

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
Cr. Misc. Application No.S-1197 of 2017

Date	Order with signature of Judge
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- 1. For hearing of main case
- 2. For hearing of MA No.11971/2017

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Mr. Iftikhar Ali Arain, Advocate for the applicants  
Mr. Jamshed Ahmed Faiz, Advocate for respondent No.2  
Mr. Shafi Muhammad Mahar, DPG

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Date of hearing: 15.04.2019  
Date of order: 15.04.2019

**ORDER**

**ZAFAR AHMED RAJPUT, J:-** This Criminal Miscellaneous Application is directed against the order dated 14.12.2017 whereby learned 1<sup>st</sup> Additional Sessions Judge/Justice of Peace Ghotki while allowing Cr.Misc. Application No.2282/2017 (*Re: Ghous Bux v/s S.H.O. Police Station A-Section Ghotki and others*), filed by the respondent No.2, under section 22-A(6) (1) Cr.P.C, directed the S.H.O. Police Station A-Section Ghotki to record the statement of the applicant and if any cognizable offence is made out, the same may be incorporated into book of 154 Cr.P.C with further direction that no arrest of the proposed accused persons will be made until some evidence is collected against them.

2. Learned counsel for the applicants states that the respondent No.2 had filed Cr. Misc. Application No.2282/2017 malafidely against the applicants No. 1 to 6 who are Mufties, Huffaz and Pesh-Imam of Masjid Alsaheed while applicants No.7 is Jeweler. He also states that besides the respondent No.2, one Aslam Pervaiz also filed a Cr.Misc. Application No.2287/2017 which was allowed by the learned Ex-Officio Justice of Peace in similar fashion vide order, dated 14.12.2017, which was impugned by the applicants in Cr.Misc. Application No.1196/2017 and the same was allowed by this Court setting-aside the impugned order with

direction to learned Ex-Officio Justice of Peace to pass the order afresh after considering the report of police. Similarly in this case the S.H.O Police Station A-Section, Ghotki submitted his report dated 09.12.2017 alleging therein that no such incident had taken place but the said report was not considered by the said Ex-officio Justice of Peace while passing the impugned order.

3. On the other hand, learned counsel appearing for respondent No.2 supports the impugned order. However, learned DPG contends that since the report of the S.H.O concerned has not been discussed by the learned Ex-Officio Justice of Peace in his order and on the same footings this Court has already set-aside the order of similar nature passed by the Ex-Officio Justice of Peace in Cr.Misc. Application No.2287/2017 filed by one Aslam Pervaiz against the present applicants, this order is also liable to be set-aside with direction to Ex-Officio Justice of peace concerned to pass the same afresh.

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

5. It appears that the present applicant No.1 is Mufti, applicant No.2 is Hafiz and Pesh-Imam at Masjid Al-Saeed while the applicant No.4 is also a Mufti, against them and other applicants, respondent No.2 filed Cr.Misc. Application No.2282/2017 under section 22-A(6) (1) Cr.P.C which was allowed by the 1<sup>st</sup> Additional Sessions Judge/Justice of Peace, Ghotki by impugned order. A Criminal Miscellaneous Application of similar nature bearing No.2287/2017 was also field by one Aslam Pervaiz against the applicants and learned Ex-Officio Justice of Peace in both the applications after calling report from the S.H.O concerned passed the orders directing him to record statements of the applicants of the said criminal Miscellaneous Applications and in case a cognizable offence is made out to

incorporate the same into book of 154 Cr.P.C. It is an admitted position that in both the criminal miscellaneous applications the S.H.O. concerned in his reports specifically stated that no such incident had taken place, however the learned Ex-officio Justice of Peace without taking the reports of the S.H.O. into consideration passed the orders, which was impugned by the applicants before this Court in two criminal miscellaneous applications bearing No.S-1196/2017 and No.S-1197. Cr.Misc. Application No.S-1196/2017 has already been decided by my brother Irshad Ali Shah-J, vide order, dated 08.4.2019, setting-aside the impugned order and directing the Ex-officio Justice of peace to decide the criminal miscellaneous application of applicant Aslam Pervaiz afresh considering the report of police and since the present criminal miscellaneous application is also on the same footings, I, therefore, set-aside the impugned order and remand the matter to 1<sup>st</sup> Additional Sessions Judge / Ex-officio Justice of Peace, Ghotki with direction to pass the order afresh after considering the report of the S.H.O. concerned and providing chance of hearing to all the concerned.

The instant Criminal Miscellaneous Application stands disposed of accordingly.

JUDGE