

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 2896 OF 2021

Mst. Irshad Ijaz

Vs

The learned Justice of Peace, etc.

PETITIONERS BY: Dr. G.M Chaudhry, Advocate.

RESPONDENTS BY: Barrister Syeda Jugnoo Kazmi, State Counsel.
Mr. Muhammad Ismail Baloch, Advocate.
Mr. Riasat, ASi, P.S Aabpara Islamabad.

DATE OF HEARING: 16.09.2021.

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BABAR SATTAR, J.- Through this petition the order of the learned Ex-officio Justice of Peace dated 29.06.2021 has been impugned, pursuant to which the application filed by the petitioner under section 22-A of Criminal Procedure Code, 1898 ("**Cr.P.C.**") for directions to be issued to the police authorities was turned down.

2. The learned counsel for the petitioner stated that applications filed by the petitioner dated 12.04.2021 and 06.05.2021 with the police authorities for registration of FIR included information related to cognizable offences and consequently the FIR ought to have been registered. He stated that only question before the learned Justice of Peace was whether or not the complaint filed with the police related to a

cognizable offence and by observing that the dispute between the petitioner and respondents No. 4 to 9 relates to partition of a house and that another FIR No. 90/2021 already stood registered, the learned Justice of Peace has exceeded his authority and did not act in accordance with law. He relied on **Khizar Hayat Vs. Inspector General of Police (Punjab), Lahore (PLD 2005 Lahore 470)**, **Younas Abbas Vs. Additional Sessions Judge, Chakwal (2016 PLD SC 581)**, **Fariq Khan Vs. Bakhtawar Jan (2019 P.Cr.LJ 1588)**, **Muhammad Saleem Vs. Investigation Officer Levies Station, Hanna, Quetta (2019 MLD 1719)** and **Sadrudin Vs. Province of Sindh (2019 YLR 951)**.

3. Learned counsel for respondents No. 5 to 9 stated that the petitioner had come to the court with unclean hands and had not mentioned FIR No. 90/2021 registered on 13.02.2021 to the learned Justice of Peace while moving her application under section 22-A, Cr.P.C. He further contended that the complaint filed by the petitioner with the police authorities was false as the alleged incident related to a day when respondents No. 4 and 5 were booked on flight to travel from Islamabad to United States. He further contended that respondent No. 4 was the father of the petitioner's husband and respondent No.5 was the brother of the petitioner's husband who lived on the first storey of the premises in which the petitioner lived and differences between the petitioner and the said respondents were in the nature of a family dispute and could not be transformed into a criminal matter.

4. The learned State Counsel submitted that the police believed that there was discrepancy in the account of the petitioner included in the complaint and the police did not believe the veracity of the complaint in view of the fact that within a few hour of the reported incident, respondents No. 4 and 5 were scheduled to fly out to the United States. She further submitted that given that FIR No. 90/2021 was in relation to an incident dated 13.02.2021, a similar subsequent incident would constitute a fresh cause for filing a complaint with the police authorities and the registration of an FIR in relation to such complaint was not barred by law.

5. In rebuttal, the learned counsel for the petitioner stated that the incident in relation to which FIR No. 90/2021 was registered was entirely independent of the incident in relation to which the police refused to register the FIR leading to the instant petition. He submitted that the allegation in the present complaint included, inter alia, trespass into the petitioner's house in the night, use of criminal force, assault of a women, tearing the clothes of a women, and threats to kill a women and that the incident attracted, among others, section 354-A of PPC, the prescribed punishment for which was the death penalty or imprisonment for life. In refusing to register an FIR, the police disbelieved the version of events as stated by the petitioner and the learned Justice of Peace also seemed to have decided the petitioner's application under section 22-A, Cr.P.C by forming an opinion regarding the truth and veracity of the complaint filed by the petitioner. And in doing so both the police authorities as well

as the learned Justice of Peace acted in a manner not envisaged by law.

6. The manner in which the FIR is to be registered and the scope of the authority of the Justice of Peace and the manner in which such authority is to be exercised came before the august Supreme Court and was settled in **Muhammad Bashir Vs Station House Officer, Okara Cantt.** (PLD 2007 SC 539). After tracing the scheme of the Code of Criminal Procedure, 1898, the Police Rules and powers vested in the police authorities thereunder, the august Supreme Court held the following:

"27. 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 provisions of S.154, Cr.P.C.

7. With regard to the scope of the authority vested in the Justice of Peace and the manner in which it is to be exercised, it was held in **Muhammad Bashir** that:

"36. For the purposes of this petition, we are concerned, primarily, with clause (i) of the above quoted provisions of subsection (6) of the section 22-A of the Cr.P.C. These provisions create a new forum to rectify a wrong done by an Officer Incharge of a Police Station by refusing to register a criminal case i.e. not recording an F.I.R. We have held above that the provisions of section 154, Cr.P.C. command a S.H.O. to lodge an F.I.R. if the information conveyed to him disclosed the commission of a cognizable offence irrespective of the information being correct or incorrect. Undoing this wrong of non-registration of a criminal case would mean only an order to the S.H.O. to register the case. The provisions of the said subsection (6) of section 22-A, Cr.P.C. confer no additional powers on an Ex-officio Justice of the Peace to hold any enquiry to assess the credibility of such an information communicated for the purpose in question nor do the said provisions give any extra authority to the said Ex-officio Justice of the Peace to refuse registration or order non-registration' of an F.I.R. in violation of or beyond the mandatory requirements of section 154, Cr.P.C.

37. We know that the prescribed forum for the determination of the correctness or falsity of the accusation levelled against some one was a court of law and not a police man or even an Ex-officio Justice of the Peace irrespective of his rank and status. And we also know from the provisions of section 190(1) of the Cr.P.C. that the lodging of an F.I.R. and the report consequently submitted by a police officer under section 173, Cr.P.C. was only one of the three modes of reaching the prescribed competent court for such a determination. The other two channels being a private complaint and a suo motu action taken by the authorized Magistrate leading to the taking of cognizance.

38. And if an Ex-officio Justice of the Peace who also happens to be the higher of the two subordinate courts and a trial Court with respect to certain offences and an appellate and a revisional court in other, was to declare, like it was done in the present case, that no offence at all had been committed and that the accusations were false and that also on the basis of a mere report by a police officer without any evidence having been examined by a Court of Law then we would not only be shutting out the other two channels which had been made available by law but would also be deciding the fate of criminal cases in a manner never visualised by the law makers even in the wildest of their dreams.

39. This could never be allowed.

40. 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.

8. The question of legality of the direction to register an FIR in exercise of powers under section 22-A, Cr.P.C came before the august Supreme Court most recently in **Abdul Rehman Malik Vs Synthia D. Ritchie, Americans National (2020 SCMR 2037)**, wherein the august Supreme Court reiterated the law laid down in **Muhammad Bashir** and held the following:

"We have also carefully examined Rule 24.4 of the Police Rules, 1934, referred to by the learned counsel to argue that once the police had definitely concluded the accusation as motivated and false, there was no occasion left to record a First Information Report so as to undertake a futile

pursuit. The supra Rule possibly suspends the mechanism to be followed under section 154 of the Code of Criminal Procedure, 1898, however, commanding unambiguously to record a First Information Report upon receipt of information disclosing commission of a cognizable offence. The Rule ibid runs as follow:

"24.4. Action when reports are doubtful:- (1) If the information or other intelligence relating to the alleged commission of a cognizable offence is such that an officer in charge of a police station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant, if any, the fact that he will not investigate the case or cause it to be investigated."

Rule 24.4 does not tyrannically foreclose doors to a complainant to voice his/her grievance nor it dogmatically empowers an Officer Incharge to terminate a prosecution before its inception on his subjective belief of its being false; its application is subservient to the scheme laid down in Part V of the Code ibid and, thus, has to be essentially read in conjunction with section 169 thereof. Therefore, an Officer Incharge can possibly invoke the Rule, that too, for reasons strong and manifest after registration of First Information Report."

9. In **Mst. Sughran Bibi Vs. The State (PLD 2018 SC 595)** a larger bench of the august Supreme Court endorsed the law laid down by a full bench of the Lahore High Court in **Khizar Hayat and others Vs. Inspector General of Police (Punjab), Lahore and others (PLD 2005 Lahore 470)** on the manner in which power to arrest is to be exercised and reproduced the said in relevant part:

"21. One of the cardinal principles of criminal law and jurisprudence is that an accused person is presumed to be innocent until proved guilty before a court of law. However, of late we have noticed a growing tendency on the part of the complainant party to insist upon arrest of an accused person nominated by it in the F.I.R. and an increasing

willingness, nay eagerness, on the part of the investigating officer of a criminal case to affect arrest of the accused person even before initiating or launching a proper investigation of the allegations levelled in the F.I.R.. Such an approach has been found by us to be absolutely against the spirit of the relevant law, to be wrought with inherent dangers to cherished liberty of citizens who may ultimately be found to be innocent and to amount to putting the cart before the horse!”

10. In view of the law as enumerated in **Muhammad Bashir**, **Abdul Rehman Malik** and **Sughran Bibi**, it is clear that (i) the registration of an FIR is an obligation to be discharged by the police authorities in the event that the complaint filed by a person makes out a cognizable case, and (ii) the registration of an FIR does not automatically lead to the arrest of the person against whom the complaint has been filed. It was held in **Muhammad Bashir** and reiterated in **Abdul Rehman Malik** that it is neither for the police authorities nor for the learned Justice of Peace to engage in an enquiry to assess the credibility, veracity or correctness of the information contained in the complaint seeking the registration of an FIR. Such investigation of the complaint is to be undertaken by the police authorities and if in view of their investigation a conclusion is drawn that the complainant was false, the appropriate course of action is exercise of authority under section 182 of PPC. Likewise, the Justice of Peace is also vested with no authority and jurisdiction to sit in judgment on the veracity and the correctness of the complaint in relation to which a direction is being sought under section 22-A of Cr.P.C. Section 22-A of Cr.P.C provides for curative action and vests in the Justice of

Peace the authority to issue directions in the event that the police has been non-feasant and has refused to exercise its authority under section 154 of Cr.P.C. In doing so the sole question before the Justice of Peace is whether or not the information in the complaint in question makes out a cognizable offence which ought to be investigated by the police.

11. In the instant case, the allegation included in the complaint is that respondents No. 4 to 9 resorted to trespass, beat up the petitioner and tore her clothes, which actions constitute cognizable offences under the Pakistan Penal Code. The fact that a similar incident was also reported a few months earlier in relation to which FIR No.90/2021 was registered is irrelevant for present purposes. Even if a similar incident transpired a few months back, the complaint relates to a repeat incident which would constitute an independent cause to file a complaint. By engaging in an enquiry to ascertain the correctness and veracity of the complaint while refusing to register the FIR, the police acted in breach of its obligation under section 154 of Cr.P.C. And by engaging in a similar enquiry, the learned Justice of Peace also acted in excess of his authority under section 22-A of Cr.P.C.

12. In view of the above, this petition is **allowed** and consequently the impugned order passed by the learned Justice of Peace dated 29.06.2021 is set aside. Respondent No.3 is directed to record a First Information Report in light of the application filed by the petitioner. It is, however, reiterated that the registration of an FIR does not automatically require the

police to exercise its arrest powers as laid down in **Sughran Bibi** and **Muhammad Bashir**. Further, in the event that after registration of case, the police comes to the conclusion that the complaint on the basis of which the FIR was registered was false, it ought to initiate appropriate proceedings under section 182 of PPC.

(BABAR SATTAR)
JUDGE

Announced in the open Court on **23.09.2021**.

JUDGE

Saeed.