

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

W.P No.2412 of 2020

Haji Nisar Ahmad
Vs
Additional Sessions Judge, etc

Date of decision: 07.09.2020

Petitioner By: Sajid Mehmood Chaudhary.

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

“ In the circumstances mentioned above, it is most respectfully prayed that impugned order dated 17.08.2020 passed by learned Ex-Officio/Justice of Peace may kindly be set aside and the respondent No.2 be directed to register FIR on the complaint of the petitioner without any further delay.”

2. Facts in brief are that the petitioner Syed Irshad Hussain Shah, who is special attorney of Haji Nisar Ahmad s/o Sabir Hussain moved an application to the S.H.O, P.S Sihala, Islamabad, stating therein that his friend Haji Nisar Ahmad purchased plot measuring 2-kanals & 10-marlas situated in khasra number 186. He constructed a room and forewall and installed a main gate to the road side. Thereafter, Sajid Hussain broke the main gate and wall of that plot. On 08.07.2020, the Investigating Officer alongwith Head Constable visited the spot and also make footage of the spot. Since, no F.I.R was lodged on application of the petitioner, therefore, the petitioner moved an application under section 22-A Cr.P.C to the learned

Justice of Peace, which was dismissed vide order dated 17.08.2020, hence this petition.

3. Learned counsel for the petitioner submits that it is the duty of learned Justice of Peace to go through the contents of application, and if any cognizable offence is made out, order the SHO to proceed under Section 154 Cr.P.C; that according to settled principle of law, civil suits do not bar the registration of a criminal case against the delinquents; learned Justice of Peace failed to appreciate the contents of complaint, which constitute a cognizable offence. Further contended that there exists no concept of any inquiry conducted by Investigating Officer regarding the falsity or otherwise regarding commission of cognizable offence prior to registration of the case under Section 154 Cr.P.C. Further submitted that the impugned order passed by the learned Ex-Office Justice of Peace, is contrary to the facts and circumstances of the case; that the impugned order passed by the learned Additional Sessions Judge, Islamabad-East, is in violation of fundamental rights of the petitioner.

4. Arguments heard, record perused.

5. Perusal of the record reveals that there is a dispute of plot and complaint under Section 3 & 4 of the Illegal Dispossession Act, 2005 is pending adjudication before the Court of learned Additional Sessions Judge-East, Islamabad. During this, the petitioner moved an application under Section 22-A & B Cr.P.C before the learned Additional Sessions Judge-V, Islamabad-East, for registration of a criminal case against one Sajid Hussain s/o Sarwar Hussain on the ground that he had broken the locks of main gate of the disputed plot and had taken away certain articles alongwith electricity meter installed at the said plot in his name.

6. Perusal of the record reveals that the complaint under Section 3 & 4 of the Illegal Dispossession, Act, 2005 is still pending adjudication before the competent Court of law with regard to the disputed plot and also civil litigation is pending between the parties with regard to the disputed plot before the concerned Civil Court, therefore, keeping in view the above facts and circumstances, the learned Additional Sessions Judge has rightly dismissed the application of the petitioner. If the petitioner has any grievance

against the violation of any stay order, he may approach the competent forum against the said Sajid Hussain whereas the instant petition is not maintainable.

7. 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."

8. 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, 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.

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

S.Akhtar