

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

Writ Petition No.817 /2020

Syed Saad Ahmed
Vs
The Learned Ex-Officio, Justice of Peace, Islamabad and others

Petitioner By: Mr. Usman Ali Ch. And Salim Ur Rehman,
Advocates.
Respondent No.4 By: Mian Tahir Iqbal, Advocate.
State By: Mr. Zohaib Hassan Gondal, State Counsel
along with Akram, Sub-Inspector.

Date of Hearing: 29.04.2020

GHULAM AZAM QAMBRANI. J.:- Through this petition, the petitioner has invoked the jurisdiction of this Court by filing instant Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

"In these circumstances, it is respectfully prayed that the writ petition may kindly be accepted, and the impugned order dated 03.02.2020, may kindly be set aside and direction may kindly be issued to the respondent No.2 to register the criminal case under Section 409, 419, 420, 468, 471, 472, 506 (ii) 34 P.P.C and any other enabling provision of P.P.C against the culprits named in the application already submitted before respondent No.2 in the interest of justice.

Any other relief, which this Hon'ble Court deems fit and proper, may also be awarded to the petitioner."

2. Briefly stated facts as per contents of the petition are that the petitioner submitted an application before the S.H.O Police Station Koral, Islamabad, as well as, before the S.P Investigation, Islamabad, for registration of criminal case against respondent No.4. Thereafter, the petitioner application under Section 22-A & B Cr.P.C before the learned Ex-Officio Justice of Peace, Islamabad, for registration of a criminal case

against the proposed accused persons which was dismissed vide order dated 03.02.2020, hence, the instant writ petition.

3. Learned counsel for the petitioner contended that the impugned order is result of mis-reading and non-reading of the material available on record; that the proposed accused has committed cognizable offences but the learned Additional Sessions Judge, Islamabad made the observation that the matter is civil in nature, hence, the impugned order is liable to be set aside.

4. Learned counsel for respondent No.4 contended that they are running the said petrol pump since the life time of his father; that on the night of 7th and 8th of January, 2020 at about 12:30 am a team of Shell Pakistan visited the site and issued termination letter to the respondent, and removed the motherboards and chips of dispenser from all five dispensers which were used for running of dispensing units and suspended the supply of business of the respondent. It is further submitted that during the probe, representative of the company failed to mention about the theft of fuel and misuse of motherboard or dispensers and that no harassment was caused by the respondent to the petitioner.

5. The learned State Counsel vehemently opposed the arguments raised by the petitioner and supported the order passed by the learned Addl. Sessions Judge, Islamabad, therefore, urged for dismissal of the petition.

6. Heard arguments and perused the available record.

7. For better understanding Section 154 of Cr.P.C is reproduced herein below.-

"154. Information in cognizable cases: *information relating to the, commission of a cognizable offence if given orally to an officer incharge of a police station, shall reduced to writing by him or*

under his direction and then read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf."

8. The provisions of Section 154 Cr.P.C are mandatory in nature, in case a cognizable offence is made out from the facts given by the complainant. The procedure which is to be followed on receipt of complaint by the officer incharge of police station and also the scope and powers of the Justice of Peace under Section 22-A and 22-B Cr.P.C have been laid down by the Hon'ble Supreme Court of Pakistan in the case titled as '*Syed Saeed Muhammad Shah and another v. The State*' [1993 SCMR 550] and observed and held as under.-

"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 vs. Station House Officer, Okara Cantt and others*' [PLD 2007 SC 539] the august Supreme Court, after thoroughly examining the scope of the Criminal Procedure Code, 1898, 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 the 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 of Cr.P.C. 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 case in hand, the respondent No.1 totally relied upon the report submitted by the respondents No.2 & 3.

12. The august Supreme Court further laid down as under:-

"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 on 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."

14. From bare perusal of the contents of the application, the allegations against the proposed accused are that at the time of termination of franchise license, the stock position available at the site was as follows:-

- Super Fuel 50411 liter ;
- V-Power 9888 liter ; and
- HSD 21638 liter.

The devices of the site were made non-operational by the Shell Pakistan Limited. Thereafter, the accused counterfeited the seals of the motherboard and installed unauthorized motherboard or dispensers illegally using the abovementioned stock of the company dishonestly which caused losses to the tune of PKR Rs.4.9million per month. In such situation, the proper course for the learned Ex-Officio Justice of Peace was to direct the S.H.O concerned to register an F.I.R and to hold impartial investigation and to proceed further in accordance with law, as, *prima facie*, there was an allegation of commission of cognizable offence.

15. In the instant case respondent No.1 failed to take into consideration the relevant principles laid down by the superior Courts while dismissing the application under Section 22-A & B Cr.P.C in an arbitrary manner, filed by the petitioner.

16. In view of above, this petition is allowed and the impugned order dated 03.02.2020 is set aside. The concerned S.H.O is hereby directed to record the statement of petitioner in his verbatim and if such statement reflects that the ingredients of cognizable offence are available to register the F.I.R against the proposed accused, he shall register an F.I.R against him.

17. The respondent No.3/ S.P Investigation, Islamabad, is also directed to depute an independent and impartial investigation officer not below the rank of D.S.P, who shall proceed with the case strictly in accordance with law without any favour or fear and shall conclude the investigation within the period of one month. The proposed accused shall not be arrested unless and until the investigation officer has collected any tangible/concrete evidence against him, warranting arrest of the accused. If it was found that false information has been given, then proceedings

under Sections 182 and 211 P.P.C should be initiated for misuse of taking into motion the law.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced In Open Court, On 30th of April, 2020.

~~JUDGE~~

Rana. M. Ift