

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

**W.P No.401 of 2021**

Ghulam Abbas  
*Versus*  
S.S.P Operation Islamabad and others

Sr.No.	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(01)	01.02.2021	Mirza Muhammad Nazakat baig, Advocate for the petitioner.

**Ghulam Azam Qambrani, J:** Through this petition, the petitioner has invoked the jurisdiction of this Court, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer;-

*“In the light of foregoing submissions, it is, therefore, respectfully prayed from this Honorable Court may graciously pass an order to the respondent No.1 to register a Criminal Case against the accused culprits in the best of interest of justice.*

*Any other relief, which this Honorable High Court deems fit and proper may also be awarded.*

2. Briefly stated facts of the petition are that the petitioner filed an application before the respondent No.1 for registration of a criminal case against the proposed accused contending therein that one Asad gave him a contract of Rs.1,50,000/- at Gulberg Dhok Bhahadur Khan. In the said contract the proposed accused, Ghulam Mustafa, showed his interest to be partner with the petitioner. The petitioner acceded his request and jointly started working. On 20.04.2020, it has been alleged by the petitioner that they jointly

decided to purchase a motorcycle for which the petitioner gave Rs.10,000/- to the proposed accused, who purchased Hero motorcycle bearing registration No.CP-235 Model 2012 @ for an amount of Rs.20,000/-; that on 21.04.2020 the petitioner received an amount of Rs.20,000/- from his landlord namely Asad and it was decided in between petitioner and the proposed accused that the profit would be decided amongst them on 50-50 basis. It was alleged that on 21.04.2020, the petitioner alongwith four others when reached at Khanna pull, the petitioner demanded the given amount from the proposed accused, who annoyed and starting abusing with threats that he will be killed and, thereafter, he opened the lock of motorcycle and hit it on his head, due to interventions of others he was saved.

3. Learned counsel for the petitioner contended that a cognizable offence was made out but the police refused to register the criminal case against the proposed accused; that the petitioner being aggrieved from non-registration of case by respondent No.1, filed an application under Section 22-A Cr.P.C seeking direction therein to respondent No.1 for registration of a criminal case but the same was dismissed vide impugned order dated 05.09.2020; that the impugned order dated 05.09.2020 is against the facts of the case; that the proposed accused attacked upon the petitioner thus a criminal case is made out against the proposed accused, therefore, a criminal case may be registered against the accused.

4. Arguments heard, record perused.

5. Perusal of the application filed by the petitioner to the learned ASJ shows that the petitioner had obtained a construction work from one Asad on contract basis for Rs.1,50,000/-, and he had completed the work from his own pocket through labour, out of which, Rs.20,000/- was obtained by the petitioner and the remaining amount of Rs.1,30,000/- was allegedly received by the proposed accused. The petitioner met with the proposed accused at Khanna pull and demanded the amount but the proposed accused became annoyed and started abusing him and, thereafter, allegedly attacked on him with lock of the motorcycle. After receiving the application by the learned Ex-Officio Justice of Peace sought a report from the SHO Police Station Koral, Islamabad, and, thereafter, dismissed the same on the ground that the dispute in between the parties was of civil in nature, being partnership regarding construction work. The report of SHO also shows that there is no evidence of any assault on the person of petitioner. During course of argument before this Court, learned counsel for the petitioner clearly stated that there are no medical reports with regard to any assault on the petitioner made by the proposed accused.

6. It is pertinent to mention here that in the case of "Muhammad Bashir v. Station House Officer, Okara Cantt and others" (PLD 2007 SC 539) the Hon'ble Supreme Court of Pakistan has been held as under:-

*"40. Therefore, in our opinion, the only jurisdiction which could be exercised by an Ex-Officio Justice of the Peace under section 22A(6) Cr.P.C. was to examine whether the information disclosed by the applicant did or did not constitute a*

*cognizable offence and if it did then to direct the concerned S.H.O. to record an FIR, without going into the veracity of the information in question, and no more. Offering any other interpretation to the provisions in question would be doing violence to the entire scheme of the Cr.P.C. which could not be permitted.*

*41. We are conscious of the fact that in pursuance of petitions filed under Article 199 of the Constitution, the High Courts, at times, did refuse to issue writs directing recording of FIRs. Suffice it to say that the exercise of discretion under the said jurisdiction was not dependent only on an illegality committed by a competent authority but was also controlled by some other important consideration such as the seeker of a writ being an aggrieved person; availability of alternative remedies such as filing of a complaint etc. in criminal matters and the applicant being qualified, in equity, for the grant of the sought relief. The powers of the Ex-Officio Justice of Peace under section 22-A(6) of the Cr.P.C. could, therefore, not be equated with the constitutional jurisdiction vesting in a High Court."*

7. It is a settled principle of law that the learned Ex-Officio Justice of Peace while seized of a petition under Section 22-A/22-B of Cr.P.C is not to act mechanically by issuing a direction for registration of a criminal case in each and every case, which have to be decided on its own peculiar facts and circumstances, as has been held by the Hon'ble Lahore high Court, Lahore in case "Mian Abdul Waheed vs. Additional Sessions Judge, Lahore and others" (2011 P.Cr.L.J 438). In any case in hand, the allegations levelled against the proposed accused by the petitioner, cannot be addressed by this Court, while exercising its extraordinary constitutional jurisdiction, as the

same entail a factual inquiry.

8. From the facts and circumstances of the case, no criminal case is made out. The learned Ex-Officio Justice of Peace has rightly dismissed the application filed by the petitioner under Section 22-A Cr.P.C.

9. For what has been discussed hereinabove, petitioner has failed to point out any illegality or irregularity in the impugned order calling for interference by this Court in its constitutional jurisdiction. Resultantly, the instant petition having no force is hereby **dismissed *in limine***.

(Ghulam Azam Qambrani)  
Judge