

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Miscellaneous Application No.S-73 of 2025

Applicant: Qurban Ali s/o Saeedullah Mari
Through Mr. Abdul Hafeez Mari advocate.

Respondents: 1. Additional Sessions Judge-I/Ex-Officio Justice of Peace, Mirpurkhas.
2. SSP Mirpurkhas.
3. SHO P.S Phulladiyoon.
Official respondents through Mr. Ghulam Abbas Dalwani, DPG.

Proposed accused: 1. Abdul Qadir s/o Naseer Khan Mari.
Through Mr. Muhammad Saleem Kunbhar advocate.
2. One unknown accused (will be identified on seeing).

Date of hearing: 10.07.2025.

Date of Order: 10.07.2025.

ORDER

Jan Ali Junejo, J. – The present Criminal Miscellaneous Application under Section 561-A of the Code of Criminal Procedure, 1898 (Cr.P.C.) has been filed by the applicant, Qurban Ali, seeking to set aside the order dated March 17, 2025, passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Mirpurkhas, in CrI: Misc: Application No: 241/2025. The said application, filed under Sections 22-A & B Cr.P.C., seeking a direction for the registration of First Information Report (FIR) against the proposed accused, was dismissed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Mirpurkhas.

2. The applicant's case, as narrated in the original application before the Justice of Peace and reiterated herein, is that on August 6, 2024, at about 06:00 PM, while he was present at his 'Otaq' (a common sitting area) along with his brother Javed, the proposed accused, Abdul Qadir (armed with a lathi), and an unknown accused (holding a pistol), forcibly entered their 'Otaq' in a white Alto New Model car. It is alleged that Abdul Qadir used abusive language,

threatened to kill the applicant, and chambered his pistol, holding it to the head of the applicant's brother, Javed, threatening to murder him if he made any noise. Subsequently, Abdul Qadir allegedly inflicted lathi blows on the applicant's head, causing serious injuries and bleeding. The accused then made aerial fires and left the scene, issuing threats of dire consequences. The applicant claims to have approached Police Station Phulladiyoon and disclosed the cognizable offence, also obtaining a treatment letter. He subsequently sought medical treatment at Civil Hospital Phulladiyoon (RHC) where a medical certificate was issued. It is further stated that initially, a "faisla" (settlement) was attempted by community elders, including the father of the accused, Naseer Khan. However, it is alleged that the accused Abdul Qadir subsequently filed an application under Sections 22-A & B Cr.P.C. against the applicant and his brother Javed, which was dismissed by the 1st Additional Sessions Judge Mirpurkhas on January 23, 2025. Following this, the applicant approached the concerned Police Station again for lodging an FIR, but was allegedly given false hopes and ultimately refused on February 11, 2025, being advised to obtain a court order. The applicant further submits that the learned Additional Sessions Judge-I/MCTC Mirpurkhas had called for a report from the Senior Superintendent of Police (SSP), Mirpurkhas (Opponent No. 02), which was submitted in favour of the applicant. Despite this, the learned Additional Sessions Judge-I dismissed the application without proper perusal of the record. The learned Additional Sessions Judge-I, in the impugned order, noted that the applicant was referred to RHC Phulladiyoon by the police, and the MLO found four injuries, eventually issuing a final MLC on August 23, 2024, indicating offences under Sections 337-A(i), 337-F(i), and 337-L(ii) P.P.C. The order acknowledged the admitted enmity between the parties since August 6, 2024, and that the police had lodged Non-Cognizable (NC) report vide entry No. 17 at 1855 hours. The learned Justice of Peace concluded that *"Since the proceedings U/s 155 Cr.P.C are pending against the applicant, therefore, question of registering FIR, does not arise. Hence, this application stands disposed of accordingly"*.

3. The applicant's learned counsel argued that the present Criminal Miscellaneous Application was filed under Section 561-A of the Code of Criminal Procedure, 1898 (Cr.P.C.) to set aside an order dated March 17, 2025. This order, passed by the Additional Sessions Judge-I/Ex-Officio Justice of Peace, Mirpurkhas, had dismissed their application seeking the registration of a First Information Report (FIR) against the proposed accused. The counsel reiterated the applicant's case, stating that on August 6, 2024, at approximately 6:00 PM, the proposed accused, Abdul Qadir (armed with a lathi), and an unknown accused (holding a pistol), forcibly entered the applicant's 'Otaq' in a white Alto New Model car. It was alleged that Abdul Qadir used abusive language, threatened to kill the applicant and co accused held a chambered pistol to the head of the applicant's brother, Javed, threatening murder if he made any noise. Subsequently, Abdul Qadir allegedly inflicted lathi blows on the applicant's head, causing serious injuries and bleeding. The accused then fired aerial shots and left, issuing threats. The applicant's counsel stated that the applicant approached Police Station Phulladiyoon, disclosed the cognizable offense, and obtained a treatment letter. Medical treatment was sought at Civil Hospital Phulladiyoon (RHC), where a medical certificate was issued. Furthermore, the counsel submitted that the Additional Sessions Judge-I/MCTC Mirpurkhas had called for a report from the Senior Superintendent of Police (SSP), Mirpurkhas, which was submitted in the applicant's favor. Despite this, the Additional Sessions Judge-I dismissed the application without proper perusal of the record. The counsel asserted that the Justice of Peace is empowered by Sections 22-A and 22-B Cr.P.C. to direct FIR registration if a cognizable offense is disclosed and the police have failed to do so. Lastly, the learned counsel prayed for allowing the present Criminal Misc. Application.

4. Learned counsel for respondents and learned D.P.G., has vehemently opposed the present Criminal Miscellaneous Application and supported the impugned order passed by the learned Ex-Officio Justice of Peace. They argued

that the applicant has failed to demonstrate any illegality or irregularity in the impugned order warranting interference by this Court in its constitutional jurisdiction under Section 561-A Cr.P.C. He contended that the applicant's version, even if accepted at face value, does not disclose the commission of any cognizable offence of such gravity that would necessitate the registration of an FIR, especially when the police, after conducting an inquiry, registered an NC report and medical examination only confirmed minor injuries. He further submitted that the Justice of Peace rightly exercised discretion in light of the pending counter-proceedings under Section 155 Cr.P.C., reflecting a mala fide attempt on part of the applicant to misuse the process of law as a retaliatory measure. Therefore, he prayed that the present application is devoid of merit and be dismissed accordingly.

5. This Court has carefully perused the application, the impugned order, and the documents annexed therewith, and has considered the arguments advanced by the learned counsel for the parties. The primary issue to be determined is whether the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Mirpurkhas, was justified in dismissing the applicant's application for the registration of an FIR. It is a well-settled principle of law that Section 154, Cr.P.C. imposes a mandatory duty upon the Officer Incharge of a Police Station to register an FIR if the information received discloses the commission of a cognizable offence, regardless of whether the information is ultimately true or false. The scheme of law, as evident from a bare reading of the provision, requires the SHO to first determine whether the reported offence falls within the category of cognizable offences. If it does, the use of the word "*shall*" in Section 154, Cr.P.C. becomes operative, thereby obligating the SHO to reduce the information into writing and enter it in the FIR Register, as prescribed under Chapter XXIV of the Police Rules, 1934. Clause (i) of sub-section (6) of Section 22-A, Cr.P.C. provides a remedial forum where an SHO unlawfully refuses to register an FIR. However, the scope of powers under this

provision is limited. The Ex-officio Justice of the Peace is not vested with any authority to assess the truthfulness or credibility of the information provided, nor can he refuse or direct non-registration of an FIR in violation of Section 154, Cr.P.C. The only lawful direction that may be issued under Section 22-A(6)(i), Cr.P.C. is to instruct the SHO to register the case, if the information discloses a cognizable offence. Reference in this regard may be made to the Case of ***Muhammad Bashir v. Station House Officer, Okara Cantt*** (PLD 2007 SC 539), wherein Honourable Supreme Court has unequivocally held that: *“For the purposes of this petition, we are concerned, primarily, with clause (i) of the above quoted provisions of subsection (6) of the section 22-A of the Cr.P.C. These provisions create a new forum to rectify a wrong done by an Officer Incharge of a Police Station by refusing to register a criminal case i.e. not recording an F.I.R. We have held above that the provisions of section 154, Cr.P.C. command a S.H.O. to lodge an F.I.R. if the information conveyed to him disclosed the commission of a cognizable offence irrespective of the information being correct or incorrect. Undoing this wrong of non-registration of a criminal case would mean only an order to the S.H.O. to register the case. The provisions of the said subsection (6) of section 22-A, Cr.P.C. confer no additional powers on an Ex-officio Justice of the Peace to hold any enquiry to assess the credibility of such an information communicated for the purpose in question nor do the said provisions give any extra authority to the said Ex-officio Justice of the Peace to refuse registration or order non-registration' of an F.I.R. in violation of or beyond the mandatory requirements of section 154, Cr.P.C.”*

6. In the instant case, the applicant specifically alleged not only physical assault but also house trespass, criminal intimidation (issuing murderous threats), and use of abusive language. While the learned Justice of Peace focused solely on the nature of injuries as per the MLC (which categorize some injuries under offences that may be non-cognizable without further aggravating factors), it is crucial to note that house trespass with the intent to commit an offence, or criminal intimidation involving threats to cause death or grievous

hurt, are indeed cognizable offences under the Pakistan Penal Code (PPC). Section 448 PPC deals with house-trespass, which is a cognizable offence. Section 506(2), P.P.C., which deals with criminal intimidation involving threats to cause death, The applicant's detailed account clearly describes elements of these offences. The police report, as admitted by the learned Justice of Peace in the impugned order and further elaborated in the grounds of this application, indicated that a quarrel took place and the applicant sustained injuries. The report also mentioned an NC report being lodged. However, the mere lodging of an NC report for a minor aspect of an incident does not negate the requirement to register an FIR if other cognizable offences are disclosed. The critical error in the impugned order lies in the reasoning that "*Since the proceedings U/s 155 Cr.P.C are pending against the applicant, therefore, question of registering FIR, does not arise*". Section 155 Cr.P.C. deals with information as to non-cognizable cases and investigation of such cases. The pendency of proceedings under Section 155 Cr.P.C. against the applicant (presumably a complaint filed by the proposed accused) is wholly irrelevant to the obligation of the police to register an FIR when information disclosing cognizable offences is presented by the applicant. The two are distinct matters. The police cannot refuse to register a cognizable offence simply because a non-cognizable report or a private complaint has been lodged by the other party. Each complaint must be dealt with on its own merits, especially when it involves cognizable offences. Furthermore, the learned Justice of Peace failed to consider the specific allegations of house trespass and criminal intimidation (murderous threats), which are distinct from the physical injuries. Even if the physical injuries, taken in isolation, might be categorized under sections that can be non-cognizable, the cumulative allegations clearly point towards the commission of cognizable offences. The mandate of Sections 22-A and 22-B Cr.P.C. empowers the Justice of Peace to direct the police to register an FIR if a cognizable offence is disclosed and the police have failed to do so. The impugned order also appears to be non-speaking in its dismissal of the other serious allegations made by the

applicant, such as house trespass and criminal intimidation, focusing narrowly on the nature of the physical injuries as categorized in the MLC. In light of the above, it is clear that the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Mirpurkhas, misapplied the law by failing to appreciate that the applicant's complaint disclosed various cognizable offences, and by erroneously linking the registration of the FIR to the pendency of proceedings under Section 155 Cr.P.C. against the applicant.

7. For the foregoing reasons, this Court is of the considered view that the impugned order dated March 17, 2025, passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Mirpurkhas, suffers from legal infirmities and cannot be sustained. The applicant has made out a prima facie case for the registration of an FIR, disclosing cognizable offences. It is the police's duty to register the FIR and then proceed with the investigation in accordance with the law. Accordingly, the present Criminal Miscellaneous Application is allowed. The impugned order dated March 17, 2025, passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Mirpurkhas, in Criminal Misc: Application No: 241/2025, is hereby set aside. In consequence thereof, the application of the applicant, Qurban Ali, is allowed. The Respondent No.03, Station House Officer, Police Station Phulladiyoon, is directed to:

- ***Record the statement of the applicant, Qurban Ali, under Section 154, Cr.P.C.; and***

It is clarified that this direction does not amount to a determination of guilt or innocence of any individual, which shall be decided after proper investigation and, if necessary, trial. The Respondent No.3, or any other officer assigned to conduct the investigation, is expected to carry it out fairly, impartially, and independently, without being influenced by the mere registration of the FIR.

JUDGE

