

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

**W.P No.2863 of 2017**

Imran Rafiq  
**Vs**  
Additional District Judge, etc

Date of Hearing: 08.07.2020

Petitioner By: In person.

State by: Zohaib Hassan Gondal, State  
Counsel with Nasar Ullah ASI.

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**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;-

*"It is humbly prayed that the writ petition may be accepted and following declaration and direction be given to the respondents.*

- a. *That impugned order dated 20.07.2017 passed by the respondent No.1 may very kindly be set aside.*
- b. *Accepting this writ petition and issuance of appropriate direction to the respondent No.2 to proceed in accordance with law in line with Section 154 Cr.P.C by registering a criminal case against the accused mentioned in application in accordance with the provisions of PPC.*
- c. *Grant any other relief, which this Hon'ble Court deems just and proper in the circumstances of the case."*

2. Facts in brief are that the petitioner Imran Rafiq moved an application to the S.H.O, P.S Aabpara, Islamabad stating therein that on 24.09.2016, when he was present in the house of his brother, the accused Micheal Rose and Robin came there and borrowed his car for two months for some personal affairs.

Petitioner gave his car as well as its registration book. However, after two months, the accused persons did not return the vehicle and on demand, refused to fulfil their promise. 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 20.07.2017, hence this petition.

3. Petitioner in person submits that respondent No.2 being a public functionary is required to act in accordance with law and to protect the rights of the petitioner; that respondents are not performing their duties honestly; that accused persons have committed cognizable offence and are liable to be prosecuted. He further submits that the proposed accused persons namely Michael Rose, brother of his wife and Robin Sardar borrowed his car with original registration book for their personal use for two months and after lapse of said period, the petitioner demanded the car from them; that firstly they made evasion to give back the car and registration book to the petitioner, but thereafter, when the petitioner consulted them again for return of his car, they flatly refused to return the car and its registration book to him and also threatened him for dire consequences. Petitioner also 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, is in violation of fundamental rights of the petitioner.

4. On the other hand, learned State counsel strongly opposed the contentions of the petitioner and supported the impugned order.

5. Arguments heard, record perused.

6. Perusal of the record reveals that there is a dispute of ownership of the vehicle in between the spouses. Wife of the petitioner has claimed that she purchased the said car on instalments from the bank and that she is paying the

instalments of the said vehicle. The dispute in between the parties is of purely civil nature. *Prima facie*, no cognizable offence is made out, as such, the learned Ex-Officio Justice of Peace has passed a well-reasoned order.

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 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 **dismissed**.

**(Ghulam Azam Qambrani)**  
**Judge**

S.Akhtar