

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 247 of 2021

Zulfiqar Ali

Versus

Additional Sessions Judge / Justice of Peace (West), Islamabad and others.

| S.No. of order/ proceeding | Date of order/ proceeding | Order with signature of Judge and that of parties or counsel where necessary. |
|-----------------------------------|----------------------------------|--|
| 08. | 19.09.2022 | M/s. Muhammad Wajid Hussain Mughal and Qasim Sarfaraz, Advocates for the petitioner. Raja Waqar Ahmed, Advocate for the respondents No. 4 & 5. Mr. Fahad Ali, State Counsel. Raza Muhammad, S.I. |

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, the petitioner has impugned order dated 01.10.2020, passed by learned Additional Sessions Judge / Justice of Peace, West-Islamabad, whereby the petition filed by the petitioner U/S 22-A & 22-B Cr.P.C against respondents No. 4 & 5 for registration of F.I.R has been dismissed.

02. Succinctly stated facts of the case are that the petitioner filed an application before

S.H.O P/S Industrial Area I-9, Islamabad, wherein it is alleged that respondents No. 4 & 5 have obtained an amount of Rs. 4 crore from the petitioner for the purpose of investment in business, subsequently it revealed that the respondents / proposed accused have committed criminal breach of trust and mis-appropriated the said amount.

03. The petitioner filed an application before S.H.O, Industrial Area, Islamabad for registration of F.I.R against respondents No. 4 & 5, but the police did not register the case, hence the petitioner being aggrieved, moved an application U/S 22-A & 22-B Cr.P.C before learned Additional Sessions Judge / Justice of Peace, West-Islamabad, which has been dismissed vide impugned Order dated 01.10.2020, hence the instant writ petition.

04. Learned counsel for the petitioner, *inter alia*, contends that the contents of proposed F.I.R clearly constitute cognizable

offence, hence the S.H.O / respondent No. 3 was bound to register a case U/S 154 Cr.P.C; learned Additional Sessions Judge / Justice of Peace has also given remarks / observation while dismissing the petition that "*whereas the petitioner is also part of the said fraud being partner. The petitioner just to avoid the payment of people managed this petition*" which is unwarranted; learned Justice of Peace was bound under the law, either to accept or dismiss the petition U/S 22-A & 22-B Cr.P.C and due to passing of said observation petitioner will suffer an irreparable loss. Further contends that he will not press the instant petition and will be satisfied if the said remarks / observation be expunged.

05. On the other hand, learned State Counsel assisted by learned counsel for respondents No. 4 & 5 has stated that impugned order has rightly been passed; the said remarks / observation has rightly been given by learned Additional Sessions Judge /

Justice of Peace, West-Islamabad on the basis of record, hence has prayed for dismissal of instant writ petition.

06. Arguments heard, record perused.

07. The mandate / powers of learned Justice of Peace are mentioned in Section 22-A(6) Cr.P.C, which is 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;

(iii) neglect, failure or excess committed by a police authority in relation to its functions and duties.

08. In the light of above referred law, learned Additional Sessions Judge / Justice of Peace was liable either to allow or dismiss the petition filed U/S 22-A & 22-B Cr.P.C.

09. When confronted, learned counsel for the respondents No. 4 & 5 has stated that

they have also filed an application against the petitioner for committing cheating and fraud, but the police did not register a case, consequently an application U/S 22-A Cr.P.C was filed which has also been dismissed by the Court of learned Justice of Peace, Islamabad. However, learned counsel for the respondents No. 4 & 5 has neither placed copy of application filed against the petitioner before the S.H.O concerned nor copy of order passed by Learned Justice of Peace, Islamabad, whereby the petition filed by the respondents No. 4 & 5 was dismissed.

10. The grievance of the petitioner is that on the basis of said remarks, he can suffer an irreparable loss, as the application filed against him by respondents No. 4 & 5 was not entertained by the police being baseless and the petition U/S 22-A for registration of case against the petitioner has also been dismissed by the Court of learned Justice of Peace and the said order has not been

challenged by the respondents.

11. In view of above discussion, the instant writ petition is dismissed, the impugned order dated 01.10.2020, passed by learned Additional Sessions Judge / Justice of Peace, West-Islamabad is hereby maintained, however, the remarks / observation that "*whereas the petitioner is also part of the said fraud being partner. The petitioner just to avoid the payment of people managed this petition*" is expunged. The said observation may not be read as part of the impugned order dated 01.10.2020, however any person aggrieved by the alleged fraud / illegal acts committed by the petitioner can avail the remedies available to him under the relevant provisions of law.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-