

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Miscellaneous Application No.S-716 of 2025

Applicants:	Hussain son of Saleem and another, through Mr. Mansoor Akhtar Advocate
Respondents:	Mst. Rubina and Saleem Ameer Ali present in person. Ms. Seema Zaidi, Additional Prosecutor General, Sindh alongwith SIP. Rab Nawaz of Police Station Soldier Bazaar, Karachi.
Date of hearing:	29.08.2025.
Date of decision:	01.09.2025.

ORDER

MUHAMMAD HASAN (AKBER), J.- Through the instant Criminal Miscellaneous Application under section 561-A Cr.P.C., the applicants have assailed the order dated 07-08-2025 passed by learned Additional Sessions Judge-I, Karachi East (Ex-officio Justice of Peace), thereby allowing the Respondents' application under section 22-A and B of the Criminal Procedure Code (Cr.PC.) for registration of First Information Report (FIR) under section 154 Cr.PC.

2. Heard all private parties who are present in person, their learned Advocates and the learned APG. Perusal of the record and Police Reports reflect that Criminal Misc. Applications No.1894/2025 was filed by Respondents which was subsequently transferred to learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Karachi, East and was given a new number i.e. Cr. Misc. Application No.3552/2025.

3. Parties appear to be from educated background in that the applicants (brothers) are Professor and Accountant respectively whereas Respondent lady (sister) is reportedly concerned with the medical field. Applicant No.2 with his two children is living in the same house with his mother and father, the divorced sister

(Respondent) with her son is also living in the same house, whereas the other son (Applicant No.1) claims to have paid substantial instalments for clearance of loan on the subject house. Both father and mother are senior citizens of advanced age, whereas mother is suffering from cancer. The dispute between the spouses appears to have triggered in November 2024 over dealing and distribution of assets of the old-age parents, resulting into filing of an application under section 22-A&B for registration of FIR by the sister (complainant No.1) against both the brothers.

4. It was in the above complicated background that the learned Ex-officio Justice of Peace passed the impugned Order by straight away directing to lodge FIR against the present applicants. Per applicants, after transfer of the earlier case, no notice was issued to them and the impugned Order was passed in their absence and without hearing them, which position is also clearly reflected from the impugned Order.

5. In addition to the above, the learned Justice of Peace also proceeded to issue directions for protection under The Protection of Parents Ordinance 2021 (**Ordinance 2021**) in contrast to the mandatory and procedural requirements thereof and without realizing that under the Ordinance, the jurisdiction vests with the concerned Deputy Commissioner. The principles and parameters as settled in the case of ***Ali Akram*¹** were also not observed. The objects of the said Ordinance as spelled out from its Preamble are *inter alia* to provide certain rights to the parents, so also protection against their expulsion from their living place/ home; and lastly to deal with offences and punishments ancillary thereto. While section 3 deals with the situation of eviction of parents from a house, Section 4 deals with the rights of the parents to evict a child. The concerned Deputy Commissioner has been authorised to decide complaints upon his satisfaction and after hearing the parties, and such Order is appealable under section 7. Proceedings under sub-section (5) of section 4 are summary in nature whereas proceedings under sub-section (2) of section 4 require recording of evidence, as envisaged under Chapter XX of the Code of Criminal Procedure, 1898. As held in *Ali Ikram* *ibid*, the procedures of complaint, as provided in Sections 200 to 240 under Chapters XVI to XIX Cr.PC. will not be followed.

6. Moreover, while dilating upon the term “may” as used in section 22-A(6) Cr.PC., it was held in the case of **Khizer Hayat**² that in order to avoid the machinery of criminal law being misused by motivated persons for achieving self-serving objectives, the Justice of the Peace is not obliged to mechanically issue a direction regarding registration of a criminal case whenever a complaint is filed before him. In the case of **Jamal Khan**³ the Supreme Court upheld the refusal to lodge F.I.R in a dispute of a civil nature between the parties pertaining to alleged forgery of thumb impression on an arbitration agreement. The Supreme Court in **Rai Ashraf**⁴ also refused prayer for registration of F.I.R by probing into the possibility of lack of *bona fide* motives, whereas in the case of **Jamshed Ahmad**⁵ registration of FIR was also refused *inter alia* on the ground that other remedy of criminal complaint was available with the complainant. The application in hand is under section 561-A Cr.PC., scope whereof is to prevent abuse of the process and to foster the ends of justice.

7. Applying the above discussed legal principles to the facts of the present case, it appears that the impugned order has been passed in a mechanical manner without application of judicial mind, without consideration of all relevant facts and without observing the principles laid down by the superior Courts *supra*. The directions to straightaway register FIR against the respondent was passed without notice and in the absence of an opportunity of hearing to the parties whereas the directions to consider action under the Ordinance 2021, suffered from lack of jurisdiction. The nature of dispute and the relationship between the parties also ought to have been considered so also the principle that for seeking discretionary relief, the complainant has to disclose all the relevant facts and ground realities before the Court; so also the conduct and possible motives of the complainant ought to have been looked into. Lastly, the directions to apply the Ordinance 2021 were also misplaced and beyond jurisdiction.

1. 'Ali Akram v. Mian Muhammad Akram and 3 others' (PLD 2022 Lahore 559)
 2. 'Khizer Hayat V. Inspector-General Of Police (Punjab), Lahore' (PLD 2005 Lahore 470)
 3. 'Jamal Khan V. Secretary Home Department' (2021 SCMR 468)
 4. 'Rai Ashraf and others V. Muhammad Saleem Bhatti and others' (PLD 2010 SC 691)
 5. 'Jamshed Ahmad v. Muhammad Akram Khan' (1975 SCMR 149)

8. Consequently, the impugned Order dated 07.08.2025 passed by the learned Ex-officio Justice of Peace/ Additional Sessions Judge-I Karachi East is hereby set-aside and the Respondent No.3/ SHO, Police Station Soldier Bazar Karachi is hereby directed to enquire into the Statement and material relied upon by the complainant No.2/ father so also the material relied upon by the present applicants. During such process and with the sincere intentions to save the entire family from being consumed in criminal proceedings, the parties shall also make sincere attempts to internally resolve their disputes. Finally, upon conclusion of Inquiry, and only if a cognizable offense under the law is clearly spelled out, the Respondent No.3 shall proceed under section 154 Cr.PC. Lastly, Respondent 3 shall ensure and provide protection to the old-aged father, Mr. Saleem Ameer Ali and the mother Mst. Razia Begum wife of Saleem Ameer Ali.

This Criminal Miscellaneous Application stands disposed of in the above terms.

JUDGE

MUBASHIR