

# THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

## *Criminal Miscellaneous Application No.S-303 of 2023*

Applicant: Mst. Khan Zadi Khatoon, *through* Mr. Shakeel Ahmed G. Ansari, Advocate.

Respondents: Waqar Ali and others, *through* Mr. Muhammad Afzal Jagirani, Advocate.

The State: *through* Mr. Nazeer Ahmed, Deputy Prosecutor General, Sindh.

Date of Hearing: 06.08.2024

Date of Order: 06.08.2024

### ORDER

**ALI HAIDER 'ADA' I.-** Through this Criminal Miscellaneous Application, the applicant has challenged the order dated 09.06.2023, passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Jacobabad, in Criminal Miscellaneous Application No. 406 of 2023 (Re: Mst. Khanzadi Khatoon v. S.H.O. Police Station B-Section Thull and another), whereby the application for seeking directions of registration of FIR against the proposed accused was dismissed and further directed the concerned S.S.P. to conduct an enquiry and proceed further in accordance with law. Being aggrieved and dissatisfied with the said order, the applicant has filed the present application before this Court.

2. The main contention of the applicant is that she seeks to have an FIR registered strictly in accordance with her version of events against the proposed accused, who are employees of WAPDA. Her grievance begins from the incident wherein two of her buffaloes died as a result of electrocution caused by a fallen electric wire. She desires to report this incident to the concerned police authorities for appropriate legal action.

3. Learned counsel for the applicant contends that the death of two buffaloes occurred due to the negligent and reckless act of respondents No.1 to 3, who are employees of WAPDA. He argues that such negligence constitutes a cognizable offence within the meaning of Section 429 PPC, which deals with mischief by killing or maiming cattle. Accordingly, he prays that

the instant Criminal Miscellaneous Application be allowed and appropriate directions be issued to the police functionaries to record the statement of the applicant under Section 154 Cr.P.C., and, if a cognizable offence is made out, to register the FIR against the said respondents in accordance with law.

4. Conversely, learned counsel appearing on behalf of Respondents No.1 to 3 categorically denies the occurrence of the alleged incident and further submits that even if the assertions made in the application are presumed to be correct, no cognizable offence is made out under the law. He, therefore, seeks dismissal of the application.

5. Learned Deputy Prosecutor General also opposes the application and supports the stance of the respondents by submitting that, as per the reports submitted by the SSP Jacobabad and the SHO P.S. B-Section, Thull, no such incident has been substantiated. The said reports were filed today and have been taken on record.

6. I have heard the learned counsel for the parties and carefully perused the available record in light of the applicable legal provisions.

7. Before parting with this order, it is essential to underscore that the Justice of Peace, while exercising powers under Sections 22-A and 22-B of the Criminal Procedure Code, is required to act within the legal limits of judicial discretion and not to treat such powers as a mere formality or mechanical process. The object of conferring such jurisdiction is not to usurp the investigative domain of the police but to ensure that aggrieved citizens are not left without remedy when their complaints involve a cognizable offence and the police fail to act. The powers under Section 22-A(6), Cr.P.C. enable the Justice of Peace to issue directions to the police to register an FIR when the allegations *prima facie* disclose the commission of a cognizable offence. However, this power is not unrestrained. It must be exercised judiciously, on the basis of the facts and circumstances of each case, and only where a cognizable offence is made out. A Justice of Peace cannot substitute the role of the investigating officer nor conduct a roving inquiry into the veracity of the complaint at that stage. Hence, it is expected that while deciding such applications, the Justice of Peace must carefully examine whether the contents

of the application disclose the commission of a cognizable offence. If so, appropriate directions can be issued to the police for registration of FIR; otherwise, the application may be declined with reasoning. The process must reflect judicial application of mind rather than routine disposal. For clarity, the relevant provisions are reproduced below:

*22-A. Powers of Justice of the Peace. (1) A Justice of the Peace for any local area shall, for the purpose of making an arrest, have within such area all the powers of a Police Officer referred to in section 54 and an officer in-charge of a police-station referred to in section 55.*

- (2). A Justice of the Peace making an arrest in exercise of any powers under subsection (1) shall, forthwith, take or cause to be taken the person arrested before the officer in-charge of the nearest police-station and furnish such officer with a report as to the circumstances of the arrest and such officer shall thereupon re-arrest the person.*
- (3) A Justice of the Peace for any local area shall have powers, within such area, to call upon any member of the police force on duty to aid him:*
  - (a) in taking or preventing the escape of any person who has participated in the commission of any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having so participated; and (b) in the prevention of crime in general and, in particular, in the prevention of a breach of the peace or a disturbance of the public tranquillity.*
- (4) Where a member of the police force on duty has been called upon to render aid under subsection (3), such call shall be deemed to have been made by a competent authority.*
- (5) A Justice of the Peace for any local area may, in accordance with such rules as may be made by the Provincial Government:*
  - (a) issue a certificate as to the identity of any person residing within such area, or (b) verify any document brought before him by any such person, or*
  - (c) attest any such document required by or under any law for the time being in force to be attested by a Magistrate, and until the contrary is proved, any certificate so issued shall be presumed to be correct and any document so verified shall be deemed to be duly verified, and any document so attested shall be deemed to have been as fully attested as if he had been a Magistrate.*

*22-B. Duties of Justices of the Peace. Subject to such rules as may be made by the Provincial Government, every Justice of the peace for any local area shall,*

- (a) on receipt of information of the occurrence of any incident involving a breach of the peace, or of the commission of any offence within such local area, forthwith make inquiries into the matter and report in*

*writing the result of his inquiries to the nearest Magistrate and to officer in charge of the nearest police station.*

*(b) if the offence referred to in clause (a) is a cognizable offence, also prevent the removal of any thing from, or the interference in any way with, the place of occurrence of the offence;*

*(c) when so required in writing by a police-officer making an investigation under Chapter XIV in respect of any offence committed within such local area.*

- (i) render all assistance to the police-officer making such an investigation.*
- (ii) record any statement made under expectation of death by a person in respect of whom a crime is believed to have been committed.*

8. According to the powers conferred under Sections 22-A(6)(i), (ii), and (iii) of the Criminal Procedure Code, there exists no scope for conducting any inquiry or verification prior to recording the statement of the applicant. The process envisaged under the said provisions merely requires the Justice of Peace to direct the police to record the statement if the allegations disclosed prima facie commission of a cognizable offence. Any pre-registration inquiry or verification by the police or direction thereof by the Justice of Peace is beyond the statutory mandate. Reliance is placed upon the case of ***Syed Qamber Ali Shah v. Province of Sindh and others (2024 SCMR 1123)***, wherein it has been categorically held that:

*"....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...."*

9. Now adverting to the merits of the present case. When queried by this Court as to under which provision of law or the Pakistan Penal Code the alleged offence falls, learned counsel for the applicant submitted that the incident amounts to "mischief" punishable under Section 429, P.P.C. However, for a proper understanding, it is essential to first examine the definition of "mischief" as provided under Section 425, P.P.C. For ready reference, Section 425 of the Pakistan Penal Code is reproduced below:

425. *Mischief. Whoever, with intent to cause, or , knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".*

10. According to Section 425 of the Pakistan Penal Code, the offence of "mischief" requires not only the act of causing damage but also the presence of a specific *mens rea* (criminal intent), that the accused acted with intent to cause, or with knowledge that they were likely to cause, wrongful loss or damage to any person or the public at large. In the present case, learned counsel for the applicant has not placed on record any material or allegation that shows that respondents No.1 to 3, being officials of WAPDA, deliberately or knowingly installed or maintained the electric wires in a manner so as to cause harm to the applicant or her livestock. There is no indication to suggest that the respondents had any personal motive or intention to harm the applicant, nor there is any sign that they acted with such recklessness that it would imply knowledge of likely harm.

11. So far the legal proposition, Section 33 of the Electricity Act, 1910 is very much clear and give proper process in order to avail the remedy. For ready reference the same is read as under

33. *Notice of accidents and inquiries.*—4[(1) *If any accident occurs in connection with the generation, transmission, supply or use of energy in, or in connection with, any part of the electric supply-lines or other works of any person, and the accident results or is likely to have resulted in loss of life or personal injury, such person shall give notice of the occurrence, and of any loss of life or personal injury actually occasioned by, the accident, in such form and within such time and to such authorities as the 5[Provincial Government] may, by general or special order, direct.*]

(2) *The [Provincial Government] may, if it thinks fit, require any Electric Inspector, or any other competent person appointed by it in this behalf, to inquire and report*

(a) *as to the cause of any accident affecting the safety of the public, which may have been occasioned by, or in connection with the generation, transmission, supply or use of energy, or*

(b) *as to the manner in, and extent to, which the provisions of this Act or of any license or rules thereunder, so far as those provisions affect the safety of any person, have been complied with.*

12. For the foregoing reasons and discussion above, the present Criminal Miscellaneous Application appears to be misconceived and devoid of legal merit. Accordingly, the same is hereby dismissed.

*JUDGE*

*Manzoor*