

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No. 789 of 2023

Applicants : Ali Shayan and others  
Through Mr. Kashif Hanif Abbasi, Advocate

Respondents : The State  
Through Ms. Rahat Ahsan, All. P.G Sindh.

Date of short order : 02.05.2025

Date of reasons : 10.05.2025

## **REASONS**

**KHALID HUSSAIN SHAHANI, J:-** Through the instant application filed under Section 561-A Cr.P.C. for setting aside the impugned order dated: 06.10.2023 passed by the learned Ex-Officio Justice of Peace/Aadditional Sessions Judge-XII Karachi East, whereby Cr. Misc. Application No. 4345/2023 was allowed, hence the applicants prefer the instant application for setting aside the impugned order.

2. The applicants contended that the dispute arises from an incident dated 12.09.2023, when Applicant No.1 observed an employee, Anees Ahmad, in collusion with Respondent No.4, engaged in unauthorized removal of Company stock from the warehouse. The matter was immediately reported to the security guard on duty, who confirmed that the warehouse gate had been locked by Respondent No. 4 in his presence. Thereafter, the matter was escalated to the Company's head office, and both individuals were called for an explanation. On 13.09.2023, a formal inquiry was initiated by the Company, and Applicant No. 2 was appointed as the Inquiry Officer. Preliminary findings revealed a misappropriation of goods valued at approximately Rs.4,120,000, although a final assessment of loss remains pending. A show-cause notice was issued to Respondent No. 4 on the same day, following which both Respondent No. 4 and his accomplice admitted their guilt and tendered written confessional statements, purportedly executed voluntarily and without any duress. Subsequently, Respondent No.4 deposited partial amounts of Rs.150,000 on 14.09.2023 and Rs.50,000 on 18.09.2023 towards restitution, and offered his motorcycle (Registration No. KOE-2080) as security for the remaining liability. Thereafter, both individuals absconded and became untraceable, leading the Company to file a

written police complaint on 22.09.2023, seeking registration of FIR, which remains pending. It is further alleged that in retaliation, Respondent No. 4 maliciously filed an application before the learned Sessions Court while concealing material facts and mentioning an incorrect branch address to mislead the Court and obtain an ex-parte order. The Applicants were neither issued any notice nor were their statements recorded by the police, and the impugned order came to be passed without affording them an opportunity of hearing, in contravention of the requirements of law and principles of natural justice.

3. The learned counsel for the applicants contended that the impugned order dated 06.10.2023 passed by the learned XII Additional Sessions Judge/Ex-Officio Justice of Peace, Karachi East, is improper, illegal, and perverse, and thus liable to be set aside. It was submitted that the order has been passed in contravention of settled principles of law and procedure. Learned counsel argued that under the law, an FIR can only be directed to be registered if the information discloses the commission of a cognizable offence. However, in the instant matter, no cognizable offence was made out against the applicants, and Respondent No. 4 failed to place on record any material that could connect the applicants with any such offence. It was further contended that the learned Sessions Judge failed to appreciate the evident mala fides on the part of Respondent No. 4, who filed the application solely to shield himself from criminal liability and to pre-empt the consequences of his own misconduct. It was next urged that the impugned order suffers from a fatal procedural defect, as no notice was ever issued to the applicants, nor were they afforded an opportunity of hearing prior to the passing of the impugned order. This, according to the learned counsel, amounts to a blatant violation of the principles of natural justice and Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973. Learned counsel submitted that Respondent No.4 intentionally misled the learned Sessions Court by furnishing an incorrect address of the Company's branch, thereby preventing the applicants from participating in the proceedings. It was emphasized that such conduct further reflects the mala fide intention of the respondent and casts serious doubt on the bona fides of the underlying application. It was further submitted that the office of the Ex-Officio Justice of Peace exercises quasi-judicial functions, and is therefore bound to adhere to the principles of due process and fairness. However, in the present case,

neither any notice nor summons was issued to the applicants, nor were their versions recorded by the police before the issuance of the impugned directions. The learned counsel maintained that the impugned order is not only devoid of lawful authority but is also mechanically passed, without application of judicial mind or articulation of any reasons. It was argued that such stereotyped and unreasoned orders, passed in routine and in disregard of legal norms, are unsustainable and void ab initio. Lastly, it was submitted that the impugned order is unwarranted by law and is in clear violation of the provisions of the Code of Criminal Procedure as well as settled principles laid down by the Superior Courts.

4. From the cumulative assessment of the facts on record, it is evident that the impugned order dated 06.10.2023 passed by the learned Ex-Officio Justice of Peace is not sustainable in law. The record reflects that the applicants were neither issued any notice nor provided any opportunity of hearing prior to the passing of the impugned order, thereby violating the principles of natural justice and Article 10A of the Constitution. Moreover, the learned Ex-Officio Justice of Peace failed to examine the bona fides of Respondent No.4, who admittedly tendered an apology in his own handwriting and deposited the misappropriated amount into the company's account through documented bank receipts. This fortifies the claim that Respondent No.4 was found involved in theft and criminal breach of trust regarding the company's stock, for which FIR No. 1673 of 2023 has already been registered against him under Sections 408, 381, and 34 PPC, and the trial in that regard is currently pending adjudication.

5. The impugned order also contravenes the legal parameters laid down by the Hon'ble Supreme Court in the case of *Younis Abbas v. Additional Sessions Judge, Chakwal* (PLD 2016 SC 581), wherein it was held that the power of the Ex-Officio Justice of Peace under Section 22-A Cr.P.C. is circumscribed and must be exercised judicially, only where the information discloses commission of a cognizable offence and the police has failed to act without lawful justification. No such circumstance existed in the present matter, as the information before the learned Ex-Officio Justice of Peace neither constituted any cognizable offence against the applicants nor warranted issuance of directions for registration of FIR.

6. Furthermore, the registration of a second FIR on the same set of allegations is impermissible under the settled law enunciated in the case of *Mst. Sughran Bibi v. Additional Sessions Judge* (PLD 2018 SC 595), wherein the Hon'ble Supreme Court held that only one FIR can be registered in respect of a single occurrence, and all versions of the incident must be incorporated in the same FIR, if needed through supplementary statements.

7. In light of the above discussion, I find merit in the instant Criminal Miscellaneous Application. Accordingly, the same is allowed, and the impugned order dated 06.10.2023 passed by the learned XII Additional Sessions Judge/Ex-Officio Justice of Peace, Karachi East is hereby set aside. Order be facsimiled to the concerned for information and compliance. The listed application(s) if any stand disposed of accordingly and these are the detail reasons of the short order announced by this Court on 02.05.2025.

**J U D G E**