

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

Writ Petition No.366 / 2020

Muhammad Nawaz
Versus
Justice of Peace, Islamabad-West and others.

Petitioner by:	Syed Salman Aziz, Advocate.
Proposed accused by:	Mr. Zahid Asif Chaudhry, Advocate.
State By:	M/s Zohaib Hassan Gondal and Hamad Saeed Dar, State Counsel, Muhammad Riaz- Inspector Legal, Fazal Khan Sub-Inspector, Turab ul Hassan- A.S.I.
Date of Hearing:	16.07.2020.

GHULAM AZAM QAMBRANI, J:- The petitioner, Muhammad Nawaz S/o Saleem Ahmed, has invoked the Constitutional jurisdiction of this Court by filing instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking a direction to respondent No.4 for registration of criminal case against the proposed accused persons.

2. Briefly stated facts of the instant petition are that on 28.11.2019, petitioner was present inside his house along with his friend Adnan and petitioner's family members. At about 02:00 pm, proposed accused while armed with weapons entered into his house and started abusing and torturing/ threatening him and others. The petitioner and his family members were confined in a room. They searched the house of the petitioner, and took away an amount of Rs.2,00,000/- in cash from the cupboard. One Bilal Shafqat and Zeeshan Sadiq witnessed the said occurrence; the alleged accused also forcibly took the petitioner and his friend in two motor cars and one motor bike to an unknown place, thereafter, to the Police Station Abpara, where they demanded an amount of Rs.5,00,000/- and threatened that if the said amount is

not paid, they would be involved in false criminal cases, as such, they extorted an amount of Rs.1,50,000/- but even then, they lodged false F.I.R No.409 & 410 of 2019 under Section 9-B CNSA against the petitioner and his friend namely Adnan.

3. The petitioner submitted an application for registration of the criminal case against the proposed accused persons to the S.H.O concerned Police Station, but to no avail. Thereafter, the petitioner filed an application under Section 22-A Cr.P.C., before the learned Ex-Officio Justice of Peace, Additional Sessions Judge Islamabad-West, for issuance of direction for registration of F.I.R which was dismissed vide order dated 15.01.2020, hence, the instant petition.

4. The learned counsel for the petitioner argued that the impugned order has been passed on the basis of surmises and conjectures; therefore, the same is liable to be set aside. That the impugned order is absolutely unlawful arbitrary and against the facts and law; that the police is bound to register the criminal case if the same discloses commission of a cognizable offence and lastly prayed that a direction be issued to the respondent No.2 to 4 to register criminal case against the proposed accused persons.

5. Conversely, the learned counsel for the proposed accused strongly opposed the contentions raised by the learned counsel for the petitioner contending that a false and frivolous story has been narrated by the petitioner; That no offence has been committed by the proposed accused; that several F.I.Rs have been registered against the petitioner and others; that F.I.R No.410 has been registered against witnesses of the petitioner namely Adnan, Bilal and Shafqat; that they are involved in narcotics business; that the witnesses have got recorded their statements against the petitioner; that the petitioner is a dealer of narcotics; false and frivolous story has been concocted against the police officials just to save their skin. Lastly, prayed for rejection of the instant petition.

6. The learned State counsel submitted that when the petitioner was produced before the learned Magistrate, he did not file any application for conducting his medical examination; that witnesses of the petitioner are also accused of criminal cases under CNSA.

7. Heard learned counsel for the parties, and have gone through the available record, perused the application under Section 22-A Cr.P.C and the impugned order.

8. Perusal of the record reveals that the petitioner and his witnesses are involved in so many criminal cases of narcotics. Record further reveals that a thorough inquiry was conducted and it was found that the petitioner has submitted the application against the police officials just to save his skin from the criminal cases registered against him and his witnesses. During the said inquiry, the petitioner also failed to produce any evidence with regard to the commission of theft of Rs.2,00,000/- from his house by the police officials and also with regard to the alleged torture upon him by the proposed accused. The record further depicts that Ali Zaman Constable (No.3792) was on official duty in the official vehicle No.GV-177, as gunman on the alleged day of occurrence. Further an F.I.R No.410/2019 is already registered against witnesses of the petitioner namely Adnan, Bilal and Shafqat. As such, keeping in view the above facts and circumstances, the learned Additional Sessions Judge has rightly declined the application of the petitioner. Further, it is a settled principle of law that the Ex-Officio Justice of Peace whilst seized of a petition under Section 22-A/22-B of 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 others" (2011 P.Cr.L.J 438). In any case, the allegations leveled against the proposed accused by the petitioner cannot be addressed by this Court while exercising its extraordinary constitutional jurisdiction, as the same entail a factual inquiry.

9. The august Supreme Court in the case of "Muhammad Bashir v. Station House Officer, Okara Cantt and others" (PLD 2007 SC 539) 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 22A (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 FIR, 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 FIRs. 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 consideration 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 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."

10. In the facts and circumstances of this case, the learned Ex-officio Justice of Peace was satisfied that a case for issuance of a direction for registration of a criminal case was not made out and, therefore, rightly dismissed the application under section 22-A of Cr.P.C. filed by the petitioner.

11. For what has been discussed above, the 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 hereby **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

*Rana. M. Ift **