

ORDER SHEET

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**W.P. No. 2782/2019**

**Munsibdar**

Vs.

**S.H.O Police Station Tarnol, Islamabad and 3 Others.**

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.03.2022	Mr. Nazakat Baig, Advocate for petitioner. Mr. Shahbaz Shah, State Counsel along with Muhammad Hanif, S.I.

The instant writ petition is arising out of the order dated 11.07.2019 passed by the Additional Sessions Judge-X, Islamabad West, whereby application under Section 22-A Cr.P.C filed by the petitioner was dismissed.

2. Relevant facts are that petitioner submitted a written application to the respondent No. 2 ( SSP, ICT) with the contention that he is owner in possession of land comprising Khasra No. 280, 287, 281, 282, 289 situated within the revenue estate of Mouza Sara-e-Kharboza regarding which a civil suit was already pending; that proposed accused namely Mehboo Elahi along with 5-6 persons had taken over its possession illegally by putting crushed stones and also extended threats of dire consequences. Finding no response, petitioner then filed application under Section 22-A Cr.P.C, wherein after procuring police report, it was dismissed vide impugned order.

3. The learned counsel for the petitioner argued that in case qua report regarding commission of a cognizable offence, it is incumbent upon the police to register the FIR and then to proceed while an inquiry before the registration of FIR is uncalled for and that proceedings in terms of section 182 PPC are without any substance/ material.

4. On the other hand learned State counsel supported the impugned order by contending that the parties are already tagged in civil litigation, police report explicitly furnishes true account of the probe and that the petitioner retains alternate remedy to question the legality of proceedings initiated in terms of section 182 PPC before the Court of competent jurisdiction.

Heard, record examined.

5. It is settled principle that the powers bestowed in ex-officio Justice of Peace are to be exercised judicially with due application of mind and there is no hard and fast rule to order registration of criminal case, on every complaint alleging commission of cognizable offence.

6. Record reveals that the property over which the petitioner claims exclusive ownership and possession had been the subject of partition proceedings and as observed by the learned ex-officio Justice of Peace, the possession of the proposed accused over the same was pursuance to order of the Assistant collector. In presence of dispute qua title coupled with the fact that in probe conducted by the police, the impugned order appears to be in accordance with law and facts.

7. As far as prayer for quashing proceedings initiated against the petitioner in terms of Section 182 PPC is concerned, suffice it to say that in order to gauge the authenticity or falsehood of the allegations, factual inquiry, under the circumstances of the case, is essential, which cannot be carried out in constitutional jurisdiction, in addition, petitioner retains alternate efficacious remedy before appropriate forum. Guidance is solicited from case law titled as ***Ikram Ullah Khan Yousafzai, Excise and Taxation Officer Peshawar v. Rizwan Ullah (2022 SCMR 576)***, wherein it has been held that;-

*"We are also at loss to understand under what authority of law, the rescuing team that included some lawyers took away the respondent from custody apparently sanctioned by law, a criminal offence in itself. These are the issues that hinged upon factual*

*controversies and as such could not have been attended in exercise of Constitutional jurisdiction in the face of multiple alternate statutory remedies available to the respondent.*

*For the foregoing reasons, the petition is converted into appeal and allowed; impugned direction/order dated 24.06.2015 is set aside, however, the respondent is certainly at liberty to dispute the vires of impugned assessment before the competent forum in accordance with law as well as to avail alternate remedy of private complaint to be attended on its own merits, if so advised."*

8. In view of above, the impugned order in the backdrop of facts of the instant case, is well reasoned and does not call for any interference. Consequently instant writ petition fails, and accordingly **dismissed**.

**(ARBAB MUHAMMAD TAHIR)**  
**JUDGE**

**\*\*Kamran/\*\***