

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

**Writ Petition No.105/2020**

Intikhab Hussain  
Vs.  
Additional District & Sessions Judge, Islamabad-West, Etc.

Petitioner By:	Sardar Jahanzeb Khan and Malik Muhammad Akbar, Advocates.
Respondents No. 4 & 5 By:	Mr. Nasir Azeem Khan, Advocate.
State By:	Mr. Zohaib Hassan Gondal, State Counsel along with Yaseen, Sub-Inspector.
Date of Hearing:	03.02.2020.

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**GHULAM AZAM QAMBRANLI**: The petitioner through the instant petition assailed the validity of order dated 08.01.2020 (the impugned order), passed by the learned Additional Sessions Judge-V, Islamabad-West, in his capacity as Ex-Officio Justice Of the Peace, Islamabad, whereby the petition filed under Section 22-A Cr.P.C filed by the petitioner was dismissed.

2. Briefly stated facts of the case are that the petitioner filed a petition under Section 22-A & 22-B Cr.P.C for registration of an F.I.R against the private respondents namely RanaRafaqat and RanaShahroz, alleging therein that the petitioner acquired a residential house No.869, Service Road East, Sector I-10/4, Islamabad, on rent through an agreement dated 18.12.2019, and

shifted in the said house with his family along with household items. The petitioner submitted the verification form in Rescue 15, Islamabad. It has been further alleged that on 22.12.2019, the respondents Rana Rafaqat and Rana Shahroz came to the said house and extended threats to the petitioner for vacation of the house and the petitioner on the very next day filed a suit against them and obtained injunctive orders from the learned Court of Civil Judge, Islamabad–West, on 23.12.2019. It has also been alleged that on 24.12.2019, the above named respondents again came to the house of petitioner started quarrelling with him. In the meantime, local police of the Police Station Sabzi Mandi reached there and the petitioner alongwith them and kept him behind the bars. Thereafter, on 25.12.2019, the respondents along-with some other unknown persons duly armed with deadly weapons entered into the said house, badly beaten the family of the petitioner, broken the household items and forcefully dispossessed the family of the petitioner from the said house and also extended threats of killing them. It has also been stated that on 25.12.2019, the petitioner approached the concerned police station and submitted an application for registration of case but they refused to entertain the same. He also approached the high-ups of the police but his grievance was not redressed. The petitioner filed a petition under Section 22-A& 22-B Cr.P.C before the Ex-Officio of Justice of Peace/Additional Sessions Judge-V,

Islamabad-West/respondent No.1, who after calling for a report from the concerned S.H.O, dismissed the petition vide order dated 08.01.2020.

3. The learned counsel for the petitioner contended that the impugned order passed by the learned Ex-Office Justice of Peace, is contrary to the facts and circumstances of the case; that there are various illegalities, irregularities and improprieties, on the basis whereof the impugned order is not sustainable and liable to be set-aside and direction be issued to the S.H.O Sabzi Mandi Islamabad/respondent No.2 to register an F.I.R against the proposed accused/respondents.

4. Conversely, learned counsel for the proposed accused, as well as, learned State counsel strongly opposed the contentions of the learned counsel for petitioner contending that the respondents namely Rana Bakhatwar Ali, Rana Rafaqat Ali, Rana Shahroz Ali are the registered owners of the house in question; that the petitioner forcibly intends to occupy the said house and the allegations are baseless; no any such act has been committed by the respondents.

5. Heard arguments and perused the available record with their able assistance of the learned counsel for the parties.

6. Perusal of the record reveals that on the direction of learned Justice of Peace, respondent No.2/S.H.O has filed a detailed report dated 07.01.2020 wherein, it has been mentioned that the

petitioner through a tenancy agreement alleged himself as tenant, but despite opportunity, failed to produce the owner, mentioned in the tenancy agreement.

7. The S.H.O obtained a report from the Capital Development Authority, Islamabad, wherein, the private respondents have been shown owners as per record. It has been mention in the report submitted by the S.H.O that false allegations have been leveled against the respondents by the petitioner just to grab the house in question on the garb of above said agreement.

8. It is necessary to mention here that in the case of Muhammad Bashir versus Station House Officer, Okara Cantt. And others(PLD 2007 SC 539), the Hon'ble Supreme Court of Pakistan has been pleased to observe as under:-

*"40. 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.*

*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 F.I.Rs. 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 considerations 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 the 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."*

9. In view of the above legal position, I am clear in my mind to observe that Ex-Officio Justice of Peace, under Section 22-A(6) Cr.P.C have to examine whether the information disclosed by the petitioner did or did not constitute a cognizable offence and if it did, then to direct the concerned S.H.O to register an F.I.R. The impugned order is reproduced herein below:-

*"From perusal of record and police report it transpires that petitioner himself has illegally occupied the house of the proposed accused, so, no cognizable offence is made out. Under these circumstances, no direction is required to be issued to the local police. Resultantly, the petition in hand needs no further consideration, thus the same is hereby dismissed. File be consigned to the record room after due completion/compilation."*

10. The record shows that there is a dispute between the parties over the said house and the parties are claiming ownership of the same. In the instant case, as per impugned order which was based on the report of S.H.O, according to which, the private respondents/proposed accused are the registered owners of the house in-question and the Ex-Officio Justice of Peace has passed a well reasoned order. Further, it is a settled principle of law that the Ex-Officio Justice of Peace while seized of a petition under Section 22-A/22-B 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 seven others (2011 P.Cr.L.J 438). In any case, the allegations leveled against the accused persons by the petitioner cannot be addressed by this Court while exercising its extraordinary constitutional jurisdiction, as the same entail a factual inquiry.

11. For what has been discussed hereinabove, learned counsel for the 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 **dismissed**.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

ANNOUNCED IN OPEN COURT ON 11-2/2020

**JUDGE**

*"Rana.M.Ift"*