

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Writ Petition No.749 /2021

Sara Younas
Versus
The Station House Officer and others

Petitioner by:	Mr. Tariq Muhammad Khan Marwat, Advocate.
Date of decision:	23.02.2021.

Ghulam Azam Qambrani, J.: - Through this petition, the petitioner has challenged the order dated 25.11.2020, (hereinafter be referred to as “**impugned order**”), passed by the learned Ex-Officio, Justice of Peace/ Additional Sessions Judge-II, Islamabad-East, whereby, application under Section 22-A/B Cr.P.C filed by petitioner was dismissed.

2. Brief facts of the petition are that on the basis of application submitted by the petitioner F.I.R No.246/ 2020 was registered by the respondent No.1 at Police Station Bhara Kahu, Islamabad, under Sections 354, 148, 149 P.P.C. in the present petition, it is the contention of petitioner that sections 442, 443 and 509 P.P.C are also attracted, which have not been inserted in the above mentioned F.I.R., and only bail-able offence have been inserted, whereas, the accused persons at the time of commission of offence, caused the injuries to the petitioner by means of sticks. It has also been contended that respondent No.1 & 2 have favoured the accused persons by taking a lenient view and conducted a poor investigation in the case mala fide and tried to destroy the case of petitioner. That the petitioner has also filed an application for insertion of proper Sections in the case alongwith affidavits of witnesses, but the respondent No.2/ investigation officer is reluctant to bring on record the factual position. That the petitioner filed an application under Section 22-A/B Cr.P.C before the learned Ex-Officio Justice of Peace, Islamabad-East, for the

addition of appropriate sections of law in the above-mentioned F.I.R, which was dismissed vide order dated 25.11.2020 hence this petition.

3. Learned counsel for the petitioner has contended that the impugned order passed by the learned Ex-Officio Justice of Peace is against the facts of the case, which is not tenable in the eye of law; that F.I.R has already been registered against the accused persons, but proper sections of law has not been inserted; that the learned Ex-Officio Justice of Peace without appreciating the true facts passed the impugned order mechanically and lastly, submitted that proper section of law may be inserted before submission of report under Section 173 Cr.P.C before the learned trial Court.

4. Heard learned counsel for the petitioner and perused the available record.

5. Perusal of the record reveals that on the report of petitioner F.I.R No.246/ 2020 has already been registered at the Police Station Bhara Kahu, Islamabad. After registration of above mentioned F.I.R, investigation is being carried out. The petitioner has filed another application to respondent No.1 with regard to the same incident and thereafter, filed an application under Section 22-A/B Cr.P.C before the learned Ex-Officio Justice of Peace, praying therein for the insertion of appropriate sections of law, however, after hearing arguments of the parties, the learned Ex-Officio Justice of Peace dismissed the application.

6. Perusal of F.I.R No.246/ 2020 shows that sections 354, 148, 149 P.P.C have been inserted in the above mentioned F.I.R. It is the contention of petitioner that Sections 442, 443 & 509 P.P.C also attract in the case, which may be inserted in the abovementioned F.I.R. The learned trial Court is not bound by the report submitted under Section 173 Cr.P.C., and the Court has to frame the charge under Section 265-D, Cr.P.C., after perusing the police report, complaint and the other material provided by the

prosecution. Charge once framed would not become rigid or irrevocable; it can be altered or changed under Section 227, Cr.P.C, if it is so warranted by the circumstances subject to the condition that it should have been done prior to the pronouncement of judgment, in order to eliminate possibility of any prejudice to accused person. Reliance in this regard is placed on the case reported as “Muhammad Jameel Azeem Vs. Ghulam Shabbir and others” (2011 SCMR 1145). Where the charge is properly framed by the learned trial Court but thereafter, after taking evidence, it is found that the same is groundless, the Court is not prevented from striking out such charge. Once the court in its opinion comes to a conclusion that such addition or alteration in its opinion is likely to cause prejudice then the learned trial Court is competently empowered to amend the charge on the strength of evidence, came on the record, at any stage of trial. Insertion or deletion of any Section in the F.I.R falls within the exclusive domain of the Investigating Police Agency and the District Prosecutor and Investigating Police Agency as per facts and whether the police or the District Prosecutor has rightly deleted or inserted any Section in the F.I.R shall be looked into by the learned trial Court at the time of framing of the charge , but the same cannot be challenged through this constitutional petition or petition under Section 22-A, 22-B Cr.P.C before the learned Ex-Officio Justice of Peace as this Court has no jurisdiction to interfere in the investigation or to issue direction to the police for deletion or insertion of any Section of law in the F.I.R, which is the sole domain of the investigating agencies. Guidance in this regard is solicited from the case laws reported as “Muhammad Sharif V. District Police Officer and 2 others” (PLD 2015 Lahore 84) and “Farman Ullah and 5 thers V. The State through Additional Advocate General, Peshawar and 4 others” (2016 PCr.LJ 1096).

7. Furthermore, if the petitioner is aggrieved from the conduct of investigation officer, she can approach the high-ups of the police hierarchy for change of investigation and in case, she is not

satisfied, she has the remedy of filing a private complaint against the accused persons, whereas, the instant constitution petition is not maintainable. In my view where alternate remedy is more convenient, beneficial and likely to set the controversy at naught completely, jurisdiction of this Court under Article 199 cannot be exercised. In this regard, reference can be made to the dictum laid down in the cases reported as “Muhammad Abbasi versus S.H.O. Bhara Kahu and 7 others” (PLD 2010 SC 969), “Abdul Hamid Khan Ackakzai v. Election Commissioner” (1989 CLC 1833) and “Abdul Razzaq & Co. v. Asstt. Collector of Customs” (1986 CLC 2559).

8. In view of what has been discussed above, this petition having no merit is hereby **dismissed** *in limine*.

(GHULAM AZAM QAMBRANI)
JUDGE

“Rana. M. Iqbal”

Approved for reporting.