

Before Mrs. Syeda Tahira Safdar and Zaheer-ud-Din Kakar,, JJ

HABIB QADIR---Petitioner

Versus

STATION HOUSE OFFICER, SADAR KHUZDAR and 2 others---Respondents

Constitutional Petition No.559 of 2017, decided on 14th June, 2017.

(a) Criminal Procedure Code (V of 1898)---

---Ss. 154 & 155---First information report---Scope---Station House Officer of police station, on receiving information relating to the commission of a cognizable offence, was under statutory obligation to enter the same in the prescribed register.

(b) Criminal Procedure Code (V of 1898)---

---S. 22-A(6)---Ex-Officio Justice of peace---Jurisdiction---Scope---Jurisdiction, which could be exercised by the Ex-Officio Justice of Peace was to examine whether the information disclosed by the applicant did constitute a cognizable offence; in case it did , to direct the concerned Station House Officer to record FIR without going into veracity of the information.

(c) Criminal Procedure Code (V of 1898)---

---Ss. 154---First information report---Delay in lodging FIR---Effect---Undue, unreasonable and unexplained delay in filing FIR would lead to suspicion and reflect on the truth of the prosecution case---Information of crime was required to be supplied at the earliest in order to avoid criticism of the report as being manipulated and a result of deliberation and consultation.

(d) Criminal Procedure Code (V of 1898)---

---Ss. 22-A, 22-B & 561-A---Application for registration of case against accused-respondents was dismissed by ex-Officio Justice of Peace---Contention of applicant was that, in his absence, the accused-respondent enticed his wife and children and took them to his house and admitted his sons in a school on fake school leaving certificates---Applicant approached Station House Officer for registration of case; on his refusal for lodging FIR, applicant approached the Ex-Officio Justice of Peace, who refused the prayer---Record showed that applicant had approached the Station House Officer after delay of about fourteen months without any plausible explanation and after his refusal for lodging FIR, he approached the Ex-Officio Justice of Peace, who declined the prayer---Validity---Applicant had approached the Station House Officer and Ex-Officio Justice of Peace after unexplained delay of about fourteen months---If the contention of applicant was true; why did he remain silent for initiating any action against the respondents for so long---Circumstances established that the application was instituted on the basis of family disputes---Applicant had failed to point out any illegality or irregularity in the impugned order calling interference by the Court---Constitutional petition was dismissed in circumstances.

Nadir Ali Chalgari for Petitioner.

Date of hearing: 30th May, 2017.

JUDGMENT

ZAHEER-UD-DIN KAKAR, J.-- Habib Qadir, the petitioner, through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 assails the validity of order dated 05.05.2017 "the impugned order", passed by the learned Sessions Judge, Khuzdar in his capacity of Justice of the Peace "JoP", whereby the application under Section 22-A, Cr.P.C, filed by the petitioner, was dismissed.

2. According to the facts, as narrated in the application filed by the petitioner under Section 22-A Cr.P.C were that he is resident of Zerina Kathan Khuzdar and doing job in Capital Development Authority, Islamabad (CDA), his sons namely Hammad Habib and Haris Habid aged about 16 and 15 years respectively, were studying in Islamabad. On 02.12.2015, he along with Family came to Khuzdar after that he went to Saudi Arabia for Umra, when came back he came to know that respondent No.3 Ghulam Sarwar enticed his wife and children and took

them to his home and admitted his sons at Ranger Public School, Karachi on fake certificates which was issued by respondent No.1. According to the petitioner that the respondent No.2 prepared fake certificate and destroyed the future of his sons and he submitted an application to SHO for lodging of FIR but he refused. Thereafter, he filed an application under section 22-A, Cr.P.C. before the JoP, who called report from SHO and after hearing the parties, the JoP dismissed the application, hence this petition.

3. Learned counsel for the petitioner contended that the proposed accused persons committed a cognizable offence and the respondent No.1 (SHO) was under statutory obligation to record the FIR under Section 154, Cr.P.C, but he failed to do so. It is further argued that on refusal of JoP to issue direction to the SHO for lodging of FIR is also against the law; that the JoP while passing the order impugned has badly appreciated the facts and circumstances of the case and finding given by him are contrary to material available on record, thus, the same is liable to be set aside and respondent No.1 may be directed to lodge FIR against respondents Nos.2 and 3.

4. We have heard the learned counsel for the petitioner and have gone through the record available. There is no cavil to the proposition that if there is information relating to the commission of a cognizable offence, it falls under section 154, Cr.P.C. and a police officer is under statutory obligation to enter it in the prescribed register. The condition precedent is simply two-folds; first it must be information and secondly. it must relate to cognizable offence on the face of it and not merely in the light of subsequent events. A police officer is bound to receive a complaint, when it is preferred to him or where the commission of an offence is reported to him orally, he is bound to take down the complaint. Thus, it does not depend upon the sweet will of the Police Officer, who may or may not record it. It is settled principle of law that the only jurisdiction, which could be exercised by an Ex-Officio Justice of the Peace under section 22-A(6) of the Cr.P.C., was to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence and if it did then to direct the concerned S.H.O to record an FIR without going into veracity of the information in question, but the record of the instant case is indicative of the fact that, in the month of December 2015, when the petitioner came back to Khuzdar, after performing Umra, came to know that the respondents, on the basis of fake school leaving certificates, admitted his children in Ranger Public School Karachi whereas he has approached the respondent No.1 (SHO) on 16.2.2017 i.e. after delay of about 14 months without any plausible explanation, and after his refusal for lodging FIR, he approached the JoP on 09.3.2017, who also declined his prayer vide impugned order. It is by now well settled law that undue, unreasonable and unexplained delay in filing FIR leads to suspicion and reflects on the truth of the prosecution case and earlier information of crime is required to be supplied in order to avoid criticism of the report as being manipulated and a result of deliberation and consultation.

5. We are mindful of the fact that under Article 199 of the Constitution and section 561-A, Cr.P.C., this Court is empowered to review or set aside order passed under Section 22-A, Cr.P.C., but such power could only be exercised, if JoP has not applied its judicious mind or has overlooked some material aspects of the case. When the lower Court has passed a well reasoned order, keeping in view the facts and circumstances of the case, then no interference is required by the High Court. In the instant case, as mentioned above, the petitioner approached the respondent No.1 and the JoP after unexplained delay of about 14 months. Here the question arises that, if the contention of petitioner is true, then why did he remain silent for initiating any action against the respondents for so long? From the peculiar circumstances of the case, it can safely be inferred that the application was instituted by the petitioner on the basis of family disputes.

6. For what has been discussed above, learned counsel for the petitioner has failed to point out any illegality or irregularity in the impugned order calling interference by this Court in its constitutional jurisdiction. Resultantly, this petition do not have the force thus, dismissed in limine.