

**ORDER SHEET  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT**

Writ Petition No. 1052-2013,  
Muhammad Younas Butt-Vs-SSP Islamabad:

S. No. of order proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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31-05-2013: Mr. Shafqat Mehmood Butt, Advocate for the petitioner,  
Mr. Shabbir Ahmad Abbas learned Standing Counsel, *Hakim Khan SI*  
Mr. Samar Naveed, Advocate for respondent No.3.

**ORDER  
MUHAMMAD ANWAR KHAN KASI, CJ:**

Following order of learned ASJ/Ex-Office Justice of Peace dated 25-02-2013 has been called in question by way of this constitutional petition:-

“ As per comment submitted by the local police, there are civil nature disputes between the parties, as there is recovery of amount involved and just to pressurize the other party, the petitioners want to get register FIR. Moreover, as per police report and attached agreement, the matter was already settled through Jirga. Therefore, the petitioners just want to linger on the payment and pressurize the other party by registration of FIR.

Under the circumstances, no direction is required to be issued to the local police. Resultantly, the petition in hand needs no further consideration. Same is hereby dismissed.”

The main contention of the learned counsel is that Ex-Officio JOP had no power to enter into deeper controversy or to embark upon an inquiry for determination of the truthfulness or otherwise of the contents of the application made to him and he can only order for registration of case, if any cognizable offence is made out. He referred case laws reported as 2013 P Cr LJ 117, 2011 P Cr LJ 913 and 2011 P Cr LJ 268 in support of his submissions.

The arguments advanced by the learned counsel for the petitioner lead to the point that the observations of the learned Ex-Officio JOP to the effect that **there are civil nature disputes between the parties, as there is recovery of amount involved and just to pressurize the other party, the petitioners want to get register FIR. Moreover, as per police report and attached agreement, the matter was already settled through Jirga.**

Therefore, the petitioners just want to linger on the payment and pressurize the other party by registration of FIR, while entertaining an application under Section 22- A Cr. PC amounts to a decision before the trial and is beyond the mandate whereby the learned JOP can only examine whether the information disclosed by the applicant did or did not constitute a cognizable offence, and if it did according to his own independent opinion as per facts narrated by the applicant, then he was bound to direct the SHO to register an FIR without going into veracity of the information and irrespective of any private or civil dispute between the parties.

Learned counsel for private respondent resisted the above arguments by maintaining that the petitioner in order to avoid payment, intend to get register the FIR for putting pressure on the respondents and that the matter has already been resolved through a compromise in the PS, therefore, the learned ASJ/JOP rightly rejected the application being devoid of merits. Learned counsel while referring PLD 2010 SC 691 further submits that each and every case is to be decided on its own peculiar facts and circumstances and where an application for registration of FIR had been filed with malafide intention, High Court should decline exercise of discretion in favour of the applicant.

Learned Standing Counsel also supported the impugned order.

Heard and record perused.

The pivotal point in this case which requires determination is that as to whether the facts and circumstances of this case deserve direction for registration of an FIR or otherwise?

The record is evident of the fact that the parties to lis are at daggers drawn against each other. Initially, the petitioner set the law into motion through a written complaint on 04.04.2012 before the SHO with allegation of snatching of his Oil-Tanker at gun-point by respondent No. 3[Raja Saeed]. After four days of moving the said application, on 08.12.2012, a case under section 341/506 PPC was got registered from the side of respondent No.3 against Khalid Mehmood, the driver of the present petitioner, at PS Mandra, Gujar-Khan, vide FIR No. 374/2012, which was found false during investigation and the accused of that case were recommended for discharge with opinion that the parties had business dispute and the respondent No.3 is retaining possession of Oil tanker against his claim. Subsequently, the respondent No.3 also got registered another FIR No. 38 of 2013 against the present petitioner and his driver under section 406/34-PPC at PS Sehala, Islamabad, regarding embezzlement. Soon after the registration of said FIR, the present petitioner filed a Civil Suit for rendition of accounts against the respondent No.3 on 22.04.2013.

It is noteworthy that the compromise document which has been annexed with the report of police and relied upon by the learned Ex-Officio JOP cannot be termed as an authentic document for want of date,

complete terms & conditions entered into between the parties. The said compromise was also not entered into between the parties through a due process of Alternate Dispute Resolution; therefore, any reliance upon such unauthentic document would not be safe.

It is evident from the above facts & circumstance of this case that it was the petitioner, who initiated action against the respondent No.3 with specific allegation of snatching of his oil tanker, and thereafter the respondent No.3 reacted and then the litigation went on. In such state of affairs, the proper course for the learned Ex-Office JOP was to direct the SHO concerned to register an FIR and to hold impartial investigation and to proceed further in accordance with law, as, prima facie, there was an allegation of commission of a cognizable offence.

As a sequel of above discussion, impugned order dated 25.02.2013 is set-aside and the respondent No.2 [SHO, PS Sehala] is directed to register the case on the basis of complaint filed by the petitioner dated 04.12.2013. The respondent No. 1 [SSP] is also directed to depute any independent and impartial Inquiry Officer not below the rank of DSP, who shall proceed with the case strictly in accordance with law, without any favour or fear and shall conclude the investigation within a period of one month under intimation to this Court through the Registrar, for perusal in Chambers and further necessary action, if need be. Office is further directed to transmit the copy of this Order to all concerned including the IGP Islamabad, with direction to ensure strict compliance and transparent investigation in this case.

The petition is disposed of in above terms.

**CHIEF JUSTICE**

M. Suhail  
31.05.2013

APPROVED FOR REPORTING

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