

Writ Petition No. 6211/2014

Qari Abdul Shakoor.

Addl. Sessions Judge etc.

5. 11.6.2014. Malik Saboor Alam, Advocate for the petitioner.
Mr. Ashfaq Ahmad Kharal, Assistant Advocate
General with Muhammad Nawaz, ASI.
Syed Ansar Abbas Rizvi, Advocate for
respondent No.4.

Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, the petitioner has prayed for setting aside the order dated 03.3.2014 whereby the learned Additional Sessions Judge Lahore, in his capacity as Ex-Officio Justice of Peace directed the concerned SHO to record statement of respondent No.4 under section 154 Cr.P.C. and proceed further in accordance with law.

2. Briefly, the allegation against the petitioner is that he along with the proposed accused while armed with deadly weapons had forcibly entered into the house of respondent No.4 and assaulted respondent No.4 along with other females. During the occurrence, the assailants also outraged their modesty and as such they became naked.

3. The learned counsel for the petitioner contended that the application under section 22 A, 22-B, Cr.P.C in which the impugned order has been passed was not maintainable. He added

that from bare reading of the said application no cognizable offence is made out against the petitioner; that no reason was given by the learned Ex. Officio Justice of Peace/ASJ while accepting application of respondent No.4/ complainant filed under sections 22-A, 22-B Cr.P.C and by passing the impugned order, the Ex-Officio Justice of Peace has committed a serious illegality and as such, the same is liable to be set aside.

4. Conversely, learned counsel for respondent No.4 has opposed the instant petition, on the ground that Station House Officer of the police station is bound to register the F.I.R. in all circumstances and as such the instant petition be dismissed.

5. I have heard the arguments of the learned counsel for the parties and have perused the record.

6. From the record it revealed that brother of respondent No.4, namely, Ghulam Hussain took a house on rent from the petitioner @ Rs.1300/- per month through rent deed. Thereafter brother of respondent No.4 failed to pay monthly rent to the petitioner. Upon which respondent No.4 moved application for registration of case to the District Police Officer, Sheikhpura which has no diary number wherein respondent No.4 stated that the accused persons assaulted her and others on the pretext that her brother

Ghulam Hussain took house on rent from the petitioner against advance payment of security of Rs.50,000/- and he wants to vacate the rented premises by way of hooliganism, on which her brother filed civil suit for permanent injunction. The learned civil court passed interim injunctive order in favour of the petitioner on 18.2.2014 and due to issuance of injunctive order being revengeful, the petitioner and others committed the offence. The certified copies of suit for permanent injunction has been produced by the learned counsel for respondent No.4 which reflect that suit was filed on 18.2.2014 and on the same day, injunctive order was issued to the effect that *“in the meanwhile subject to notice, the defendant/respondent is restrained from interference into possession of petitioner/plaintiff till next date of hearing. However, this order shall not effect upon the legal proceedings of any other court of competent jurisdiction. This order will cease to have its effect automatically if specifically not extended on the next date of hearing.”* The interim order sheet reflects that interim injunctive order was not extended on the next date of hearing and ultimately on 02.4.2014 suit was dismissed for non-deposit of process fee by the learned civil Judge Ist Class, Ferozewala by observing that plaintiff has not submitted receipt of process fee and it appears that the plaintiff is not interested in pursuing the case in hand. Later on the suit was restored by the learned

civil court on the application filed by the petitioner on 04.4.2014. It is alleged in the application for registration of case that alleged occurrence took place on 22.02.2014 at 4.00 p.m. and motive of the occurrence is issuance of interim injunction whereas certified copy of interim order sheet reflects that notices were not received by the petitioner as brother of respondent No.4 had not deposited process fee nor receipts were produced before the court. The learned counsel for respondent No.4 also produced certified copy of contempt petition filed on 25.2.2014. From the perusal of said petition it reveals that brother of respondent No.4 alleged that the petitioner along with others forcefully, obstinately and illegally occupied the house and illegally interfered into his possession. The brother of respondent No.4, namely, Ghulam Hussain did not mention in his petition that any kind of assault was made against women or the assailants outraged modesty or his household articles were stolen by the petitioner and others. The brother of respondent No.4 had not approached the learned civil court for initiating the proceedings of contempt of court immediately on the next day whereas he filed contempt petition after four days of alleged occurrence and he did not give any plausible explanation in this regard. It is notable from the documents annexed with this petition, viz-a-viz application for registration of

case under section 22-A, 22-B Cr.P.C., suit for permanent injunction etc and contempt petition were filed by some lawyers and there is sufficient confliction in the facts and the allegations levelled in the above said cases.

7. From the above referred facts, it reveals that respondent No.4 by levelling false accusation, moved application under section 22-A, 22-B Cr.P.C. seeking registration of case but the comments requisitioned by this Court reflect that respondent No.4 is habitual to move applications against others to achieve her nefarious design. The comments filed by Muhammad Nawaz, ASI, Police Station Sharaqpur Sharif also reflect that the occurrence had not taken place as alleged by the complainant/respondent No.4 and allegation levelled by her are found to be false and baseless during interrogation. From the comments, it further reveals that brother of respondent No.4 failed to pay rent on which respondent No.4 moved false and frivolous application for registration of case. Learned counsel for the petitioner has produced certified copy of FIR No.248 dated 19.4.2013, under section 452, 354, 148, 149 PPC registered at Police Station Sharaqpur Sharif. On perusal of above referred FIR it appears that respondent No.4 is in habit of levelling allegations of assault in order to resolve the disputes. The earlier FIR lodged by respondent No.4 against her other

family members was found to be false by the police and cancelled the same on 26.4.2013.

8. Keeping in view the facts and circumstances, referred above, the report furnished by the police before the Ex. Officio Justice of Peace, it appears that the application of respondent No.4 seeking registration of case is based on *malafide* intention. It is the duty of the learned Ex. Officio Justice of Peace to look into the matter minutely and also peruse the comments filed by the police. It is also the duty of the court to discourage such practice, otherwise either on account of animosity or on account of relationship the proposed complainant did not divulge the truth but fabricated a false allegation against the proposed accused and roped the innocent persons simply because of the enmity. It is held by the Hon'ble Supremes Court of Pakistan in the case of **Rai Ashraf and others v. Muhammad Saleem Bhatti and others (PLD 2010 Supreme Court 691)** that each and every case is to be decided on its particular facts and circumstances.

9. From the foregoing reasons, circumstances and considering all facts, I am of the considered view that respondent No.4 had not approached this Court with clean hands and had concealed the true facts. More over, section 22-A 22-B Cr.P.C empowered the justice of peace for

issuance of directions for registration of case but this power was never supposed to be exercised in a mechanical manner. The Courts were never supposed to shut their eyes from other aspects of the case and to pass order blindly for registration of case on false applications of the complainant. The *malafide* on the part of respondent No.4/complainant is clearly apparent on the record and as such the story narrated by respondent No.4 in his application seeking registration of case is found to be concocted one. However, the complainant has the remedy available under the law before the competent court of law in form of private complaint regarding the alleged commission of offence by the petitioner.

10. For what has been stated above, this petition is **accepted** and the order dated 03.3.2014 passed by the learned Ex-Officio Justice of peace has been declared null and void and the same is hereby **set aside**.

(Aalia Neelum)
Judge

Approved for reporting.