

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH**  
*(Judicial Department)*

Cr. MQ No. 69-D of 2015

**JUDGMENT**

Date of hearing 26.10.2015

Appellant-petitioner Allau Din etc by Mr. Sana Ullah Khan

Gandapur Advocate

Respondent State by Mr. Kamran Hayat Miankhel Addl: AG

**MUHAMMAD GHAZANFAR KHAN, J.-** Through the instant petition under section 561-A Cr.P.C, the petitioners have called in question the order dated 28.8.2015 rendered by learned Additional Sessions Judge-IV/Justice of Peace, D.I.Khan, whereby application filed by respondent No.2 under section 22-A(6) Cr.P.C was allowed and the SHO of police station concerned was directed to register an FIR against the petitioners in the light of facts alleged in the application.

2. The brief facts giving rise to the instant petition are that Mohammad Siddique, respondent No.2 submitted an application under sections 22-A(6)/25 Cr.P.C for registration of a criminal case under sections 324/34 PPC against the petitioners alleging that on 31.3.2015 at 0630 hours, he alongwith his cousin Islamuddin was coming towards home from their lands; that when they reached the land of one Haji Shajee Khan, they saw the petitioners standing there duly armed with pistols; that when the

complainant and his companion reached near petitioners, the latter started firing at them with the intention to kill, as a result of which the complainant sustained injury whereas his companion escaped unhurt.

3. The application was marked to learned Additional Sessions Judge-IV, D.I.Khan who called for comments of the SHO concerned which were submitted. After hearing the arguments, the learned Additional Sessions Judge-IV/Justice of Peace, D.I.Khan accepted the application vide impugned judgment/order dated 28.8.2015.

4. The learned counsel for the petitioners argued that the learned Court has failed to appreciate the provisions of section 156 Cr.P.C. He further contended that after cancellation of case on 29.4.2015 by the learned Illaqa Magistrate on the same allegations, the learned Justice of Peace could not hear the case and thus the registration of new FIR No.103 dated 01.9.2015 is unwarranted which needs to be quashed.

5. As against that, the learned Addl: A.G vehemently opposed the arguments of learned counsel for the petitioners and contended that a cognizable offence was reported to the local police but instead of lodging an FIR, the local police started inquiry under section 156(3)

Cr.P.C which was not required as the police could not investigate the matter prior to registration of the case.

6. I have heard the arguments of learned counsel for the parties and have gone through the record and law on the subject.

7. Perusal of the record indicates that on 31.3.2015, respondent No.2 had made a report in the emergency room of Mufti Mehmood Hospital, D.I.Khan against the petitioners for causing injury to him which was recorded vide daily diary No.20 of police station Chaudhwan, which was inquired into and final report was submitted and on the basis of such report, the learned Resident Magistrate, Daraban (D.I.Khan) vide order dated 29.4.2015, filed the same without proceeding further in the matter. On the same allegations, respondent No.2 filed another application on 27.6.2015 before learned Justice of Peace, D.I.Khan which was accepted vide impugned order. Once the report of respondent No.2 containing the same allegations was filed by the learned Magistrate after proper inquiry, the impugned order for registration of FIR against the petitioners on the same allegations is not warranted by law. The arguments of learned Addl: A.G, that prior to registration of case, a police officer was not empowered to investigate the case, are misconceived. Section 156(1) Cr.P.C envisages that any officer incharge of a police

station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial. The learned Justice of Peace has materially erred in accepting the application of respondent No.2.

8. For the reasons mentioned above, the instant petition is accepted, the impugned order dated 28.8.2015 of learned Additional Sessions Judge-IV/Justice of Peace, D.I.Khan is set aside and consequently, FIR No.103 dated 01.9.2015 registered against the petitioners at police station Chaudhwan, D.I.Khan is quashed.

Announced.  
Dt:26.10.2015.  
Habib/\*

**JUDGE**