

IN THE PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'

FORM OF ORDER SHEET

Date of Order	Order or other proceedings with signature of the Judge(s)
1	2
30.08.2017	<p><u>W.P. No.3203-P/2017.</u></p> <p><u>Present:</u></p> <p>Mr. Muhammad Mauzzam Butt, Advocate, for the petitioner.</p> <p>***</p> <p><u>IJAZ ANWAR, J.-</u> Through the instant petition, the petitioner, namely, Kausar Shabir widow of Shabir Hussain, resident of Malik Pura House No.2565, Yakatoot Peshawar claimed registration of second FIR as per her separate version of the same incident.</p> <p>2. The petitioner alleges that her daughter was married to one Muhammad Ibrahim resident of Najohi Wadpagga, District Peshawar, as a result of indiscriminate firing, Muhammad Ibrahim, daughter of petitioner and an unborn child in her womb were murdered by Zahoor son of Abdul Aziz on 17.6.2017. It is alleged that one Sher Afzal has registered an FIR against the accused; however, the story has been narrated in such a way so that the accused get favour at the stage of trial.</p> <p>2. Learned counsel for the petitioner was asked at the very outset whether under section 22-A Cr.P.C, a petition can be filed</p>

before the Justice of Peace for the registration of second FIR. Learned counsel for the petitioner was, however, of the view that under section 22-A of the Cr.P.C. the Justice of Peace has no such power to order for registration of second FIR. He referred to section 154 Cr.P.C. and judgments reported as 2011 YLR-883, 2001 SCMR-1556, 2005 SCMR-297 and PLD 2009 Lahore-69 and contended that in these cases writ petition for identical relief were maintained and directions were issued for the registration of the FIR. Learned counsel lastly argued that since he has approached this Court under bonafide belief that writ petition would be competent, however, in case, this Court ultimately find that writ petition is not maintainable then permission be given so that the petitioner could prefer petition before the Justice of Peace.

3. Arguments heard and record perused.

4. Perusal of the record reveals that the petitioner was not satisfied with the registration of the first FIR as she felt that it did not reflect the true fact, hence this petition is filed.

5. In order to resolve this controversy, we may refer to Section 22-A Cr.P.C. For the sake of convenience, sub-section 6 of Section 22-A is reproduced:-

(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.*

Similarly, section 154 Cr.P.C. is also reproduced:-

154. Information in cognizable cases. Every information relating to the commission of a cognizable offence if given orally to an officer in-charge of a police-station, shall be reduced to 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.

Provided that if the information is given by the woman against whom an offence under section 336-B, section 354-A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, then such information shall be recorded by an investigating officer in presence of a female police officer or a female family member or any other person with consent of the complainant, as the case may be.

Provided further that if the information, given by the woman against whom an offence under section 336-B, section 354, section 354-A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, is distressed such information shall be recorded by an investigating officer at residence of the complainant or at a convenient place of the complainant's choice in presence of a police officer or family member or any other person with consent of the complainant, as the case may be".

6. The question whether second FIR can be registered of the same occurrence has since been settled by the apex Court in case titled "Wajid Ali Durrani and others vs. Government of Sindh and others", 2001 SCMR-1556, where third FIR of the same occurrence was allowed to remain in the field and it was held that "If information is given to police officer, which discloses a different

offence was also cognizable by the police, then unless it is a mere amplification of the first version, must be recorded by the police". The same view was also expressed by the apex Court in case titled "Mst. Anwar Begum vs. Station House Officer, P.S. Kalri West Karachi" (PLD 2005 SC-297). Similarly, it is codified law and settled that under section 154 Cr.P.C. a police officer or incharge of Police Station is under legal obligation to reduce into writing any information given to him in respect of a cognizable offence.

7. Now, we advert to the question whether writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 would be maintained for issuing direction for registration of second FIR or the jurisdiction of Justice of Peace under Section 22-A Cr.P.C. can be invoked. In 2017 PCrLJ 617, this Court struck down the order of Justice of Peace refusing to allow petition under section 22-A Cr.P.C for registration of second FIR and directed the police officials to register second FIR. In the case of "Muhammad Imran Qamar vs. Additional Sessions Judge and 2 others" (2016 PCrLJ 86), the Hon'ble Lahore High Court maintained the order of Justice of Peace that has directed for registration of second FIR of the same occurrence. The same view was expressed by the Division Bench of Balochistan High Court in 2015 PCrLJ-1777.

8. It is pertinent to point out here that while referring to different precedent cases of the apex Court, the High Court under writ jurisdiction was competent to issue direction for the registration

of FIR, if the Incharge or Station House Officer of the Police Station refused to register the FIR, however, after insertion of Section 22-A vide Ordinance No.CXXXI of 2002 dated 21.11.2002, such powers are entrusted to the Sessions Judge as Ex-officio Justice of Peace to direct registration of case, in case of failure of the police officials to discharge their statutory obligation as vested in them under section 154 Cr.P.C.

9. Thus, where the law has provided an adequate remedy under Section 22-A (6) on refusal of the police officer to register FIR in cognizable case, secondly to approach a Magistrate to exercise his powers under section 156(3) Cr.P.C. and lastly by filing direct complaint under section 200 Cr.P.C thus invoking writ jurisdiction in presence of above adequate remedies is not the desirement of law.

Reference can be made to 2004 YLR-2168, 2599, PLD 2001 Karachi-269, PLD 1999 Lahore-417, 2003 YLR 550, PLD 1987 SC-21 and PLD 2002 Karachi-328.

10. Thus, after examining the case law on the subject, we came to this irresistible conclusion, that where the Ex-officio Justice of Peace is competent under section 22-A (6) Cr.P.C. to issue direction for registration of FIR, that also includes first, second or third FIR about the same occurrence depending on the circumstance of each case. Similarly, section 154 Cr.P.C. is the only section under which information is given to the police officials about the occurrence of a cognizable case, it is equally true that the FIR, merely sets in motion the criminal law and it cannot be used as a

substantive piece of evidence against any accused person, as such version would still requires to be substantiated at the trial stage.

11. Thus, having said so, we are of the view that in the presence of alternate and adequate remedy available in law, to the petitioner, the extra ordinary jurisdiction of this Court cannot be invoked. This petition is, thus held to be not maintainable and is dismissed in limine.

12. Before parting with the judgment, we may, however, observe that the petitioner would be at liberty to avail appropriate remedies available to her under the law.


JUDGE

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