

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Criminal Revision No. 23/2020
Pervaiz Akhtar
Vs
SHO PS Secretariat Islamabad

Petitioner by: Dr. G. M. Chaudhry, learned ASC.
Respondent by: Mr. Bilal Ibrahim, State Counsel.
Date of Decision: 02.06.2020.

FIAZ AHMAD ANJUM JANDRAN, J: Through the instant criminal revision petition, petitioner impugns the order dated 14.02.2020 passed by learned Additional Sessions Judge/Ex-officio Justice of Peace, Islamabad-West whereby his application under Sections 22-A/B Cr.P.C for registration of FIR has been dismissed.

2. Learned counsel contends that on every complaint regarding commission of cognizable offence, the local police is duty bound to proceed in terms of Section 154 Cr.P.C and holding of inquiry prior to registration of FIR, is not permissible under the law; that the application of the petitioner provided information about commission of a cognizable offence, therefore, it was unjustified to reject the application at its inception. It is further asserted that criminal trespass had been committed by the proposed accused under the garb of an official act which cannot be justified or termed as legal, particularly when sanctity of a dwelling house had been violated. Learned counsel placed reliance upon case law reported as PLD 2007 SC 539, 2018 MLD 275 and PLD 2005 Lahore 470.

3. Learned State Counsel opposed the above submissions. It is argued that the *malafide* on the part of the petitioner can be ascertained from the fact that the incident of 21.12.2019 had been reported to the police after

the delay of about ten days on 31.12.2019; that the act, made basis to get register an FIR had been done on the direction of officials of the CDA to snub encroachments and that the matter was inquired into by the SDPO concerned whereby the application of the petitioner had been found baseless. It is further asserted that the order impugned is well reasoned and does not call for any interference.

5. Heard the learned counsel for the petitioner, learned State Counsel and examined the record.

6. It is by now settled that powers of the learned Ex-officio JOP are required to be exercised sparingly with due care and application of judicial mind. There is no hard and fast rule to order registration of an FIR on every complaint in a mechanical manner. At the same time, it is also held mandatory that once police report is requisitioned, due weight is to be given to it and any contrary view should follow reasons thereof. The Hon'ble Apex Court in case reported as PLD 2016 SC 589 (Younas Abbas & Others Vs Additional Sessions Judge Chakwal & Others) has elaborated the role of Ex-officio JOP in following terms:-

'Functions performed by the Ex-officio Justice of Peace were not executive, administrative or ministerial inasmuch as he did not carry out, manage or deal with things mechanically. Such functions as described in clauses (i), (ii) and (iii) of section 22-A(6), Cr.P.C., were quasi-judicial as Ex-officio Justice of Peace entertained applications, examined the record, heard the parties, passed orders and issued directions with due application of mind. Every lis before him demanded discretion and judgment. Functions so performed could not be termed as executive, administrative or ministerial on any account.'

7. In the present case, admittedly the utensils/articles collected have been deposited in the concerned directorate of the CDA and it was reported by the police that the petitioner had been raising constructions illegally in the CDA owned hostel which is an official residence. In this backdrop, the request of the petitioner cannot be

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acceded to and in the circumstances of the case, the order impugned dated 14.02.2020, passed by the learned Ex-officio JOP is based on correct appreciation of the facts and does not call for any interference.

8. The refusal for the registration of FIR, *ipso facto*, does not amount to give an end to the complaint of the petitioner as the law provides remedy of a private complaint where the petitioner will have all rights to advance his case by producing convincing and cogent evidence. Consequently, the instant criminal revision 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.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail