

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Misc. Application No. S-786 of 2023

(Kashif Ali Vs. The Senior Superintendent of Police Naushahro Feroze & others)

Date	Order with signature of Judge
1. For Orders on MA No. 6606/2023 (Ex./ A) 2. For hearing of main case.	

ORDER.
11-04-2025.

Mr. Noor Hassan Malik Advocate for the applicant.
Mr. Achar Khan Gabol, Advocate for private respondents.
Syed Sardar Ali Shah Rizvi, Additional P.G for the State.
.....

Ali Haider ‘Ada’,J:- Through this application, the applicant assails the order Dated 23-10-2023, passed by learned Additional Sessions Judge/ Ex-Officio Justice of Peace Kandiaro in Crl. Misc. Application No. 3557 of 2023, as filed u/s 22-A & 22-B of Criminal Procedure Code, (Cr.P.C), by the applicant for registration of FIR against the private respondents, which was turned down by learned Ex-Officio Justice of Peace on the ground that there is disputed over landed property and proposed accused/ respondents claimed their title under the sale agreement.

2. Learned counsel for the applicant contends that the land in question originally belonged to one Farman Ali. Upon his death, the applicant, being the brother-in-law of the deceased, undertook the responsibility of managing the said land to ensure the livelihood of the widow and the minor daughter of the deceased. However, the private respondents, being cousins or near relatives of the deceased, driven by greed, unlawfully took the standing crop and have now started asserting ownership over the said land. Learned counsel further submits that the applicant had earlier moved an application under Section 145 Cr.PC before the competent forum, which was dismissed. He contends that a cognizable offence is clearly made out from the facts and circumstances of

the case, yet the learned Justice of Peace, without proper application of mind or appreciation of the material placed on record, dismissed the application filed by the applicant. He therefore prays for setting aside the impugned order and seeks a direction to the concerned Station House Officer to record the statement of the applicant and if, cognizable offence is disclosed, to incorporate the same in the relevant book under Section 154 Cr.PC.

3. On the other hand, learned counsel for the private respondents submits that, as per general agricultural practice, it is highly improbable that 100 mounds of cotton crop could be picked in a single day or even on a daily basis. He further contends that two FIRs, bearing Crime No. 107/2024 and 110/2024, have already been registered against the present applicant and others at Police Station Kandiaro, which are currently pending adjudication before the competent Court. Additionally, learned counsel has placed on record a copy of a civil suit, wherein it is specifically mentioned that the deceased, Farman Ali, had sold the subject land in the year 2021 and also handed over possession to the private respondents. He further submits that following the death of Farman Ali, his legal heirs began to dispute the sale transaction and have now denied the validity of the sale agreement. In light of these submissions, learned counsel prays for the dismissal of the instant application.

4. Learned Additional Prosecutor General submits that, as per contents of application u/s 22-A & 22-B Cr.PC and the material available on record, the provisions of Chapter XX-A, specifically Section 498-A PPC, which pertains to depriving a woman of her property are clearly attracted. He further contends that the pendency of the civil suit does not bar the

registration of a criminal case, as the same was instituted subsequent to the filing of the application u/s 22-A & 22-B Cr.PC. He submits that the civil proceedings are sub judice before the Senior Civil Judge, Mehrabpur and as per settled principles of law civil and criminal litigation may proceed simultaneously. Learned Additional PG also submits that the private respondents are presently in possession of the land in question and the version of the applicant, Kashif Ali, discloses a cognizable offence, therefore his statement ought to be recorded under Section 154 Cr.PC. He categorically states that he does not support the impugned order passed by the learned Justice of Peace. In support of his submissions, he places reliance on the report of the concerned police authorities, which in its concluding paragraphs, affirms the contents of the application filed by the applicant.

5. Heard arguments and perused the material available on record.

6. In order to carry out an objective and reasoned consideration, it is necessary to evaluate the case in its proper legal perspective. The record reveals that one Farman Ali, who was a cousin of the private respondents, was the owner of the land in question. He passed away on 12-07-2023, leaving behind a widow, namely Mst. Sanam (sister of the present applicant Kashif Ali) and a minor daughter aged about 4 to 5 years. After the demise of Farman Ali, the private respondents instituted a civil suit for specific performance in the year of 2024, against the legal heirs of the deceased, asserting that Farman Ali had, during his lifetime, sold the subject land to them and had also handed over its possession. On the contrary, the applicant, being the brother of the widow, had plea that following the death of Farman Ali, the private respondents, who are

cousins of the deceased, committed a cognizable offence on a specific date and time by unlawfully taking the cultivated crop from the land in question. It is further alleged that the private respondents continue to occupy the land illegally. Given that there is no adult male member in the household of the widow, the applicant stepped forward to protect the rights of the orphaned minor and the widow. It is pertinent to mention that two FIRs have been registered against the applicant at the instance of the private respondents and a civil suit is also pending regarding the transfer of mutation in favour of the respondents, based on an alleged agreement to sell executed by the deceased Farman Ali. The applicant had earlier filed an application under Section 145 Cr.PC against the private respondents, which was dismissed. Subsequently, the applicant approached the learned Justice of Peace seeking registration of an FIR; however, the same was dismissed through the impugned order.

7. After examining the above-mentioned facts, it is now appropriate to consider and review the relevant provisions of law applicable to the present case. Section 154 Cr.PC read with Rule 24.1 of the Police Rules, 1934, mandates that every piece of information relating to the commission of a cognizable offence shall be recorded. For the sake of reference, the relevant legal provisions are reproduced herein below:-

Section 154 – Information in cognizable cases --Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to 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.

Rule 24.1 – First Information how recorded. Section 154 and 155, Code of Criminal Procedure, provide that every information relating to an offence, whether cognizable or non-cognizable, shall be recorded in writing by the officer in charge of a police station.

8. The intent underlying Section 154 Cr.PC is that no complaint made by a citizen, disclosing the commission of a cognizable offence, should remain unrecorded, so far relevant rule as mentioned *supra* is concerned, this rule works in tandem with Section 154 Cr.PC, reinforcing the legal obligation of the Station House Officer to promptly record the information relating to cognizable offence.

9. In the case of *Syed Qamber Ali Shah v. Province of Sindh and others (2024 SCMR 1123)*, the Honourable Supreme Court of Pakistan elucidated the role of a **Justice of Peace** under Section 22-A Cr.PC, as emphasized that the function of Justice of Peace is not to conduct a detailed examination or fact-finding mission regarding the merits of the case instead has primary responsibility to determine whether the information presented discloses a cognizable offence, if, such an offence is indicated, the Justice of Peace is mandated to direct the police to record the FIR under Section 154 Cr.PC.

10. It is well settled principle of law there is no legal bar for appreciation of civil and criminal proceedings side by side. Reliance is placed on case of *Gulshan Bibi v. The State PLD 2016 Supreme Court 739*.

11. In the instant case, the application filed under Section 22-A & 22-B Cr.P.C. by the applicant *prima facie* discloses the commission of a cognizable offence; therefore, the Station House Officer Police Station

Kandiaro is bound to proceed, by recording the statement of applicant and initiating legal proceedings as mandated by law.

12. Resultantly, the instant application is hereby allowed and the impugned order passed by the learned Additional Sessions Judge / Ex-Officio Justice of Peace, Kandiaro, is set aside. It is pertinent to mention that the mere registration of an FIR does not obligate the Investigating Officer to arrest the accused; such arrest must be based on sufficient material or tangible evidence, justifying such action in accordance with law.

J U D G E

Nasim/P.A