

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No.812 of 2024

Applicant : Mst.Syeda Rabia Qadri
Through Mr. Anand Kumar, advocate

Complainant : Muhammad Zahid
Through Mr. Shakeel Ahmed, advocate

State Mr. Mohammad Mohsin Mangi, APG.

Date of hearing : 17.04.2025

Date of order : 21.04.2025

ORDER

Khalid Hussain Shahani, J: Applicant invokes the inherent jurisdiction of this Court, challenging the order dated 22.07.2024, passed in Cr. Misc. Application No. 1730 of 2024, whereby the learned Additional District Judge/Ex-Officio Justice of Peace-II, Karachi Central disposed of the application under Section 22-A, Cr.P.C. by directing the petitioner to approach P.S. concerned and SHO is required to do according to law.

2. The applicant contends that the learned Ex-Officio Justice of Peace has passed the impugned order erroneously, relying upon an unverified version advanced by respondent No.1, to the effect that the applicant and her husband allegedly received an amount of Rs.1,775,000/- from him in installments for the purpose of arranging a UAE work visa, but failed to do so and also refused to return the said amount. The applicant asserts that a complaint was made to the SHO of the concerned police station but no action was taken. The applicant's learned counsel submitted that the impugned order was passed without affording the applicant or her husband an opportunity of being heard, and thus it is in violation of principles of natural justice, contrary to law, and liable to be set aside. He further submitted that the applicant came to know about the impugned order only on 07.08.2024, when respondent No.1 allegedly sent a threatening message to the applicant along with a copy of the impugned order to her husband.

3. It is further asserted on behalf of the applicant that neither she nor her husband received any amount from respondent No.1 for purposes of visa arrangements, nor was any such commitment made. Rather, respondent No.1 had entered into a business arrangement with the applicant's husband involving the import and sale of used electronic goods (such as cameras and other items) from the UAE, and respondent No.1 used to remit the amount of cost and profit into the applicant's UBL account. Thereafter, with mala fide intent, respondent No.1 allegedly failed to make further payments after receiving goods, resulting in outstanding dues exceeding Rs.2 million. Upon demand, it is alleged that respondent No.1 resorted to threats. In support of his contentions, the applicant's counsel relied upon various case law including: *2022 YLR 514*, *PLD 2016 SC 581*, *2024 MLD 462*, and *2024 SCMR 985*, along with invoices of goods dispatched by one Imran in the name of one Zahid.

4. On the other hand, learned counsel for respondent No.1 supported the impugned order and submitted that all payments were made through interbank transfers, and documentary evidence is available to substantiate the same. It is contended that the applicant's husband was a close friend of respondent No.1, and the applicant received the funds directly into her UBL account, thus demonstrating the transaction.

5. A careful examination of the impugned order, the interbank fund transfer receipts (IBFTs), and the invoices pertaining to electronic goods suggests that there are disputed factual assertions by both sides which were not properly adjudicated at the stage of the impugned proceedings.

6. It is appropriate at this stage to reiterate the guiding principles laid down by the Honourable Supreme Court in *Younas Abbas and others v. The Additional Sessions Judge, Chakwal and others* (PLD 2016 Supreme Court 581), wherein it was observed:

"Ex-Officio Justice of Peace should exercise his powers under section 22-A(6), Cr.P.C within certain parameters when issuing a direction for registration of FIR or transfer of investigation.

The Ex-officio Justice of Peace, before issuance of a direction on a complaint for the on-registration of criminal case under section 22-A(6)(i), Cr.P.C must satisfy himself that sufficient

material was available on record, such as application to the concerned SHO for registration of the criminal case and on his refusal or reluctance, complaint to higher police officers i.e. D.P.O, R.P.O etc, to show that the aggrieved person, before invoking the powers of Ex-Officio Justice of Peace, had recourse to the highups in the police hierarchy.”

7. In the present case, while respondent No.1 claims to have sent a complaint to police high-ups by courier, no conclusive proof of either refusal or inaction by the police is available, nor is there any follow-up or outcome of such complaint. Therefore, the requirements laid down in *Younas Abbas* (supra) have not been satisfied.

8. In 2024 SCMR 985 (*Munawar Alam Khan Vs. Qurban Ali Mallano and others*), it was held by the Court that:

“...we observe that there are many precedents regarding misuse of provisions of section 22-A and 22-B Cr.P.C and it is the prime duty of the Court that such misuse be taken care and application filed should not be lightly entertained and decided in a mechanical manner for issuing direction to police to lodge the FIR.”

9. In *Mir Wais Vs. Naseebullah and 03 others* (2024 MLD 462 (Baluchistan)) the Court was of the opinion that;

“6. In the exercise of powers under section 22-A, Cr.P.C., the Justice of Peace, is not supposed to proceed and act mechanically by simply considering the version of events narrated by a party applying for registration of an FIR, but instead, in order to safeguard against misuse or abuse of such process, the Justice of Peace has to apply his judicial mind and has to satisfy himself that prima-facie there is some material available on record to support such version. We are fortified by the additional note appended to the main judgment of the Hon'ble Supreme Court in the case reported as Younas Abbas and others v. Additional Sessions Judge, Chakwal (PLD 2016 SC 581) wherein the following was observed:

"2. The past experience of around 14 years (since the insertion of these provisions into the Code of Criminal Procedure) would unmistakably reveal that these provisions especially Section 22-A of the Code of Criminal Procedure, though beneficial and advantageous to the public at large, yet in myriad cases, it has been misused and abused.

Once a false criminal case is registered against an individual, it becomes exceedingly difficult for him/her to get rid of it. The time and money which is spent on acquiring a clean chit by way of cancellation of the case or acquittal is not hard to fathom. There is no denying the fact that at times false and frivolous cases are got registered just to humiliate and harass the opposite party. In such a milieu, powers given to an ex-officio Justice of the Peace under subsection (6) of Section 22-A, Code of Criminal Procedure, to issue appropriate directions on a complaint filed by an aggrieved person for registration of a criminal case (Clause-i) and for transfer of investigation from one police officer to another (Clause-ii) though efficacious and expeditious besides being at the doorstep, but at the same time, these provisions should not be unbridled or open-ended. These provisions must be defined, structured and its contour delineated to obviate misuse by influential and unscrupulous elements. Therefore:-

(i) The ex-officio Justice of the Peace, before issuance of a direction on a complaint for the non-registration of a criminal case under subsection (6)(i) of section 22-A, Code of Criminal Procedure must satisfy himself that sufficient material is available on the record, such as application to the concerned SHO for registration of the criminal case and on his refusal or reluctance, complaint to the higher police officers i.e. DPO, RPO etc., to show that the aggrieved person, before invoking the powers of ex-officio Justice of the Peace, had recourse to the high ups in the police hierarchy.

(ii) "

7. The logic behind the conferring of powers upon the Justice of Peace under the latest amendment, which was made in the year 2002, was to enable the aggrieved person to approach the Justice of Peace for the redressal of his grievances, i.e. non-registration of FIR's, transfer of investigation to the Courts situated at the district level or Session or at particular Sessions Division. At times, this is being observed that the office of Justice of Peace is being misused by the litigants in order to settle their scores or sometimes to convert the civil litigation into criminal litigation and to use the powers under this section to damage the rival party for certain ulterior motives, which was never the intention of the legislature. For convenience, the provisions of sections 22-A (6) and 154 of the Cr.P.C., are reproduced hereunder:-

Section-22-A(6). An ex-officio Justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding;

i) Non-registration of criminal case;

ii) Transfer of investigation from one police officer to another; and

iii) Neglect, failure or excess committed by a police authority in relation to its functions and duties."

"Section 154, Cr.P.C. Information in Cognizable cases.

Every information relating to the commission of a cognizable offence if given orally to an officer incharge of a police station, shall be reduced into 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."

By comparing the abovementioned provisions of the Criminal Procedure, it is abundantly clear that in section 154, Cr.P.C, the word shall have been used while in section 22-A(6), Cr.P.C the word may have been used, which manifests the intention of the legislature that the Justice of Peace is still left with discretion to pass an order for the registration of FIR that's too in appropriate/certain cases.

Proceedings before the Justice of Peace are quasi-judicial and are not executive, administrative or ministerial to deal with the matters mechanically rather, the same is quasi-judicial powers in every case before his demand discretion and judicial observations, and that is too after hearing the parties.

8. In view of the latest judgment of this Court 2020 YLR 44, it is abundantly clear that a party to a 22-A, Cr.P.C, proceedings shall have the right of hearing to the proceedings and the person against whom the registration of FIR is sought he has to be afforded an opportunity of hearing and thereafter the Justice of Peace can pass any appropriate order because by not giving notice, the Justice of Peace would be condemning that person unheard by passing an order under the quasi-judicial proceedings. It is, therefore, observed that the Justice of Peace, before passing any order for the registration of the FIR shall put the other party on notice against whom the registration of FIR is asked for."

10. From the record, it appears that the learned Ex-Officio Justice of Peace did not afford any opportunity of hearing to the present applicant or her husband before passing the impugned order. This failure is not only contrary to settled principles of natural justice but also renders the order vulnerable on account of procedural impropriety.

11. In view of the foregoing discussion and the law laid down by the superior courts, particularly the necessity of applying judicial mind, ensuring sufficiency of material, and affording a right of hearing before passing an order under Section 22-A Cr.P.C., the impugned order dated 22.07.2024 is hereby set aside. Parties are at liberty to recourse their remedies available under the law.

Application stands disposed of in the above terms.

J U D G E