

*JUDGMENT SHEET*

**IN THE PESHAWAR HIGH COURT,  
PESHAWAR.**

JUDICIAL DEPARTMENT

**W.P No. 2508-P of 2018 with I.R.**

*JUDGMENT*

Date of hearing \_\_\_\_\_ 16-01-2019 \_\_\_\_\_

Petitioner (s) (Syed Abdul Hameed) By Mr. Younas Ahmad  
Mohmand, Advocate

Respondent (s) (Mian Izhar Ahmad) By Syed Inayat Shah,  
Advocate.  
(State)..... By Mr. Mujahid Ali Khan, Addl: A.G.

**ISHTIAQ IBRAHIM.J-**

Syed Abdul

Hameed son of Syed Abdul Rasheed, the petitioner, has  
invoked the Constitutional jurisdiction of this Court  
under Article-199 of the Constitution of Islamic Republic  
of Pakistan, 1973, praying that;

***“on acceptance of instant writ petition,  
besides any other relief, the impugned  
order dated 18.04.2018 passed by  
respondent No.3/Justice of Peace, Mardan,  
may kindly be set aside and respondent  
No.2 may be directed to stop proceedings  
against the petitioner.”***

2. The brief facts of the case are that respondent No.1 (Mian Izhar Ahmad) submitted an application under section-22-A Cr.PC against the petitioner (Abdul Hameed) before the Court of DSJ/Justice of Peace, Mardan, for registration of criminal case under the relevant law on the ground that on 01.11.2017 unknown person called him on his mobile phone No.0313-9620021 and asked him to meet him without disclosing his identity; that he asked him why to meet you, in reply he gave him threats; that on 04.11.2017 he was riding on his motorcycle Honda 125-CC bearing registration No.DGN-3831 and when reached near FALCON School Baghdada, four persons duly armed with weapons riding on two motorcycles stopped him and aimed their pistols and Kalashnikov, snatched his motorcycle, NIC card, ATM card, cash amount of Rs.6000/- and threatened him of dire consequences, if he disclosed the matter to any one; that prior to the occurrence the accused gave him threats on his phone that they are having his mobile data

and are aware of his daily activities; that delay in lodging his report was due to his arrest by local police of Police Station “*Jabbar*”, and he was released from jail, he submitted an application to the SHO Police Station Par Hoti, Mardan, for lodging his report, but the SHO refused to lodge his report; that his parents inquired about the cell No.0313-9620021 and came to know that the said cell number is registered in the name of Abdul Hameed, he charged accused Abdul Hameed son of Abdul Rasheed resident of Amazo Ghari and three others for snatching his motorcycle and other articles on gun point and giving him threats of dire consequences.

**3.** The learned Justice of Peace called comments from SHO Police Station concerned, who submitted his comments, wherein he denied the allegations of the complainant Mian Izhar Ahmad, and also reported that the complainant and respondent Abdul Hameed son of Abdur Rashid are related interse; that against complainant Mian Izhar Ahmad case FIR No.676 dated

13.11.2017 under sections-380/457/411/414/201/202

PPC has been registered in Police Station Jabbar, District Mardan; that upon his information, complainant Mian Izhar Ahmed was arrested by Abdul Hameed (petitioner) in the aforementioned case FIR. After hearing of learned counsel for the complainant, and APP for the State were heard and vide order dated 18.04.2018 the learned Justice of Peace, directed the SHO PS concerned to register a case against the private respondent No.2 in terms that;

***“I view of the above, the application submitted by applicant Mian Izhar Ahmad under section-22-A Cr.PC is accepted. SHO of Police Station Par Hoti, Mardan, is directed to register a case according to the contents of petition and fairly investigate the same. Copy of the order be sent to SHO of Police Station concerned for compliance. Meanwhile, a copy of this order be also sent to DPO and DP Mardan for information and necessary action accordingly.”***

4. Feeling aggrieved from the order dated 18.04.2018 passed by the learned Justice of Peace, Syed Abdul

Hameed son of Syed Abdul Rasheed, the petitioner, challenged the validity of the said order by filing the instant writ petition before this Court.

**5.** The respondents were put on notice. Respondent No.2 SHO Police Station Par Hoti, Mardan, submitted reply to the writ petition and annexed herewith the copy of relevant documents and FIR. As per contents of reply, Syed Abdul Hameed, the petitioner, is constable in CTD, performing the duty of Intelligence; that Mian Izhar Ahmad (respondent No.2) was wanted to local police in case FIR No.676 dated 13.11.2017 under sections-380/457/411/401/402/414 PPC registered at Police Station Jabbar; that upon information conveyed by the petitioner, Mian Izhar Ahmad, respondent No.1, was arrested by SHO Police Station Jabbar in the above cited case FIR; that after his release from jail in order to take revenge, Mian Izhar Ahmad has filed a complaint under section-22-A Cr.PC before the Justice of Peace against the petitioner.

6. Valuable arguments of learned counsel for the parties heard and available record gone through with their able assistance.

7. Perusal of record reveals that complainant Mian Izhar Ahmad, respondent No.1, who was wanted to the local police of Police Station Jabbar in case FIR No.676 dated 13.11.2017 for offences under sections-380/457/411/401/402/414 PPC, and he was arrested on the information conveyed by Syed Abdul Hameed, who is constable in CTD, Mardan. As per contents of application under section-22-A Cr.PC submitted by the complainant, motorcycle Honda 125CC bearing registration No.DGN-3831, ATM card, CNIC and cash amount of Rs.6000/- allegedly snatched from him by four unknown persons on 04.11.2017, and he submitted application to SHO Police Station Par Hoti, Mardan, for registration of case FIR against the culprits, but he refused. Record further reveals that Mian Pir Muhammad Shah son of Mian Bahadar Shah lodged FIR No.676

dated 13.11.2017 in Police Station Jabbar, wherein he charged accused namely Izhar Ahmad alias Ali Arab Raheel son of Zahoor Ahmad and Umar Khan son of Javed Iqbal for stealing of golden ornaments weighing 35/40 tolas and cash amount of Rs.200,000/-. Vide Mad No.5 dated 13.11.2017 accused Izhar Ahmad was arrested by Tajbar Shah SHO during gasht on the information conveyed by the informer in case FIR No.676 dated 13.11.2017 registered at Police Station Jabbar. On 29.11.2017 Mian Pir Muhammad Shah recorded his statement under section 164 Cr.PC before the Judicial Magistrate, wherein he also charged Mst.Shadab and her mother (sister and mother of accused Izhar Ahmad) for the commission of offence in terms that;

***“I earlier charged Izhar Ahmad and Umar but now I came to know that Mst.Shadab who is sister of accused Izhar Ahmad was also involved in the said stealing. As a matter of fact the mother (name unknown) and sister of accused Izhar namely Shadab used to come to our house.***

***Because my daughter Zainab had friendship with Mst. Shadab. They both used to study in the same school. Mst. Shadab sister and mother (name unknown) of accused Izhar gave all information regarding our house to the accused Izhar and Umar. Mst. Shadab and her mother were actively involved in the commission of said offence. I am fully satisfied, therefore, I charged Mst. Shadab and her mother whose name is not known to me for the commission of theft/stealing from my house of 35/40 tola and two lacs rupees.”***

During the investigation in the case, the investigating officer recovered cash amount of Rs.50,000/- the stolen amount, from the armpit pocket of accused Izhar Ahmad and at his pointation also recovered some of the golden ornaments from the jewelry shops. During the investigation, Muhammad Imran son of Fazal Subhan produced an affidavit to the Investigating Officer, wherein he stated that he is running the business of cloth and own a shop in the name of “Maskan Botheke” situated at Gaju Khan Road; that Izhar Ahmad alias Raheel alias Ali was his class fellow and he used to visit his shop; that one day Izhar Ahmad came to his shop and



brought with him golden ornaments weighing 12 tola and told him that he is selling the said golden ornaments upon the owners of Diamond Jewelers, Sundar Jewelers namely Noor Hassan, and Ajmal Khan, but they demanded the local identifier; that on his request he went with him to the said jewelry shops; that upon his identification, the golden ornaments were purchased by the jewelers from Izhar Ahmad and he received the cash amount; that after some time the local police of Police Station Jabbar arrested him and also recovered the golden ornaments from the shops of the said jewelers; that Izhar Ahmad has also taken his motorcycle bearing registration No.DGN-3831 from him and on demand of sale consideration, Izhar Ahmad stated that the motorcycle has been stolen from him.

8. Before adverting to the merits of the present case, we will see the history/background how the office of Justice of Peace was established. In ancient times the duty of conserving the peace lay primarily upon the

holders of certain offices, some of which were held by royal appointment and some by election. Examples of the former were the Lord Chancellor, the Lord Steward, the Lord Marshall, and the justices of the King's Bench, who had jurisdiction throughout the kingdom. Justices of the Common Pleas and barons of the Exchequer were conservators within the limits of their courts and justices of assize and goal delivery within the limits of their commissions. Sheriffs and coroners were examples of elected officers who were peace conservators within their counties and constables within their townships or hundreds.

There were also persons elected by the general body of freeholders of each county to act as peace conservators for the county. Furthermore, there were conservators of the peace by prescription and by tenure of land.

The process by which the ancient keepers of the peace with executive functions transformed into justices

with judicial powers can be traced in the history of the fourteenth century. In 1327 the King, who is "by his office and dignity royal the principal conservator of the peace within his dominions", assumed the right of appointing all conservators.

In 1344 it was enacted that "two or three of the best of reputation in the counties shall be assigned keepers of the peace by the King's commission; and at what time need shall be, the same, with other wise and learned in the law, shall be assigned by the King's commission to hear and determine felonies and trespasses done against the peace in the same counties, and to inflict punishment reasonably according to [law and reason, and] the manner of the deed".

After the transformation of keepers of the peace into justices with judicial powers, other statutes followed by which the number and authority of justices were regulated. By the Jurisdiction in Liberties Act, 1535 it was again enacted that no person or persons, of what

estate, degree or condition so-ever they be, should have any power or authority to make justices of the peace, but that all such officers should be made by letters patent under the King's Great Seal in the name and by the authority of the King and his heirs. The Act contained a saving for the County Palatine of Lancaster, where the right of appointment is vested in the Sovereign in right of the Duchy. This right, which has thus been vested in the Crown, may not, without legislation to that end, be delegated to any other authority.

At the beginning of the twentieth century the law concerning justices of the peace was derived from a number of statutes, some of them centuries old. The effect of legislation in the middle years of this century was to simplify and consolidate this branch of the law and subsequently to reform it notably by extending the powers of magistrates sitting in Magistrates' Courts.

The appointment and instruction of justices, and the keeping of the supplemental list, are regulated by the

Administration of Justice Act, 1973, as are the appointment, retirement and superannuation of stipendiary magistrates.

The Justices of the Peace Acts, 1949 and 1968 govern the residence qualification of justices, disqualification, the size and chairmanship of benches and the administration of magistrates' courts. The Administration of Justice Act, 1964 deals with the indemnification of justices out of local funds.

Justices of the peace for any commission area, other than stipendiary magistrates and ex officio justices, are appointed on behalf and in the name of Her Majesty under the hand of the Lord Chancellor or, in greater Manchester, Merseyside or Lancaster, the Chancellor of the Duchy of Lancaster.

The commission of the peace is the authority under which justices exercise their jurisdiction. It is the commission which gives justices the ancient common law powers of conservators of the peace in addition to the

statutory powers more recently conferred. (**Halsbury's Laws of England, Volume 29, published in 1979 by Butterworths, London UK**).

According to **Encyclopedia Britannica**, Chicago, USA, published in 1966 the "Justice of the Peace, in England, 'a magistrate appointed by special commission under the great seal to keep the peace within the jurisdiction for which he is appointed. Justices for counties are appointed by the crown on the advice of the lord chancellor, with the recommendation of the lord lieutenant of the county. Justices for boroughs having municipal corporations and separate commissions of the peace are appointed by the crown, the Lord Chancellor adopting the recommendation of the Town Council, the local Advisory Committee, or acting independently.

Apart from a small body of professional (stipendiary) Magistrates, mainly in London and large towns, J.Ps. are unpaid and have no professional legal qualification. For guidance on law and on the rules of

evidence, they rely on their salaried clerk. The latter must be either a barrister of not less than 14 years' standing, or a solicitor of the Supreme Court, or have served for not less than seven years as clerk to a metropolitan or stipendiary magistrate, or have been attached to a metropolitan magistrate's court.

The jurisdiction of the petty Sessional Courts, in which the J.Ps. sit, is wide and multifarious, embracing both criminal and civil work, and a number of matters, such as licensing, which are administrative rather than strictly judicial and derive from the period when the justices were often the only properly constituted local authority. The criminal jurisdiction is of two types:

- (1) Committing persons accused of the more serious offences to trial at higher courts where there is a prima facie case for the prosecution;
- (2) Hearing and determining summarily the less serious charges. Magistrates may not impose a sentence of more than six months' imprisonment. Selected Magistrates sit

in juvenile Courts to deal with matters, by no means exclusively criminal charges, involving young persons under the age of 17, and these Courts have special rules of the civil jurisdiction, other than that affecting children and young persons, that in matrimonial cases is the most important.

In the United States, justices of the peace usually are elected, although sometimes they are appointed by executive authority. They constitute the lowest of the State Courts, and their maximum award in civil cases is generally limited to about \$300 in criminal matters they may try only misdemeanors Ordinarily they may not impose a jail sentence in criminal case if the person tried prefers to pay the fine imposed. Other duties and powers commonly include the performance of marriage services, the issuance of warrants for arrest, and the holding of inquests.



**JUSTICE OF PEACE IN INDO-PAK.**

During its rule over the Indo-Pak sub-continent the British colonists had also introduced the concept of Justices of the Peace in the local system of governance and conservation of the peace. However, with almost simultaneous introduction of an elaborate system of hierarchy of Magistrates the role of Justices of the Peace never assumed any significant importance in the Indo-Pak sub-continent and Justices of the Peace were never conferred any judicial power. Although since their original induction in the system some additional powers have been bestowed upon Justices of the Peace from time to time yet their role essentially remains restricted so far to conservation of the peace and in case of breach of the peace their role ends by apprehending the culprit, if possible, and by reporting the breach of the peace to the police. It can, thus, be observed without any fear of contradiction that at least in the context of Pakistan the role of a Justice of the Peace at the present juncture in

our history is primarily of rendering assistance to the police in the matters of keeping the peace and, in case of breach of the peace, apprehending the culprit and rendering assistance to the police in investigation of the crime. On November 21, 2002 ex-officio Justices of the Peace in Pakistan were conferred an additional role through promulgation of the Criminal Procedure (Third Amendment) Ordinance (Federal Ordinance No. CXXXI) of 2002 and this role was in respect of entertaining complaints and issuance of appropriate directions to the police authorities concerned regarding registration of criminal cases, transfer of investigation of criminal cases and in respect of neglect, failure or excess committed by a police authority in relation to its functions and duties. These and other roles of a Justice of the Peace and an ex-officio Justice of the Peace in our country are evident from the following provisions of the Code of Criminal Procedure, 1898 (commonly abbreviated as Cr.P.C. Reliance is placed upon the

judgment rendered by the Lahore High Court in (**2005 PLD 470 LAHORE**)

How 22-A(6) was inserted in Criminal Procedure, though in original Cr.PC, the forum of Justice of Peace was very much there but in November, 2002, the Justice of Peace was given additional role through promulgation of the Criminal Procedure (Third Amendment) Ordinance (Federal Ordinance No.CXXXI) of 2002 and this role was in respect of entertaining complaints and issuance of appropriate directions to the police authorities concerning registration of criminal cases and in respect of neglect, failure or excess committed by the police authorities in relation to its functions and duties.

The rationale beyond the conferring of powers upon the Justice of Peace under the latest amendment, which was made in the year 2002, was to enable the aggrieved person to approach the Court of Justice of Peace for the redressal of his grievances i.e non-registration of FIR's, excess of Police, transfer of

investigation to the Courts situated at district level or Session or at particular Sessions Division. The main purpose of this enactment was to create a forum at the door step of the people for their convenience and instead of invoking or approaching the High Court in its extraordinary jurisdiction under Article-199 of the Constitution, the public would have access to the Courts situated in their respective Districts for the redressal of their grievances provided under section-22-A(6) Cr.PC. It was the intention of the legislature that if there is a genuine grievance on the part of an individual against the police and most particularly with reference to non-registration of FIR, he will resort to the concerned Justice of Peace i.e Sessions Judge or Additional Sessions Judge in a District for the redressal of his grievance and the concerned Justice of Peace would pass an appropriate order by keeping in view the facts and circumstances of the case. At times, this is being observed that the office of Justice of Peace is being misused by the litigants in

order to settle their scores or sometimes to convert the civil litigation into criminal litigation and to use the powers under this section to the detriment of the rival party for certain ulterior motives, which was never the intention of the legislature. For convenience, the provisions of section-22-A (6) and 154 of the Cr.PC are reproduced hereunder;

***“Section-22-A(6). An ex-officio justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding;***

- i) Non-registration of criminal case;***
- ii) Transfer of investigation from one police officer to another; and***
- iii) Neglect, failure or excess committed by a police authority in relation to its functions and duties.”***

***(emphasis provided)***

***“Section-154 Cr.PC. Information in Cognizable cases.***

***Every information relating to the commission of a cognizable offence if given orally to an officer incharge of a police station, shall be reduced into writing by him or under his direction, and be 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.”*

By comparing the abovementioned provisions of the Criminal Procedure, it is abundantly clear that section-154 Cr.PC, the word shall has been used while in section-22-A (6) Cr.PC the word may has been used, which manifest the intention of the legislature that the Justice of Peace is still left with discretion to pass an order for the registration of FIR that's too in appropriate/certain cases. The Larger Bench of Hon'ble Apex Court in case of Younas Abbass and others..vs..Additional Sessions Judge, Chakwal and others (PLD 2016 SC 581), wherein it was held that;

*“Functions performed by Ex-officio Justice of Peace under S.22-A (6) Cr.PC..Such functions being quasi-judicial in nature could not be termed as executive, administrative or ministerial..Said functions were complementary to those of the police*

*and thus did not amount to interference in the investigative domain of the police...Khizar Hayat and others..vs...Inspector General of Police (Punjab), Lahore and others PLD 2005 Lahore. 470 and Muhammad Ali..vs..Additional I.G, PLD 2015 SC 753 dissented from.*

*Functions performed by the Ex-officio Justice of Peace were not executive, administrative or ministerial inasmuch as he did not carry out, manage or deal with things mechanically. Such functions as described in clauses (i), (ii) and (iii) of section-22-A(6) Cr.PC, were quasi-judicial as Ex-officio Justice of Peace entertained applications, examined the record, heard the parties, passed orders and issued directions with due application of mind. Every lis before him demanded discretion and judgment. Functions so performed could not be termed as executive, administrative or ministerial on any account.”*

Proceedings before Justice of Peace are quasi-judicial and are not executive, administrative or ministerial to deal with the matters mechanically rather the same are quasi-judicial powers in every case before him demands

discretion and judicial observations and that is too after hearing the parties.

From the aforesaid paragraph and in view of the latest judgment of the Larger Bench of the Hon'ble Apex Court, it is abundantly clear that a party to a 22-A Cr.PC proceedings shall have the right of hearing to the proceedings and the person against whom registration of FIR is sought he has to be afforded an opportunity of hearing and thereafter the Justice of Peace can pass any appropriate order because by not giving notice, the Justice of Peace would be condemning that person unheard by passing an order under the quasi-judicial proceedings. It is therefore, observed that the Justice of Peace before passing any order for the registration of the FIR shall put the other party on notice against whom registration of FIR is asked for.

This is also taken note of that the parties without approaching the hierarchy provided under the police department for the redressal of their grievances against



the SHO for non-registration of FIR, the parties directly approach the Court of Justice of Peace, which is also not in consonance with law on the subject, first the relevant hierarchy i.e DPO, RPO, CCPO etc are to be approached for the redressal of the grievances against the concerned Station House Officer, when their application for registration of FIR is not considered by the concerned police hierarchy, then they have to approach the Justice of Peace and the Justice of Peace as discussed above, may pass an appropriate order after hearing the parties as held by the Hon'ble Apex Court in the judgment referred above.

9. Now dilating upon the merits of the instant petition, the order for registration of FIR against the petitioner was passed by the Justice of Peace without affording an opportunity of hearing, as mentioned in ground-II of the writ petition. More so, the complainant/respondent No.1 was arrested by the Police in case FIR No.676 dated 13.11.2017 for offences under

sections-380/457/411/414/201/202 PPC registered at Police Station Jabbar, District Mardan, and recoveries were allegedly effected from his possession and at his pointation, and after his release on bail in the aforementioned case, he approached the Justice of Peace directly, and there is nothing on record that he has approached the hierarchy of police for registration of the FIR. The grounds taken in the application under section-22-A Cr.PC appears to be whimsical. It appears that the respondent/complainant was arrested on the information or the Intelligence report of the petitioner in the theft case, wherein incriminating recoveries were effected from him. The application under section-22-A Cr. PC was filed by respondent/complainant in order to harass and humiliate the public servant, which was never the intention of the legislature. The element of malafide is quite apparent from the conduct of the respondent/complainant and in this view of the matter,

the order passed by the learned Justice of Peace dated 18.4.2018 is not in accordance with law.

For the reasons discussed above, the instant writ petition is allowed, the impugned order dated 18.4.2018 passed by the Justice of Peace is set aside. However, the complainant/respondent No.1 is at liberty to file a private complaint, if so advsed, before the competent forum.

Announced.

Dated. 16.01.2019.

**JUDGE**

**JUDGE**

(D.B)  
Hon'ble Mr. Justice Ikramullah Khan, Judge,  
Hon'ble Mr. Justice Ishtiaq Ibrahim. Judge.  
(K.Ali PS)