

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No. 2470 of 2020
Omer Waqas Qureshi and another
Versus
Additional Sessions Judge, Islamabad-East, etc.

Petitioner by: Mr. Sohail Akbar Chaudhry, Advocate,
State by: Syed Shahbaz Shah, State Counsel,
with Qasim Zia SI with police record.
Respondent No.3 by: Mr. Ghulam Fareed Chaudhry,
Shahzeb Nawaz Khan and Mr. Dawood
Iqbal, Advocates,
Date of Hearing: 19.10.2020.

FIAZ AHMAD ANJUM JANDRAN, J.- Through
the instant writ petition, petitioner impugns order dated
01.09.2020 passed by the learned Additional Sessions
Judge-IV/Ex-officio Justice of Peace, Islamabad-East,
whereby application under Section 22-A & B Cr.P.C, filed
by the respondent No.3, was disposed of in following
terms:-

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"Perusal of the record reveals that submission of application by the petitioner to the respondents has not been denied. As per allegations, accused Omer Waqas with the collusion of Muhammad Nouman Qureshi and the officials of society got transferred the plot No.6 measuring 30 x 40 situated at AGOCHS in his own name on the basis of forged stamp paper/undertaking dated 27.02.2011 on 28.02.2011, whereas, at that time, the petitioner was in abroad. The allegations levelled prima facie show that cognizable offence is made out. Even learned counsel for the petitioner has no objection upon verification/ forensic analysis of stamp paper/ undertaking dated 27.02.2011 prior to the registration of FIR. Therefore, respondent No.1/SHO is directed to firstly verify the signatures and thumb impressions of the petitioner on the original documents from forensic analyses /handwriting expert and NADRA and then proceed in accordance with law. A copy of this order be sent to the SHO concerned for compliance, while file of this Court be consigned to record room after its due completion and compilation.

2. Facts, relevant for the disposal of the instant writ petition are that respondent No.3 lodged a complaint with respondent No.2/S.H.O Police Station Lohi Bher, Islamabad against the petitioners with the allegations that they are legal heirs of Muhammad Zulqarnain Qureshi who died on 10.01.2010 leaving behind plot No.6, main commercial area, AGOCHS-I Housing Society ("subject plot"); that at the relevant time, respondent No.3 was abroad; that the subject plot after the demise of their father had to be devolved upon all the legal heirs but the petitioners in connivance with each other prepared a forged stamp paper by affixing his forged signatures and then transferred the subject plot in the name of the petitioner No.1; that neither the respondent No.3 signed any stamp paper nor relinquished his share out of the subject plot and that the undertaking sworn at his behalf on 27.02.2011 bears his forged signatures and thus the proposed accused (present petitioners) committed fraud.

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3. The respondent No.3 then filed an application under Section 22-A&B Cr.P.C, wherein the learned Ex-officio Justice of Peace requisitioned the police report whereby, it was reported that on the application, both the parties were summoned and a report was also obtained from the Registrar of the Housing Society. According to the said report as per bye laws of the Housing Society, the subject plot, being commercial in nature, was indivisible and it was the requirement that the subject plot could be transferred in the name of one of the legal heirs and therefore, all of them recommended petitioner No.1 Omer Waqas Qureshi and thereafter the transfer was made on 28.02.2011. It was further reported by the police that Omer Waqas Qureshi did not further alienate the subject plot and none of the legal heirs raised any objection over the transfer in his

name and now the allottee himself surrendered the allotment and the housing Society will now transfer the subject plot in the name of all the legal heirs. It was further reported by the police that during the probe, no cognizable offence has been found to be committed. The learned Ex-officio JOP after hearing the learned counsels for the parties disposed of the petition in terms noted in Para-1 above, hence, the instant writ petition.

4. Learned counsel for the petitioners argued that the application of the respondent No.3 did not disclose commission of cognizable offence; that it is a civil dispute amongst the legal heirs; that no offence as alleged, has been committed by the petitioner No.1 and that the very transfer in the name of petitioner No.1 has already been revoked by him on the asking of his mother, therefore, there was no justification with the Ex-officio Justice of Peace to indulge into investigation and that too contrary to the police report, therefore, impugned order is liable to be set aside. Learned counsel relied case law reported as **PLD 2007 SC 539, 2016 P.Cr.L.J, 172, 2011 YLR 2141, 2019 YLR 228 and PLD 2009 Karachi 14.**

Fmr 5. Learned counsel for the respondent No.3 repelled the above submissions, *inter alia*, stating that in the backdrop of the facts of the instant case, in order to unearth the real facts, the impugned direction is well justified and within the competence of Ex-Officio Justice of Peace, therefore, does not call for any interference; that record shows, at the relevant time respondent No.3 was not in Pakistan and he was abroad. Learned counsel relied upon case law reported as **2010 P.Cr.L.J 585, 2015 MLD 463, 2008 P.Cr.L.J. 1358 and 2012 P.Cr.L.J. 981.**

6. Heard the learned counsels for the parties and examined the record with their able assistance.

7. In order to see, whether the impugned order in the backdrop of the instant case, is well reasoned, just and appropriate in accordance with spirit of the provision of Section 22-A & B Cr.P.C. Guidance is taken from the case of "Younas Abbas and others v. Addl. Sessions Judge Chakwal and others" (PLD 2016 Supreme Court 581), wherein the Hon'ble Apex Court has graciously elaborated the functions of the Ex-officio Justice of Peace in following terms:-

"The functions, the Ex Officio Justice of Peace performs, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with things mechanically. His functions as described in clauses (i), (ii) and (iii) of sub-section (6) of Section 22-A Cr. P.C, are quasi judicial, as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind. Every lis before him demands discretion and judgment. Functions so performed cannot be termed as executive, administration of ministerial on any account."

8. In the light of ratio supra, the powers exercised by the Ex-officio Justice of Peace are quasi judicial where due application of mind is held to be 'sine qua non'. The exercise, lend authority to the Ex-officio JOP to pass appropriate directions and every *lis* demands discretion and judgment.

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9. The powers to be exercised, *inter alia*, includes summoning of police report and it is settled principle that once the police report had been called for, the same could not ordinarily be brushed aside. The Ex-officio Justice of peace, while holding contrary to the police report, is supposed to furnish tangible reasons for not relying upon the solicited police report. The Hon'ble Lahore High Court in a judgment reported as **2014 P.Cr.L.J 1146 title Mureed Hussain v. Additional**

Sessions Judge/Justice of Peace Jampur and 3 others, in a writ petition held that:-

“An Ex-Officio Justice of Peace is not bound to seek report from the police at every cost and he is fully competent to decide the application and pass an order, even without any report by the police. But when a report is called, to know the truth and real facts, as per the above-mentioned dictum, then it should not be ignored. If Ex-Officio Justice of Peace does not agree with the report, then should give the reasons. Seeking and obtaining a police report but ignoring and passing an order, contrary to it, without assigning any reason could not be appreciated. Special care to this situation is required.”

Same principle was reiterated in subsequent judgments reported as “Muhammad Asif v. Sanobir Khan and 3 others” (2017 P.Cr.L.J Note 9 (Lahore), and “Nisar Ahmed Bhatti v. Additional Sessions Judge and others” (2016 YLR N 146 Lahore).

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10. The principle *ibid* if applied to the facts of the instant case, it emerged that the Ex-officio Justice of Peace before passing the impugned order, requisitioned the police report wherein it was reported that the petitioner No.1 has since surrendered allotment; that no cognizable offence is made out; that allotment in the name of petitioner No.1 had been with the consent of all the legal heirs and that the petitioner No.1 has not alienated the subject plot to anyone else rather on the objection of respondent No.3 surrendered the allotment.

11. Though the Ex-officio Justice of Peace mentioned the receipt of report *ibid* in its order under paragraph No.2 but failed to render any observation regarding the same. The order impugned also did not contain any reasons for discarding the same.

12. Moreover, it is admitted position that the allotment in the name of the petitioner No.1 stood revoked and that no cognizable offence had been committed, therefore, in such eventuality when the very allotment in the name of the petitioner No.1 stood revoked, the police report appears to be just and cannot be brushed aside. Thus, the impugned order in the backdrop of the facts besides the law on the subject, is not legally sustainable.

13. In view of above, the instant writ petition is allowed, impugned order dated 01.09.2020 is set-aside and consequently, application filed by the respondent No.3 for registration of F.I.R is dismissed.


(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

A.R.Ansari

Approved for reporting.