

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No. S-791 of 2024
(*Mastoi Vs. The State & Others*)

Date	Order with signature of Judge
For Order on office objections at flag “A”	
For hearing of main case.	
For hearing of MA No.6676/2024 (Stay Application)	

ORDER.
02-05-2025.

Mr. Abdul Majeed Memon, Advocate for the applicant.
Mr. Shabbir Ali Bozdar, Advocate for Respondent No.03
Mr. Mansoor Ahmed Shaikh, Deputy Prosecutor General for the State.
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Ali Haider ‘Ada’,J:- The applicant, being aggrieved by the order dated 24-12-2024, passed by the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Daharki, in Criminal Miscellaneous Application No. 3347/2024 titled '*Ali Hassan vs. SHO Police Station Reti and another*, whereby the application filed by the Respondent No.03, seeking registration of FIR was allowed, so, the applicant has preferred the instant application.

2. Brief facts of the case are that Respondent No.03 filed an application under Sections 22-A and 22-B Cr.P.C. before the learned Justice of Peace/Sessions Judge, Ghotki, which was entrusted to the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Daharki. In the said application, it was stated that the proposed accused had previously been nominated in FIR No. 30/2024 regarding the murder of the respondent’s brother. Subsequently, on 28-09-2024, the proposed accused again attacked the house of respondent while he was sitting with his family. It is stated that the present applicant assaulted the injured Abdul Majeed with lathi, causing a fracture to his left hand, as later confirmed by the medical officer. Other proposed accused persons allegedly

inflicted lathi blows on male and female family members, resulting in further injuries. After obtaining medical certificates showing *Ghyr-jaifah hashimah* and other injuries, the respondent approached the concerned police station to record his version, but the same was not entertained. Consequently, he filed an application under Sections 22-A and 22-B Cr.P.C., which was allowed. However, the proposed accused (present applicant) has challenged the said order by filing the instant application and the FIR has not been registered to date.

3. Learned counsel for the applicant contended that there exists prior enmity between the parties. It was submitted that before the filing of the application under Sections 22-A and 22-B Cr.P.C. by Respondent No.03, the present applicant had already lodged FIR/s against the said respondent and his companions, one for offence punishable under Sections 506/2, 337-A(i), 337-F(i), 147, 148, and 149 PPC and another under Section 395 PPC, it is further argued that Respondent No.03, with mala fide intent and to counterblast the earlier proceedings, filed a frivolous application. The learned Justice of Peace, without appreciating the existing facts and circumstances, erroneously allowed the said application. Therefore, the impugned order is liable to be set aside and the instant application merits considered as prayed.

4. Conversely, learned counsel appearing on behalf of Respondent No.03 submitted that the matter pertains to a case of injury, wherein the injuries sustained have been medically declared as cognizable, including a fracture attributed to the act of the present applicant. He further argued that the application is neither a counter-version nor a counterblast, as an FIR had already been registered against the proposed accused for the murder of the brother of Respondent No.03. Thus, it cannot be presumed that the present proceedings were initiated with any ulterior motive. The learned Justice of Peace, after

examining the available material, rightly passed a well-reasoned and speaking order. Hence, he prayed for dismissal of the instant application.

5. Learned Deputy Prosecutor General for the State submits that, *prima facie*, the application filed under Sections 22-A and 22-B, Cr.P.C., discloses the commission of a cognizable offence, particularly falling within the ambit of Section 337-F(v), P.P.C. He further submits that the medical evidence supports the ocular account and corroborates the occurrence. Therefore, at this stage, it would be premature to restrain Respondent No.03 from recording his version. The Investigating Agency is legally bound to consider his narrative in accordance with law.

6. Heard learned counsel for the parties and perused the material available on record.

7. The record reflects that Respondent No.03 filed an application alleging that the incident occurred on 28.09.2024, wherein the proposed accused committed an offence resulting in injuries to three persons, one of whom sustained a fracture injury declared as *Ghyr Jaifah Hashimah*, which constitutes a cognizable offence. Upon perusal of the medical record, it is evident that Respondent No.03 approached the Medical Officer after obtaining a police letter and the Medical Officer confirmed the injuries through the final medical certificate. As to the contention of learned counsel for the applicant referring to two FIR/s lodged against Respondent No.03, it is noteworthy that these FIR/s were not registered as counter-versions of the incident dated 28.09.2024. One FIR pertains to an incident allegedly committed in November-2024 and was registered on 16.12.2024, while the other, under Section 395, P.P.C., relates to an alleged occurrence in June 2024, but was registered on 24.12.2024. This sequence

bears no nexus with the incident alleged in the application filed by Respondent No.03 under Sections 22-A and 22-B, Cr.P.C. Furthermore, there is already an FIR on record regarding the murder of Respondent No.03's brother, in which the present applicant party were nominated. In these circumstances, the narration advanced by Respondent No. 03 in his application cannot be disregarded without proper investigation. It is firmly recognized in law that the investigation process is initiated only upon the invocation of Section 154, Cr.P.C.

8. Now, on scanning the material available on record, it prima facie appears that a cognizable offence is made out. In support of this view, reliance is placed on the case of *Syed Qambar Ali Shah v. Province of Sindh and others* (2024 SCMR 1123), wherein the Honourable Supreme Court of Pakistan held that:

"9. We have examined the impugned order of the High Court and, in paragraphs 6 and 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 v. 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.

9. It is also well-settled that the registration of an FIR is not merely a procedural formality but a statutory and fundamental right, recognized under Section 154 of the Code of Criminal Procedure, 1898. The principle of *Primus Relatus de Crimine*, means the first account of a crime serves as the basic for initiating the criminal justice process.

10. It is the prime obligation of the Ex-Officio Justice of Peace to meticulously examine all relevant documents and after applying a prudent and judicious mind, issue necessary directions to the relevant authorities who have neglected to discharge their statutory responsibilities.

11. Upon perusal of the available record, it is evident that, at least for the purpose of a surface-level scrutiny, no legal infirmity is observed in the impugned order. The directions issued by the learned Justice of Peace appear to be in accordance with law and within the scope of jurisdiction under Section 22-A & 22-B Cr.P.C. In view of the foregoing, no interference is warranted by this Court. Consequently, this Criminal Miscellaneous Application, along with the listed miscellaneous applications, stands dismissed.

J U D G E

Ihsan/PS.