

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

I.C.A NO.34/2020

Shah Muhammad Baloch

Vs.

The Learned Justice of Peace, etc.

Petitioner : Mr. Farhan Nazir Kiani, Advocate.

Date of Decision : 26.02.2020.

LUBNA SALEEM PERVEZ, J. Through instant I.C.A, appellant has assailed judgment dated 04.02.2020, passed by the learned Single Judge in Chambers whereby W.P No. 61/2020 filed by the appellant was dismissed being devoid of merits.

2. Facts narrated in the memo of appeal are that the Appellant submitted applications to Respondent No.2 i.e. Senior Superintendent of Police, ICT and Respondent No.3 i.e. SHO, P.S Bhara Kahu, Islamabad for registration of a case against one Irum Mubashar wife of Malik Mubashar (hereinafter referred to as the proposed accused) for recovery of the amount of 30,00,000/- US dollars.

3. Learned counsel for the appellant, inter alia, contended that both the respondents are under obligation to register a case under Section 154 Cr.P.C against Irum Mubashar on the application of the appellant. The above respondents since, have not adhered to his request, therefore, he moved an application before Respondent No.1 under section 22-A Cr.P.C for registration of the case/FIR against the proposed accused. Said application was also rejected by Respondent No.1, therefore, the appellant filed writ petition before this Court assailing the order dated 08.01.2020 passed by learned Additional Sessions Judge/ Ex-Officio Justice of Peace, East-Islamabad. The learned Single Judge in Chambers also dismissed the writ petition while holding as under:-

“The circumstances highlighted above aptly indicate that the impugned order is well reasoned and, therefore, does not call for any interference. Consequently, present writ petition being devoid of

merits is dismissed, however, petitioner shall be at liberty to avail other remedies, available to him under the law, if so advised”.

4. Being aggrieved the appellant filed the present Intra Court Appeal praying for setting aside the judgment dated 04.02.2020, passed by the learned Single judge in Chambers.

5. Learned Counsel for the appellant argued that Respondent Nos.2&3 have acted unlawfully by not registering the case against the alleged proposed accused for non-payment of US\$ 30,00,000/- allegedly advanced as loan; that the Respondent No.1/learned Justice of Peace could not legally reject his application filed under section 22-A Cr.P.C; that Learned Single Judge in Chambers failed to consider the grievance and erred in law while passing the impugned judgment.

6. We have heard the learned counsel for the petitioner and have also perused the record.

7. The appellant in this appeal is aggrieved by the judgment passed by respondent No.1/learned Justice of Peace, whereby, his application under section 22-A was declined. Perusal of section 22-A Cr.P.C reveals that it has been inserted in the code on 30.10.1985 for conferring additional role to Ex-officio Justice of the Peace in Pakistan in respect of entertaining complaints and issuance of appropriate directions to the concerned police authorities regarding registration of criminal cases and in respect of neglect, failure or excess committed by the police authorities in relation to its functions and duties. Subsequently, Sub-section (6) has been added by Ordinance CXXXI of 2002, dated 21.11.2002, which reads as under:-

“(6) An ex-officio justice of the peace may issue appropriate directions to the police authorities concerned on a complaint regarding—

- (i) Non-registration of a criminal case;*
- (ii) Transfer of investigation from one police officer to another; and*
- (iii) Neglect, failure or excess committed by a police authority in relation to its functions and duties.”.*

The word “may” in sub-section (6) of section 22A convey the intention of legislature that while it empowers the Justice of Peace to issue appropriate directions to the police authorities but at the same time imposes responsibility to consider the merits of every case before entertaining any application. The Hon’ble Apex Court, while interpreting section 22-A (6) has been pleased to hold vide their

judgment passed in case titled ***Younas Abbas and others vs. ADJ Chakwal and others*** reported as (PLD 2016 SC 581), that “functions as described in clause (i) (ii) and (iii) of sub-section (6) of section 22A; are quasi-judicial as he entertains applications, examine the record, hear the parties, passes orders and issue directions with due application of mind”.

8. Keeping these observations in view, we are of the opinion that the order dated 08.01.2020, passed by Ex-Officio Justice of Peace is legally correct because every aspect of the matter narrated in application u/s 22A Cr.PC has been appreciated and the principles settled by Hon’ble Supreme Court of Pakistan in case cited above regarding powers and jurisdiction of the Ex-Officio Justice of Peace have been followed. Thereafter the learned Single Judge in Chambers rightly upheld the order passed by the learned Ex-officio Justice of Peace and dismissed the writ petition vide judgment dated 04.02.2020.

9. In view of above, we are of the considered view that the impugned judgment passed by the learned Single Judge in Chambers is based on sound reasoning which does not call for any interference, hence, instant I.C.A. is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

(LUBNA SALEEM PERVEZ)
JUDGE

*Adnan/**