

PESHAWAR HIGH COURT ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

WP No.352-A/2014.

Date of hearing 18.02.2020.

***Petitioner/s (Pehlwan Shah & others) by
Mr. Hamid Faraz Abbasi, Advocate.***

***Respondent/s (Liaqat Shah & Anwar
Shah) by Mr. Muhammad Shafique Awan,
Advocate and Raja Muhammad Zubair,
AAG for respondent No. 4.***

AHMAD ALI, J. Through this petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners ***Pehlwan Shah and two others*** have made the following prayer:-

*On acceptance of instant writ
petition, the FIR No. 363
dated: 06.05.2014 may
graciously be quashed and any
other relief in the
circumstances of the case,
which this Hon'ble Court
deems fit and proper, may also
be granted.*

2. Brief but relevant facts leading to filing of instant writ petition are that respondents No.1 and 2 filed a complainant under section

506/406/427/430/431/432/34 PPC before respondent No. 3/Judicial Magistrate-II, Havelian, Abbottabad against the present petitioners on 06.05.2014. The learned Judicial Magistrate after receiving the complaint on the very first date passed an order, which is impugned herein through this writ petition.

3. Learned counsel for petitioner mainly relied upon the arguments that learned Judicial Magistrate without advertent/considering towards the mandatory provisions of law, in a cursory and slipshod manner passed the impugned order, which is not his domain but only vested with learned Justice of Peace under section 22-A Cr. P.C.

4. Before going deep into the discussion, it is necessary to reproduce the impugned order, which is as under:-



Private complaint submitted. It be registered. Complainant Liaqat shah and Anwaar Shah through learned Tariq Khan Jadoon, Advocate submitted this private complaint against respondents under sections 506/ 406/ 427/ 430/ 431/ 432/ 34 PPC. The contents of the complaint clearly refer that the cognizable offences are

made out. Therefore, the petitioner should contact the concerned police station for registration of the FIR. The police should register the case and investigate the matter. There is nothing to proceed privately in this complaint. The petitioner should contact the concerned PS if advised. With these observations this complaint is dismissed.

5. It is true that the learned Judicial Magistrate may proceed with the complainant filed before him in accordance with law and rules applicable but in no way he can perform functions which he is not empowered under the law as in the instant case, the record reveals that upon filing of complainant against petitioners under sections 506/ 406/ 427/ 430/ 431/ 432/ 34 PPC, the learned Judicial Magistrate on the very first instance held that *"The contents of the complaint clearly refer that the cognizable offences are made out. He in the same order also held that "The police should register the case and investigate the matter, therefore, in consequence of the said order, the local police got registered the case FIR 363 dated:06.05.2014 under sections 506/ 406/ 427/ 430/ 431/ 432/ 34 PPC.*



6. The legislature has empowered Ex-Officio Justice of Peace under section 22-A [6] (i) Cr. P. C and not to Judicial Magistrate to pass an order for registration of FIR, which happened in the present case. Section 22-A Cr.P.C is reproduced herein below for ready reference:-

22-A. Powers of Justice of the Peace.

(1) A Justice of the Peace for any local area shall, for the purpose of making an arrest, have within such area all the powers of a Police Officer referred to in section 54 and an officer in-charge of a police-station referred to in section 55.

(2) A Justice of the Peace making an arrest in exercise of any powers under subsection (1) shall, forthwith, take or cause to be taken the person arrested before the officer in-charge of the nearest police-station and furnish such officer with a report as to the circumstances of the arrest and such officer shall thereupon re-arrest the person.

(3) A Justice of the Peace for any local area shall have powers, within such area, to call upon any member of the police force on duty to aid him:

(a) in taking or preventing the escape of any person who has participated in the commission of any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having so participated; and

(b) in the prevention of crime in general and, in particular, in the prevention of a breach of the peace or a disturbance of the public tranquility.



(4) Where a member of the police force on duty has been called upon to render aid under subsection (3), such call shall be deemed to have been made by a competent authority.

(5) A Justice of the Peace for any local area may, in accordance with such rules as may be made by the Provincial Government:

(a) issue a certificate as to the identity of any person residing within such area, or

(b) verify any document brought before him by any such person, or

(c) attest any such document required by or under any law for the time being in force to be attested by a Magistrate,

and until the contrary is proved, any certificate so issued shall be presumed to be correct and any document so verified shall be deemed to be duly verified, and any document so attested shall be deemed to have been as fully attested as if he had been a Magistrate.

¹[(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 a 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.]

7. So, in addition to the remedy of filing a direct complaint under S.200, Cr. P. C before Magistrate, the provision of S.22-A Cr. P. C. has been added to the Statute Book whereby Sessions Judges/Additional Sessions Judges by virtue of their office being justice of

peace, can exercise all powers of a police under S.54, Cr. P. C. This section clearly explains that Ex-officio justice of peace had been fully empowered to issue any direction to police authorities, whenever any complaint about their neglect, failure or excess committed in relation to its functions including non-registration of case in cognizable offences, and the police is duty bound to register a case. Reliance is placed on case titled: *Malik Muhammad Sadiq versus Station House officer & others* reported in **2013 P Cr. L J 1177** wherein it is held:-

5. Law casts holy duty upon the learned Justice of Peace for examining the petition and other material available on record for determining if any cognizable offence is made out therefrom or not. In this connection, learned Justice of Peace is bound by law to take into consideration contents of petition filed under section 22-A and 22-B, Cr.P.C. as well as to examine the complainant/petitioner if needed. He may seek a report from the SHO of Police Station concerned in the matter. No doubt spirit of promulgating provisions of section 154, Cr.P.C. is that report should not be entered/registered after holding preliminary enquiry but this provision of law has grossly been misused by first informants, who just to satisfy their ego or to take revenge from its opponent, lay false information. Even such first information is also provided in cases involving civil disputes like one relating to execution of an agreement to sell and business transaction etc., as such in order to sift the chaff from grain, it has become imperative for Court to have a report from Police Station. Further in appropriate cases, the person against whom a direction for

registration of case is sought, may also be summoned in the Court for showing cause as to why direction for registration of case should not be issued against him. The calling of aggrieved person is based on analogy that SHO before submitting report to Court, summons both parties and after hearing them dispatches same to Court with his own finding thus if that report of SHO, is considered, in which both parties have already been heard then there is no harm in calling that party in the Court for arriving at just conclusion. This would help in curbing multiplicity of litigation and work load could be managed besides saving precious public time. This practice if adopted would advance the principle of natural justice i.e. audi alteram partem.

8. So, in view of the above, it has been crystal clear that Judicial Magistrate was not empowered under the law to issue directions to the police regarding registration of case, which powers are only vested with the learned Ex-Office Justice of Peace under section 22-A Cr. P.C, so, without discussing the merits of the complaint and leaving aside the question that whether the offences allegedly committed are cognizable or nor, we reached at the conclusion that the act of the learned Judicial Magistrate issuing directions to the police regarding registration of case is beyond his jurisdiction, so the whole proceedings upon which the superstructure was build i.e

registration of case are not sustainable. Hence, the instant writ petition is allowed and as a result thereof, the impugned order of learned Judicial Magistrate dated: 06.05.2014 is set-aside and resultantly, the FIR No. 363 dated: 06.05.2014 is quashed.

Announced.
18.02.2020.


JUDGE

JUDGE

Hon'ble Justice Shakeel Ahmad and Justice Ahmad Ali.