed an application in terms of Section 22-A&B Cr.P.C. for a direction to the respondent No.3 and the SSP Complaints to register the FIR and proceed in accordance with law against the accused persons. The learned Ex-Officio Justice of Peace after procuring report from the SSP Complaints heard the parties and passed the impugned order, hence, instant writ petition.

4- It is significant to note that the respondent No. 4 also filed complaint under Section 3 & 4 of the Illegal Dispossession Act, 2005 (**“Act of 2005”**) against the petitioner wherein the possession of the subject property was restored to respondent No. 4 by the learned ASJ-IV, Islamabad (East) vide order dated 09.05.2019. The petitioner assailed the said order through Criminal Revision No.195 of 2019, before this Court, which was dismissed being not maintainable vide order dated 12.12.2019.

5- The respondent No.4 then filed another Revision Petition bearing No.115 of 2019, against the order dated 09.05.2019. Said Revision Petition was duly contested by the petitioner and the then learned Single Judge in Chambers dismissed the Revision Petition vide order dated 30.04.2020.

6- Learned counsel for the petitioner argued that on the same allegations, respondent No.5 lodged a complaint under Sections 3 & 4 of the Act of 2005 and obtained possession of the subject property while criminal revision filed by the petitioner was dismissed, therefore, retrial on the same set of allegations is prohibited under Section 403 Cr.P.C under the principle of *double jeopardy* and Article 13 of the Constitution; that it is a non-speaking order where-under a blanket authority had been bestowed to the local police either to proceed in terms of Section 154 Cr.P.C or 155 Cr.P.C which, according to the learned counsel,

was against the spirit of Section 22 A&B Cr.P.C; that the report furnished by the respondent reflect true facts which could not have been disbelieved and that the learned Ex-Officio Justice of Peace omitted to conceive principle of merger as once the petitioner had been indicted under the Act of 2005 in an offence entailing higher punishment, the incidental acts constituting offence under the Code (Pakistan Penal Code) would be considered merged into the main charge. Learned counsel fortified his submissions by placing reliance upon case laws reported as 2011 YLR 861, 2011 P.Cr.L.J. 487, 2021 YLR 2327 and PLD 2009 Lahore 235.

7- On the other hand, learned counsel for respondent No. 4 argued that recourse under the Act of 2005 would not be considered bar for lodging of an FIR; that in the attending circumstances of the case, principle of double jeopardy cannot be pressed into service and that complaint filed by respondent No.5 on the face of it constitutes commission of cognizable offence, therefore, petition is liable to be dismissed. Learned counsel placed reliance upon case laws reported as PLD 2009 Karachi 350 and 2019 YLR 2307.

8. The learned State Counsel while adding to above contended that the impugned order is well reasoned and based upon correct appreciation of law on the subject, therefore, petition is liable to be dismissed.

8- Heard, record perused.

9- Before appreciating the veracity of the impugned order, it would be appropriate to respond to the submissions made by learned counsel for the petitioner at-bar. According to the learned counsel, the complainant had already obtained possession of the subject property pursuant to proceedings conducted in the complaint under the Act of 2005, therefore, proceedings under the same set of allegations afresh would amount to subject the petitioner for retrial which contravenes principle of *double jeopardy*. The submission, if seen in the context of the principle, the answer would be that the same envisages prohibition for subjecting an individual for trial on the same allegations twice while in the present case, the situation is not the one which the learned counsel attempted to portray as the petitioner by the

impugned action is not being subjected to retrial for the same allegations rather there was a complaint respecting commission of a cognizable offence, punishable under the offences of the Pakistan Penal Code and for setting the law in motion, the statute i.e. the Code of Criminal Procedure provided a set mechanism in terms of Section 152 and 154 Cr.P.C. If the contention of the learned counsel is admitted correct, the net result would be to put in abeyance the course provided under the statute. In other words, it would amount to override the statutory provisions, which of course is not the spirit of law. The submission, on the other hand, is premature as the petitioner is not being put to trial therefore, the impugned order rather it directs to proceed in accordance with law. The principle would come into play when it is established that the offence under the Act of 2005 and under the Pakistan Penal Code are result of one and the same set of allegations; that under the Act of 2005, petitioner had already been subjected to trial and that thereafter it would be considered that the trial of the petitioner under the Pakistan Penal Code would contravenes the principle *ibid*. In the present case, neither the trial under the Act of 2005 has yet been commenced or concluded nor is the petitioner going to be inducted under the offences alleged in the complaint under the Pakistan Penal Code. The submission to this effect can safely be held as misconceived and premature. It is accordingly repelled.

10. It is not the case as argued by the learned counsel that one and the same Presiding Officer under the one and the same complaint proceeded to order the registration of the FIR and the restoration of the possession to the respondent No. 4. The former direction had been passed on an application filed by the respondent No. 4 under Section 22-A&B Cr.P.C while the latter proceedings were conducted under the complaint filed under Act of 2005.

11. Adverting to the controversy, the guiding principles on the subject have been laid down by the Hon'ble apex Court in the case of **"Younas Abbas & others v. Additional Sessions Judge, Chakwal and others" (PLD 2016 SC 581)**. It has graciously been laid down that the functions performed by the Ex-Officio Justice of Peace are quasi-judicial in nature. Every lis before him demands

discretion and judgment. Functions so performed could not be termed as executive, or administrative or ministerial on any account.

12. The ratio set-in the case of **Younas Abbas supra** guides to hold that the powers of the Ex-Officio Justice of Peace are to be exercised with due application of mind by considering the attending circumstances of the case besides the police report. The wisdom had been to minimize the false implication and the registration of FIR on account of malice or malafide.

13. In the present case, the complaint moved to the respondent No.3-SHO, P.S. BharaKahu, Islamabad contains specific allegations in terms that on 19.03.2019 at about 1:30, 10-11 persons armed with fire-arms, 2 with sticks, trespassed into the house of the complainant, directed the latter to go out at gun point, extended threats to life and also pushed the complainant.

14. The complaint *ibid*, on the face of it, *prima facie* discloses commission of cognizable offence while the police report tendered before the Ex-Officio Justice of Peace did not state anything on the allegations leveled by the complainant, rather it goes ahead to mention the claim of the petitioner against the subject property and the counter claim of respondent No. 4 which, of course, was not the job of the police. It was incumbent upon the police to have probe and investigation as to whether the alleged transgression had taken place as the complainant asserted in his complaint. No such effort had been made by the police not it is so depicted in its report dated 05.02.2020.

15. It is significant to note that as per police report, the matter had been recommended to be kept pending till the decision by this Court in the Revision Petition filed by the petitioner against the order under Section 7 of the Act of 2005. The order qua restoration of possession to the respondent No. 4 has since been upheld by this Court vide judgment dated 30.04.2020 passed in Criminal Revision No.115 of 2019. This aspect, *prima facie*, lends support to the allegations set forth in the complaint which even otherwise, *prima facie*, constitutes commission of cognizable offence, for which police is under obligation to proceed in accordance with law, register the FIR and then to conduct investigation.

16. The case law relied upon by the learned counsel do not extend any help to the petitioner case due to having distinct facts and circumstances.

17. Having examined the case from every angle, the impugned order in the backdrop of the facts and law on the subject is well reasoned and does not call for any interference. Consequently, the impugned order is upheld and the instant writ petition is accordingly **dismissed**.

**(ARBAB MUHAMMAD TAHIR)**  
**JUDGE**

A.R.Ansari

Announced in an open Court on \_\_\_\_\_04.2022.

**JUDGE**