Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.3157 /2015

Akhtar Seth
Vs
Justice of Peace and 2 others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.11.2015	Mr. Khurram M. Qureshi, Advocate for the petitioner. Ch. Abdul Khaliq Thind & Ms. Azra Kazmi, Standing Counsels. Ashiq Shah, S.I.

Through the instant petition the petitioner has assailed order dated 03.10.2015 passed by respondent No.1 whereby the application under sections 22-A & 22-B Cr.P.C. filed by the petitioner was dismissed.

2. The facts, in brief, are that the petitioner filed a complaint with respondent No.3 alleging therein that he has received a call showing 'private number', however, the caller introduced himself as Inspector Special Branch and threatened him. Since no action was taken by respondent No.3 on the application of the petitioner, therefore, petition under sections 22-A & 22-B Cr.P.C. was filed before respondent No.1 wherein comments were called from respondent No.3, whereafter the application was dismissed vide the impugned order.

3. Learned counsel for the petitioner *inter alia* submitted that under section 154 Cr.P.C respondent No.3 is bound to register F.I.R. if a cognizable offence is made out. It was further contended that respondent No.1 failed to take into consideration the referred aspect of the law and dismissed the application filed by the petitioner without any basis or justification. Learned counsel also pointed out that the facts as narrated in the complaint, filed before respondent No.3,

make out a cognizable offence.

4. Learned State Counsel *inter alia* submitted that no cognizable offence is made out, therefore, F.I.R. was not registered. It was further contended that under section 20 of the Telegraph Act, 1885 the petitioner has an alternate remedy.

5. Under section 154 Cr.P.C. the procedure is prescribed which is to be followed when an information regarding the commission of a cognizable offence is received by the Officer Incharge of the Police Station. If the information is oral then the same is reduced into writing by the Officer Incharge or under his direction and is read over to the informer. In case an information is in writing or reduced to writing it is signed by the person giving it. The substance of the information is then entered in a book to be kept by the Officer Incharge in the form prescribed. The provisions of section 154 Cr.PC. are mandatory in nature, in case a cognizable offence is made out from the facts given by the complainant/informer. The procedure which is to be followed on receipt of the complaint by the Officer Incharge of Police Station and also the scope and powers of the Justice of Peace under sections 22-A & 22-B Cr.P.C. was clinched by this Court in W.P. No.3186/2012 and the principles on the referred aspect were reiterated on the basis of already decided cases on the subject. The relevant paragraphs of the referred writ petition are reproduced and are as follows:

> *"8. In the case of 'Syed Saeed Muhammad Shah and another v. The State' [1993 SCMR 550], the august Supreme Court observed and held as follows.-*
>
> > *"In Part V of the Criminal Procedure Code there is Chapter XIV containing sections 154 to 176 which relate to information to the police and their powers to investigate. These provisions cover information in cognizable cases as well as in non-cognizable cases. Under Section 154, Cr. P. C. it is mandatorily bounden duty of the police officer to register F.I.R. of a cognizable offence. Under section 157, Cr.P.C. he has to send his report to the Magistrate and if he*

> *does not want to investigate a case for reason of insufficient grounds then also he has to send his report to the Magistrate with reasons for his such conclusion."*

9. In the case of 'Muhammad Bashir v. Station House Officer, Okara Cantt. and others' [PLD 2007 SC 539] the august Supreme Court, after thoroughly examining the scope of the Cr. P. C, elucidated the law and the principles relating to the nature of obligations under Section 154 of the Cr. P. C, and the scope of the powers conferred on a Justice of the Peace under Section 22-A of the Cr. P. C. It has been held that upon receiving the information, the incharge of the police-station must first determine whether the offence disclosed in the information received falls in the category of a cognizable or non-cognizable offence. After having determined the category of the offence, as disclosed from the bare perusal of the information received, it becomes a mandatory obligation to reduce the said information to writing in the prescribed register. In the event that the determination leads to the conclusion that a non-cognizable offence has been committed, then it is mandatory to follow the procedure prescribed under Section 155 of the Cr. P. C. The Hon'ble Supreme Court emphasised the use of the expression 'shall' by the legislature in Section 154 of the Cr. P. C. It is to be noted further that the question whether the officer concerned is conferred with the power to hold an inquiry so as to assess the correctness or falsity of information, was answered as follows.-

> *"It may be reiterated and even emphasized that there was no provision in any law, including the said section 154 or 155 of the Cr. P. C. which authorized an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or the falsity of the information received by him before complying with the command of the said provision which obliged him to reduce the same into writing irrespective of the fact whether such an information was true or otherwise."*

10. The august Supreme Court succinctly explained the rationale of the legislative intent behind the procedure prescribed under section 154. The rationale was explained as to ensure that the officer incharge of the police-station does not assume the authority to adjudicate or determine the truthfulness or falsehood of the information received. It was observed that if such a power was to be assumed as having been conferred on the officer in charge of the police-station, then it would

tantamount to bestowing the power to decide the guilt or innocence of an accused person, which otherwise is within the exclusive domain of the courts of law. The august Supreme Court in the said judgment summarized the conclusions in paragraph-27 and the same are reproduced as follows.-

> *"The conclusions that we draw from the above, rather lengthy discussion, on the subject of F.I.R. are as under:---*
>
> *(a) no authority vested with an Officer Incharge of a Police Station or with anyone else to refuse to record an F.I.R. where the information conveyed, disclosed the commission of a cognizable offence-*
>
> *(b) no authority vested with an Officer Incharge of a Police Station or with any one else to hold any inquiry into the correctness or otherwise of the information which is conveyed to the S.H.O. for the purposes of recording of an F.I.R.*
>
> *(c) any F.I.R. registered after such an exercise i.e. determination of the truth or falsity of the information conveyed to the S.H.O. would get hit by the provisions of section 162, Cr.P.C.*
>
> *(d) existence of an F.I.R. is no condition precedent for holding of an investigation nor is the same a prerequisite for the arrest of a person concerned with the commission of a cognizable offence;*
>
> *(e) nor does the recording of an F.I.R. mean that the S.H.O. or a police officer deputed by him was obliged to investigate the case or to go through the whole length of investigation of the case mentioned therein or that any accused person nominated therein must be arrested; and finally that,*
>
> *(f) the check against lodging of false F.I.Rs. was not refusal to record such F.I.Rs, but punishment of such informants under S.182, P.P.C. etc. which should be, if enforced, a fairly deterrent against misuse of the provision of S. 154, Cr. P.C."*

11. It is obvious from the above that upon receiving an information regarding an offence, the officer incharge of the police-station has to

determine at the first instance regarding the nature of the offence i.e. whether it falls in the category of a cognizable or non-cognizable offence . After such a determination has been made, it places a mandatory obligation to strictly comply with the requirements of Section 154 or 155 of the Cr. P. C, as the case may be. Conducting an inquiry or investigation prior to carrying out the mandatory obligations under Section 154 or 155 of the Cr. P. C is neither envisaged, nor is such a power conferred under the scheme of the Cr. P. C. As a corollary, an inquiry to be conducted by any other authority is also neither provided, nor can the incharge of the police-station refuse compliance with the procedure prescribed under Section 154 of the Cr. P.C on such ground. In the instant case, the respondent No.3 refused to fulfill the mandatory obligations under Section 154 of the Cr. P. C on the ground that the Chairman of the Capital Development Authority was to first conduct an inquiry. The same ground also prevailed on the learned Justice of the Peace. Such ground was neither tenable nor in consonance with the scope of jurisdiction vested in the respondent No.3 or the learned Justice of the Peace.

12. In the same judgment the august Supreme Court has also referred to another crucial aspect i.e. the effect of the registration of a First Information Report. In the case of the registration of a criminal case, the apprehension or fear of being arrested even when a person is innocent, is misconceived. This aspect has also been dealt by the august Supreme Court in paragraph-24 of the judgment. It would be pertinent to reproduce the same as follows.-

> *"It must, therefore, be kept in mind that mere registration of an F.I.R. could bring no harm to a person against whom it had been recorded. No one, consequently, need fear a false F.I.R. And if a police officer arrested a person in the absence of the requisite material justifying the same and only one the pretext of such a person being mentioned in an F.I.R., then such would be an abuse of power by him and the remedy for such a misuse of power would not be to permit another abuse of law by allowing an unlawful exercise of collection of evidence to assess the veracity of allegations levelled through the information conveyed to a S.H.O. before recording of an F.I.R. The remedy lies elsewhere."*

13. The scope of the powers and functions of the Justice of the Peace under Section 22 of the Cr. P. C have also been examined, and the principles

relating thereto were eloquently elaborated by the august Supreme Court in the case of Muhammad Bashir (supra). The same have been summed up in paragraph-40 of the judgment and are reproduced as follows.-

> *"Therefore, in our opinion, the only jurisdiction which could be exercised by an Ex-officio Justice of the Peace under section 22-A(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 F.I.R. 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."*

6. In the instant case respondent No.1 has failed to take into consideration the relevant principles/guidelines laid down by the Superior Courts of the country and has dismissed the application under sections 22-A & 22-B Cr.P.C. filed by the petitioner in an arbitrary manner.

7. In view of above, the instant petition is allowed and the impugned order dated 03.10.2015 is set aside. Consequently, the application under sections 22-A & 22-B Cr.P.C. shall be deemed to be pending before respondent No.1 and shall be decided in accordance with law.

(AAMER FAROOQ)
JUDGE

M.Naveed