

**JUDGMENT SHEET
PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT.**

W.P.No. 3361-P of 20013

JUDGMENT

Date of hearing: _____ **09.04.2015.**

Appellant: _____

Respondent: _____

MAZHAR ALAM KHAN MIANKHEL, CJ.- Petitioners,

Hamid and Imtiaz, have filed instant writ petition for declaring the order dated 18.12.2013 of Justice of Peace, Shabqadar, as illegal and have prayed that the SHO Police Station Shabqadar be directed not to register an FIR against them, which has been ordered to be registered on the application of respondent No.1 Syed Sikandar Shah under Section 22-A Cr.P.C. Similarly, respondent No. 1 (hereinafter called respondent No.1) has also filed Writ Petition No.3054-P/2013 against the petitioners and three other persons praying therein to declare the detention of his brother Syed Rohullah Shah at the hands of petitioners as illegal and unlawful. As common questions of law and facts are involved in both the petitions, therefore, we propose to decide both the petitions through this single judgment in Writ Petition No.3361-P/2013.

2. The allegation of respondent No.1 in his writ petition is that the petitioners, who are in the Police Department, alongwith others illegally detained his brother, therefore, he may be rescued from the clutches of petitioners because his brother being a Hafiz-e-Quran and law abiding citizen has not at all been involved in any criminal act and his detention is thus quite illegal and without any lawful cause. It may be mentioned here that respondent No.1 had also filed an application under Section 22-A Cr.P.C. before the Justice of Peace against the petitioners and others for registration of a case against them for the illegal confinement/abduction of his brother. The said application was accepted/allowed by the Justice of Peace vide order dated 18.12.2013 and the SHO Police Station Shabqadar was directed to register an FIR against the petitioners and others under the relevant sections of law. The petitioners, feeling aggrieved of the order of Justice of Peace, filed the instant writ petition on 23.12.2013 but till 31.12.2013 the SHO of the concerned Police Station had not registered the case as on the said date this Court issued directions that no adverse action be taken against the petitioners.

3. The petitioners in their reply to the writ petition of respondent No.1 has denied to have illegally confined or abducted the brother of petitioner. On the other hand, the learned Justice of Peace has ordered for registration of a case against the petitioners etc.

4. Arguments heard and record perused.

5. The learned Additional Sessions Judge as Justice of Peace, in exercise of his powers under Section 22-A, Cr.PC, has directed the SHO to register the FIR against the petitioners and others as a cognizable offence seemed to have been committed by the petitioners. A look at the order of the Justice of Peace would reveal that the same has been passed in accordance with law, keeping in view the allegations leveled against the petitioners leading to a cognizable offence committed by the persons mentioned therein and the SHO of the concerned Police Station was bound under the law to register a case under the relevant sections of law. Even otherwise the questions urged by the learned counsel for the petitioners, being contentious, are essentially one of fact, requiring recording of evidence, with which the Court

competent to try the petitioners can deal either during the trial or through an application under Section 249-A or 265-K of the Cr.PC.

6. It is by now settled law that any order passed by the Justice of Peace is not a judicial order and is of administrative and ministerial in nature. It has just to issue an appropriate direction to the police authorities on a complaint by any aggrieved person regarding non-registration of criminal case as provided in Section 22A(6)(i) of Cr.P.C. It has nothing to do with the veracity and truthfulness of the allegations leveled in the complaint/application. If the facts and circumstances so alleged *prima facie* confirm the commission of a cognizable offence and the local police, whatever the reasons may be, is reluctant and avoiding the registration of an FIR, then it has to issue such directions only. After registration of the case, investigation in the case is the sole job of the concerned police and the Justice of Peace has got no concern whatsoever with the same. Since our society in general and the police in particular also have a misconception regarding arrest of an accused after registration of the criminal case and generally this authority is very brutally misused so, we would also like to observe that the law on the issue is also well settled and established. Arrest of an accused

is not a statutory compulsion during investigation of the case provided the accused is cooperative with police during investigation. This aspect of the law has very elaborately been discussed in **Mukhtiar Hussain's** case reported as **2015 SCMR 1763**. So, mere registration of case would not be a ground for arrest of the accused during investigation. If the accused is proved innocent during investigation, he can be dealt with in accordance with the provisions of Section 169 and Section 173(3) of Cr.P.C and the complainant can also be dealt-with under Section 182 Cr.P.C.

7. So far as the facts of the connected writ petition are concerned, although the petitioner has asserted that the detinue is in the illegal confinement of respondents but respondent No.3 in his written reply has stated that when the alleged incident took place, he was under suspension and moreover he was neither posted in P.S Battagram nor in PS Shabqadar and similar is the stance of respondent No.4, as he too in his written reply has stated that he has no concern with the alleged incident and that he never remained posted either in PS Battagram or in PS Shabqadar. In view of such categoric rebuttal by the respondents, the matter

becomes a contentious one, which cannot be determined by this Court in exercise of its writ jurisdiction; hence, the same cannot be issued. As the Justice of Peace has already ordered registration of a case against the petitioners, which order was stayed under the orders of this Court so, the SHO of the concerned Police Station is directed to register a case against the petitioners under the relevant sections of law by ensuring the protection of rights of both the parties before him as discussed above.

8. We have gone through the impugned order as well as the record appended with the petitions and found no jurisdictional defect in it, which could justify interference of this Court in exercise of constitutional jurisdiction, therefore, both the writ petitions are hereby dismissed with no order as to costs.

Announced
09.04.2015

CHIEF JUSTICE

J U D G E

A.Mateen