

*HCJD/C-121*  
**ORDER SHEET**  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**Crl. Misc. No.16-M/2011**

**Naeem Sarwar**  
Versus  
**S.H.O. P/S Aabpara, Islamabad**

S.No. of order / Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
--------------------------------	------------------------------	--

**3.           01-02-2011           Petitioner in person.**  
**Rao Abdul Ghaffar and M. Ghias ul Haq**  
**Sheikh standing counsels for State.**  
**M. Khalid, Inspector with record.**

This order is directed to dispose of petition under Section 561-A Cr.P.C. filed by the petitioner, Naeem Sarwar, for quashment of proceedings initiated against him under Section 182 PPC.

2. Background of the petition is that the petitioner submitted an application to S.H.O. P/S Aabpara stating therein that being S.V.P (Legal) to Agricultural Development Bank, he instituted a writ petition against Tahir Anwer Pasha and others and said persons have developed grudge against him. It was alleged in the application that Ismail, Rai Yaqoob, Imran alias Mani, Tahir Anwar Pasha and Maqbool Sukhera at the instance of Zaka Ashraf started threatening him and all the above said persons in connivance with each other decided to attack at the house of petitioner. Since the petitioner was not at his house, so they sat in front of

house of the petitioner and the petitioner while coming to his house saw them from the long distance and realized that the intention of those persons were not good. According to the petitioner, the above said persons started coming towards him, but he turned his vehicle towards Faisal Avenue, which is a separate road and in such a way, he saved himself. In the application, he requested for initiating proceedings against the above said persons. The S.H.O. P/S Aabpara investigated the matter on his own and came to the conclusion that the above said complaint was false and frivolous. Accordingly, he filed a Qalandra under Section 182 PPC against the present petitioner in the court of Assistant Commissioner, Islamabad, in which notice was issued to the petitioner, so the petitioner filed the present petition under Section 561-A Cr.P.C. for quashment of proceedings initiated against him under Section 182 PPC.

3. I have heard the petitioner in person as well as learned standing counsel for the respondent.

4. The petitioner contended that the S.H.O. in connivance with the opposite party with malafide intention initiated proceedings under Section 182 PPC against him. According to the petitioner, no action was taken on his complaint. He submitted an application



before the learned Additional Sessions Judge, Islamabad for registration of case and at that time, he came to know that proceedings under Section 182 PPC have been initiated against him. Petitioner also submitted that so called enquiry conducted by the S.H.O. concerned is one sided effort, in which statement of his opponents have been recorded. The petitioner further contended that the proceedings are also in violation of the law.

5. Learned standing counsel admitted that the S.H.O./respondent had gone beyond the sphere of his authority, but there was no malice involved.

6. Leaving aside the allegations of the petitioner, the legal position is that when a complaint is filed in the police station and the S.H.O. finds that a cognizable offence has taken place, then he is bound to register a case under Section 154 Cr.P.C. and to initiate the investigation thereafter. If the S.H.O. comes to the conclusion that no cognizable offence has taken place, then in that case neither the case can be registered nor investigation can be initiated. In non-cognizable case, the S.H.O. is bound to approach the concerned Magistrate. Under Section 155(2) Cr.P.C. no police officer can investigate a non-cognizable case without the order of a Magistrate. In the instant case,

6-0

the S.H.O. on receiving the complaint of the petitioner was to determine as to whether any cognizable offence has taken place or not. If in his opinion, no cognizable offence had taken place, then he could not initiate the investigation without the leave of the Magistrate. As such the investigation, if any, conducted by the S.H.O. is illegal and of no effect. The S.H.O. concerned had not acted in accordance with law and the proceedings initiated under Section 182 PPC against the petitioner being violative of Section 154 & 155 of Cr.P.C. are unlawful, void and of no legal effect. In the circumstances, this petition is accepted and the proceedings initiated against the petitioner under Section 182 PPC are quashed.

**(RIAZ AHMED KHAN)**  
**JUDGE**

Approved for reporting.

**JUDGE**

*Wajid*