IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Irfan Saadat Khan

Criminal Petition No.99-K/2018
Against the order dated 20.7.2018 passed by High Court of Sindh, Karachi, Skkur Bench in Crl. M.A Nos.S-531/2016, 81, 29, 63 & 61/2017

...Petitioner(s)

Syed Qamber Ali Shah

Versus

...Respondent(s)

Province of Sindh and others

For the Petitioner(s):	Mrs. Abida Parveen Channar, AOR a/w Petitioner In person Syed Salman (alleged abductee)
For official Respondents:	Mr. Hakim Ali Shah, Addl. AG Mr. Sagheer Abbasi, Addl AG Mr. Saleem Akhtar, Addl. PG Mr. K. A. Wahab, AOR Dr. Sumair Noor, SSP Ghotki Mr. Mushtaq Abbasi, AIG Legal SIP Zaheer Hussain, SHO Police Station Ghotki
For Respondents 4,5 & 8:	Malik Naeem Iqbal, ASC
Date of Hearing:	02.04.2024

Judgment

Muhammad Ali Mazhar, J.- This Criminal Petition is directed against the consolidated Order dated 20.07.2018, whereby the High Court of Sindh, Karachi, set aside the order passed by the Justice of Peace/IInd Additional & District and Sessions Judge, Ghotki, in Criminal Misc. Application No.1290 of 2015 which is the subject matter of the present Criminal Petition for leave to appeal.

2. The anthology of facts are that Salman Shah, brother of the petitioner, was allegedly abducted. According to the petitioner, the concerned Station House Officer (**S.H.O**.) was allegedly involved, therefore, the petitioner approached S.S.P., Ghotki, for lodging the FIR and finally, he filed an Application No.1290 of 2015 under Section 22-A of the Code of Criminal Procedure, 1898 (**Cr.P.C**) in the Court of IInd Additional District &

Sessions Judge Ghotki/Justice of Peace. On 06.10.2015, the application was allowed and the S.H.O., Police Station 'A' Section, Ghotki, was directed to record the statement of the petitioner and, if any cognizable offence is made out, then register the FIR with the rider that the proposed accused should not be arrested without collection of tangible evidence. In order to further safeguard the interest of the accused persons, the Justice of Peace ordered that if, during the investigation, the FIR is found to be false, the police will be at liberty to initiate action against the complainant (petitioner) as required under Section 182, Cr.P.C. Before the implementation of the order, the proposed accused, namely, Haji Khan, and three others filed Criminal Misc.Application No.S-61/2017 in the High Court of Sindh, Sukkur Bench, and *vide* order dated 01.06.2018, the Criminal Misc. Application was allowed and the impugned order of the Justice of Peace dated 06.10.2015, passed in Cr. Misc. Application No.1290/2015, was set aside with the observation that if the complainant (petitioner) is aggrieved, he can file a private complaint in accordance with the law. On the last date of hearing dated 28.12.2023, it was informed by the petitioner that his brother Syed Salman Shah has been recovered, thus the Court directed him to appear in person. While being present in the Court, he raised the same allegations of his kidnapping against the alleged accused persons.

3. The petitioner in person argued that the remedy under Section 22-A, Cr.P.C, was more effective than filing of direct complaint. He further contended that ample material and evidence is available which shows a *prima facie* case, hence the learned Trial Court rightly passed the order but the learned High Court set aside the order without any lawful justification and also touched the merits of the case which caused serious prejudice to the petitioner's case.

4. The learned counsel for respondent No.4, 5 & 8, while supporting the impugned order, argued that the order passed by the learned Justice of Peace was contrary to the law and he failed to examine the documents regarding dispute over the plot but ordered the S.H.O to record the statement of the petitioner. He also raised some allegations against the petitioner that he is a land-grabber and several FIRs have been lodged against him and he, on the behest of a rival political group, tried to involve the alleged accused with *mala fide* intention and ulterior motive in order to damage the image of the alleged accused. The learned counsel showed

us a summary order dated 27.10.2023, passed in FIR No. 46 of 2020, lodged at Police Station, Adilpur, under Section 324, 353 and 368 of the Pakistan Penal Code, 1860 (**P.P.C.**). The summary order shows that the abductee Salman Shah (Syed Suleman Shah) S/O Shahnawaz Shah (brother of the petitioner) was abducted on 01.07.2015 and recovered on 24.06.2020 but paragraph No.3 of the same order shows that the statement of the abductee was recorded under Section 164, Cr.P.C., and he reiterated the allegations of his kidnapping and also nominated further accused persons.

5. The learned Additional Advocate General argued that neither was there any case of kidnapping nor was the brother of the petitioner kidnapped by the proposed accused persons. He also relied on the report of the investigation which was carried out in FIR No.46/2020 (State vs. Gaman and others) lodged at P.S. Adilpur, to show some nexus with the present complaint of the petitioner but it is a ground reality that the petitioner was not provided any opportunity to record his own statement in terms of his grievance lodged to the Justice of Peace against the alleged kidnapping of his brother.

6. Heard the arguments. Under section 22-A, Cr.P.C, it is not the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or to render any findings on merits but he has to ensure whether, from the facts narrated in the application, any cognizable case is made out or not; and if yes, then he can obviously issue directions that the statement of the complainant be recorded under Section 154. Such powers of the Justice of Peace are limited to aid and assist in the administration of the criminal justice system. He has no right to assume the role of an investigating agency or a prosecutor but has been conferred with a role of vigilance to redress the grievance of those complainants who have been refused by the police officials to register their reports. If the Justice of Peace will assume and undertake a full-fledged investigation and enquiry before the registration of FIR, then every person will have to first approach the Justice of Peace for scrutiny of his complaint and only after clearance, his FIR will be registered, which is beyond the comprehension, prudence, and intention of the legislature. Minute examination of a case and conducting a fact-finding exercise is not included in the functions of a Justice of Peace but he is saddled with a sense of duty to redress the grievance of the complainant who is

aggrieved by refusal of a Police Officer to register his report. The offences have been categorized by the Cr.P.C. into two classes i.e., cognizable and non-cognizable. Section 154 of the Cr.P.C. lays down a procedure for conveying information to an S.H.O. with respect to the commission of a cognizable offence, while the provisions of Section 155 (1) of the Cr.P.C. articulates the procedure *vis-à-vis* a non-cognizable offence. Both the provisions are replicated as under:

> **Section154 Cr.P.C.**
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> **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.
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> **Section 155 Cr.P.C.**
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> **Information in non-cognizable cases**. (1) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.
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> **Investigation into non-cognizable cases.** (2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of first or second class having power to try such case or send the same for trial to the Court of Session.
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> (3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

7. At whatever time, an Officer Incharge of a Police Station receives some information about the commission of an offence, he is expected first to find out whether the offence disclosed fell into the category of cognizable offences or non-cognizable offences. There is no provision in any law, including Section 154 or 155 of the Cr.P.C., which authorizes an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or falsity of the information before complying with the command of the said provisions. He is obligated to reduce the same into writing, notwithstanding the fact whether such information is true or otherwise. The condition precedent for recording an FIR is that it should convey the information of an offence and that too a cognizable one. The remedy of filing a direct complaint cannot measure or match up to the

mechanism provided under section 154, Cr.P.C., in which the Officer Incharge of a Police Station is duty bound to record the statement and register the FIR if a cognizable offence is made out. If in each and every case it is presumed or assumed that instead of insisting or emphasizing the lodgment of an FIR, the party may file a direct complaint, then the purpose of recording an FIR, as envisaged under section 154, Cr.P.C., will become redundant and futile and it would be very easy for the police to refuse the registration of an FIR with the advice to file direct complaint. However, in some exceptional circumstances, the alternate remedy in the shape of direct complaint may be availed but not in every case. The statutory duty casts upon the officer of a police station to enter information regarding the cognizable offence first and then the investigation comes later in order to gather evidence and other relevant material to prosecute the identified culprits. No doubt, an Investigating Officer plays a crucial role in the administration of the criminal justice system and the constituent of investigation report and its worth keeps hold of plenteous value and repercussions on the outcome of any criminal case, but tainted investigations can become an acute obstacle in the administration of justice. In the case of Sughra Bibi vs. State **[PLD 2018 SC 595]**, it was held that during the investigation, the Investigating Officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and as required by Rule 25.2(3) of the Police Rules, 1934. It is the duty of an Investigating Officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person. Whereas in the case of Babubhai v. State of Gujrat and others **[(2010) 12 SCC 254]**, the Supreme Court of India held that investigation must be fair, transparent and judicious as it is the minimum requirement of the rule of law.

8. Investigative activities serve a multitude of purposes, therefore, it is also a duty of the Officer Incharge of Police Stations to ensure that the Investigating Officer follows the provisions of law conscientiously, without any breach, conducting an impartial and honest investigation with the sole aim of bringing the truth to light, which is the foundational pathway for the prosecution's case. In case of declining the registration of FIR or

recording the statement, the aggrieved person obviously has a right to approach under Section 22-A, Cr.P.C. and file any such application, and the Justice of Peace is obligated to examine it and, after hearing the parties, pass an appropriate order.

9. We have examined the impugned order of the High Court and, in paragraph 6 & 7, several observations are made as a fact-finding forum which directly affected the merits of the case. It seems to us that the learned High Court had assumed the role of an investigator and passed certain observations to declare the case false which is beyond the purview of the jurisdiction of the High Court under Section 561-A, Cr.P.C. It is well-known that the inherent jurisdiction conferred under Section 561-A, Cr.P.C., cannot be deemed to be an alternative jurisdiction or additional jurisdiction and cannot be exploited to disrupt or impede the procedural law on the basis of presumptive findings or hyper-technicalities, but it is meant to protect and safeguard the interest of justice to redress grievances of aggrieved persons for which no other procedure or remedy is provided in the Cr.P.C. Despite everything, the ends of justice inescapably denote justice as administered and dispensed with by the courts but not justice in an abstract and intangible notion. In the case of Ghulam Muhammad vs. Muzammal Khan **[PLD 1967 SC 317]**, this Court had occasion to point out that the power given by section 561-A, Cr.P.C., can certainly not be so utilized as to interrupt or divert the ordinary course of criminal procedure as laid down in the procedural statute. The matter only relates to the simple implementation of the order passed by the Justice of Peace which was only confined to the recording of the statement of the complainant before the S.H.O. but what we have perceived is that the matter was dragged unnecessarily for the last many years and the order passed in October 2015 is at a standstill and unimplemented.

10. The mere registration of FIR does not insinuate the conviction but as a rider, it is clearly provided under Section 169 of the Cr.P.C. that if upon an investigation, it appears to the officer incharge of the police-station, or to the police-officer making the investigation that there is no sufficient evidence or reasonable ground or suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate

empowered to take cognizance of the offence on a police-report and to try the accused or send him for trial. While Section 173 Cr.P.C *inter alia* provides that as soon as the investigation is completed, the officer incharge of the police station shall, through the Public Prosecutor, forward to a Magistrate empowered to take cognizance of the offence on a police-report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and communicate, in such manner as may be prescribed by the Provincial Government. Furthermore, in the present context of the case where the respondents allegedly claim that no case was made out and the Justice of Peace exceeded his jurisdiction, it would be pertinent to point out the genre of the "A", "B" and "C" Class Reports under Section 173, Cr.P.C. The Police Report under "A" class indicates that the FIR is true but the accused persons are untraced, or there is no clue whatsoever about the culprits or property, or the accused is known but there is no evidence to justify his being sent up to the Magistrate for Trial, while report under "B" class denotes that the FIR is maliciously false or frivolous and no case is made out against the accused persons, whereas the report under "C" class refers to when the criminal case was filed due to mistake of fact or if offence complained about is of a civil nature. Had the opportunity been afforded to the Investigating Officer to carry out investigation according to the statement of the petitioner, he could perform his duties to ascertain whether any *prima facie* case is made out, and obviously if no case was made out then the Investigating Officer could file the report in the Court in the relevant Class. Being fully cognizant to such law and procedure, the learned Justice of Peace, while allowing application under Section 22-A, Cr.P.C, directed the S.H.O. Police Station 'A' Section, Ghotki, to record the statement of the petitioner and if a cognizable offence is made out, then register the FIR with the rider that the proposed accused should not be arrested without collection of tangible evidence and if during investigation, the FIR is found to be false, the police will be at liberty to initiate action against the complainant (petitioner) as required under Section 182 Cr.P.C.

11. In the case of Muhammad Bashir v. Station House Officer, Okara Cantt **(PLD 2007 SC 539),** this Court held that no authority vested with

an Officer Incharge of a Police Station or with anyone else to refuse to record an FIR where the information conveyed disclosed the commission of a cognizable offence. No authority vested with an Officer Incharge of a Police Station or with anyone else to hold any inquiry into the correctness or otherwise of the information which was conveyed to the S.H.O. for the purposes of recording of an FIR. Check against lodging of false FIRs was not refusal to record such FIRs but punishment of such informants under section 182, P.P.C. etc., which should be, if enforced, a deterrent against the misuse of the provisions of section 154, Cr.P.C. While in the case of Brig. (Retd.) Imtiaz Ahmad vs. Government of Pakistan **[1994 SCMR 2142],** this Court held that the starting point of the examination of the legal questions canvassed by the petitioner's counsel must be the important fact that the stage at which the petitioner thought it proper to invoke the High Court's jurisdiction under Article 199 of the Constitution was the stage of registration of criminal cases against him. The effect of the registration of a case is to set in motion an investigation by the police in accordance with law. The Court also referred to the case of Norwest Holst Ltd. v. Department of Trade and others **[(1978) 3 All ER 280 at 290],** which laid down that "In every investigation...there are...by and large three different phases. First of all, the administrative phase; next, the judicial phase; and, finally, the executive phase when the orders of the Court or the Tribunal are, if necessary, executed or promulgated. Quite plainly fairness to the suspect... demands that he should be given a chance of stating his case before the final period: the execution... Equally fairness demands that the suspect shall be given a chance of putting his side of the case before the judicial inquiry is over...But on the other side, and the other side are entitled to fairness just as the suspect is, fairness to the inquirer demands that during the administrative period he should be able to investigate without having at every stage to inquire from the suspect what his side of the matter may be. Of course, it may be difficult to find out the particular point at which the administrative phase ends and the judicial phase begins". The judgment also quoted a passage from Lord Reid's speech in Wiseman vs. Borneman **[(1971) AC 297, at 308)]**, that "Every public officer who has to decide whether to prosecute or raise proceedings ought first to decide whether there is a prima facie case, but no one supposes that justice requires that he should first seek the comments of the accused or the defendant on the material before him. So, there is nothing inherently unjust in reaching such a decision in the absence of the other party." Whereas in the case of Younas Abbas vs.

Additional Sessions Judge, Chakwal **[PLD 2016 Supreme Court 581]**, a five-member bench of this Court held that the functions performed by the Justice of Peace being quasi-judicial in nature cannot be termed as executive, administrative or ministerial; that such functions being complementary to those of the police do not amount to interference in the investigative domain of the latter and thus cannot be held to be violative of the judgments of this Court rendered in the cases of Muhammad Bashir vs . Station House Officer, Okara Cantt. (*supra)* and Brig. (Retd.) Imtiaz Ahmad vs. Government of Pakistan (*supra)*.

12. As a result of the above discussion this Criminal Petition is converted into an appeal and is allowed. As a consequence thereof, the impugned order passed by the High Court on 01.06.2018 is set aside as far as it relates to the order passed by the Justice of Peace/IInd Additional & District and Sessions Judge, Ghotki, on 06.10.2015 in Cr. Misc. Application No.1290/2015 with the directions to the S.H.O., Police Station 'A' Section, Ghotki, to implement the abovementioned order of the Justice of Peace and act strictly in accordance with law.

Judge

Judge

KARACHI
02.4.2024
A*pproved for reporting*"