

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 2267/2020

Cynthia D Ritchie
Versus
Justice of Peace, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	01-09-2020	Mr Imran Feroze Malik, Advocate for petitioner. Syed Muhammad Tayyab, Deputy Attorney General. Mr Rabi Bin Tariq, State Counsel. Malik Mushtaq Ahmed Khanjera and Mr Abdul Rehman Hur Bajwa, Advocates for respondent. Mr Falak Sher Virk, Deputy Secretary and Mr Abrar, Section Officer, for Ministry of Interior.

Athar Minallah, C.J.- Ms Cynthia D Ritchie
(*hereinafter referred to as 'Petitioner'*) has invoked the jurisdiction of this Court assailing order, dated 05-08-2020, passed by the learned Ex-Officio Justice of Peace / Additional Sessions Judge , Islamabad (West).

2. The facts, in brief, are that the Petitioner had filed a petition under section 22-A and 22-B of the Code of Criminal Procedure, 1898 (*hereinafter referred to as 'Cr.P.C.'*) seeking a direction for registration of a criminal case against Mr Abdul Rehman Malik (*hereinafter referred to as "Respondent"*). The petition was dismissed by the learned Ex-Officio Justice of Peace vide the impugned order, dated 05-08-2020.

3. The learned counsel for the Respondent has contended that the learned Ex-Officio Justice of Peace was competent to direct the incharge of Police Station to thoroughly investigate the allegations. He has further contended that on the basis of such investigations, the learned Ex-Officio Justice of Peace was empowered to record his findings and dismiss the petition. I am afraid that the arguments advanced by the learned counsel for the Respondent are not in consonance with the principles and law enunciated by the august Supreme Court.

4. With the able assistance of the learned counsels for the parties, the impugned order has been carefully perused. It is noted that the august Supreme Court in the case titled '*Younas Abbas and others v. Additional Sessions Judge, Chakwal and others*' [PLD 2016 SC 581] has elaborately highlighted the law regarding scope of jurisdiction vested in an Ex-Officio Justice of Peace and the nature of functions performed by the latter while exercising powers under section 22-A of Cr.P.C. It has been held that functions performed by the Ex-Officio Justice of Peace were not executive, administrative or ministerial, inasmuch as the latter did not carry out, manage, or deal with matters in a mechanical manner. The functions were quasi judicial in nature because the Ex-Officio Justice of Peace is required to entertain applications, examine record and after hearing the parties pass orders and issue directions with due application of

mind. The scope of jurisdiction and powers of Ex-Officio Justice of Peace are confined to issuing appropriate directions for registration of a criminal case and to check the neglect, failure or excesses committed by the police authorities. In the same judgment, one of the Hon'ble Judges on the Bench has observed as follows.-

"The ex-officio Justice of the Peace, before issuance of a direction on a complaint for the non-registration of a criminal case under subsection (6)(i) of section 22-A, Code of Criminal Procedure must satisfy himself that sufficient material is available on the record, such as application to the concerned SHO for registration of the criminal case and on his refusal or reluctance, complaint to the higher police officers i.e. DPO, RPO etc., to show that the aggrieved person, before invoking the powers of ex-officio Justice of the Peace, had recourse to the high ups in the police hierarchy."

5. In the case titled '*Muhammad Bashir v. Station House Officer, Okara Cantt. and others*' [PLD 2007 SC 539] the august Supreme Court has highlighted the principles and law relating to registration of criminal cases 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 asunder:--

- (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.”*

6. The above principles were affirmed by the august Supreme Court in the case titled '*Mst. Sughran Bibi v. The State*' [PLD 2018 SC 595].

7. A plain reading of the impugned order, dated 05-08-2020, unambiguously shows that the learned Ex-Officio Justice of Peace exceeded jurisdiction vested under the law. It appears that the learned Ex-Officio Justice of Peace, while passing the impugned order had not taken into consideration the principles and law enunciated by the august Supreme Court in the aforementioned judgments.

8. In the light of the above discussion, this petition is allowed and the impugned order, dated 05-08-2020, is hereby set aside. The petition filed by the Petitioner shall be treated as pending. The learned Sessions Judge, Islamabad (West) is expected to assign the matter to a designated Ex-Officio Justice of Peace, other than the judicial officer who had passed the impugned order, dated 05-08-2020. This Court further expects that a date will be fixed by the learned Sessions

Judge and the parties will be informed accordingly. The learned Ex-Officio Justice of Peace, after affording a reasonable opportunity to the parties, is expected to decide the petition filed by the Petitioner expeditiously, preferably within three weeks from the date of receiving a certified copy of this order, inter alia, having regard to the principles and law highlighted in the aforementioned judgments.

(CHIEF JUSTICE)

Luqman Khan/*

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