JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Writ Petition No.3769 of 2019

Shahida Parveen
Vs
Addl. Sessions Judge and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.03.2020	Ch. Zaheer Ahmed, Advocate for the petitioner. Mr. Imran Afzal Malik, Advocate for the proposed accused. Mr. Zohaib Hassan Gondal, State Counsel Sultan Mehmood, S.I. and Ashfaq Ahmed A.S.I, Police Station Koral, Islamabad.

Through the instant petition the petitioner has challenged the order dated 19.10.2019, passed by the learned Ex-Officio Justice of Peace/ Addl. Sessions Judge (East), Islamabad, whereby the application under Sections 22-A & 22-B Cr.P.C. filed by the petitioner, was dismissed.

2. Brief facts narrated in the petition are that on 07.08.2019 at about 3/4 p.m, the petitioner drawn an amount of Rs.1,14,000/- from Allied Bank, Tarlai Branch, Islamabad, and went to a battery shop for purchase of UPS battery, near school stop Tarlai. Meanwhile a lady came there, and introduced herself as her neighbour and proposed to purchase the same from another shop having good quality. When petitioner along with her daughter, seated in her vehicle (White Corolla), being drove by her driver and came on road. Both proposed accused extended them threats and snatched gold ring, gold earrings, two big gold bangles weighing about 4 tolas and her purse having already kept Rs.22000/- cash and bank drawn amount of Rs.1,14,000/- (total Rs.1,36,000/-). Thereafter, dropped them at Tariqabad near Chatha Bakhtawar, Islamabad,

with threats that if, they disclosed anything regarding that incident, they will be killed. That said lady is recognized and identified as resident of back side of the petitioner's home, known as Ayesha wife of Naveed and her driver as Muhammad Aftab.

3. The petitioner submitted an application to respondent No.3 for registration of F.I.R, who refused to lodge the F.I.R; that the petitioner, thereafter, moved an application to the office of respondent No.2/ Superintendent of Police, Complaints, Islamabad, but no action was taken, therefore, the petitioner filed an application under sections 22-A & 22-B Cr.P.C. before respondent No.1 wherein comments were called from respondent No.2, but vide the impugned order dated 19.10.2019, same was dismissed. Hence, the instant petition.

4. Learned counsel for the petitioner, *inter alia,* contended that respondent No.3/ S.H.O, under Section 154 Cr.P.C is bound to register F.I.R. if a cognizable offence is made out. Further, contended that from bare reading of the application submitted by the petitioner before respondent No.3, it is clear that the petitioner communicated information to the S.H.O, does constitute a cognizable offence, but the learned Addl. Sessions Judge, did not apply judicial mind and dismissed the application without any basis or justification. Learned counsel also pointed out that the facts as narrated in the application, filed before respondents No.2 & 3, make out a cognizable offence.

5. Learned State Counsel supported the impugned order and submitted that no cognizable offence is made out; therefore, no order was passed for registration of the F.I.R.

6. Arguments heard; record perused.

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 Cr.P.C., 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 a 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 emphasized 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 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. In the case in hand, the respondent No.1 totally relied upon the report made by the respondents No.2.

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. From bare perusal of the contents of the application, *prima facie*, a cognizable offence is made out. The petitioner in her first application dated 07.08.2019 to the S.H.O, did not nominate any of the accused, the S.H.O had to lodge the F.I.R against the unknown accused persons and during the investigation if it was found that a false information has been provided by the petitioner, then the proceedings under Section 182 P.P.C should be initiated for misuse of taking into motion the law.

15. 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 be the petitioner.

16. In view of above, instant petition is **allowed** and the impugned order dated 19.10.2019 passed by the respondent No.1 is set-aside. Respondent No.3 is directed to register F.I.R on the prior application of the petitioner dated 07.08.2019 and to take action, strictly in accordance with law.

(GHULAM AZAM QAMBRANI)
JUDGE

Rana. M. Ift