

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.D-3299 of 2016

PRESENT:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Rasheed Ahmed Soomro

For Katcha Peshi.

24.02.2017.

Mr. Wahid Bux Aajiz Laghari, Advocate for petitioners.
M/s Allah Bachayo Soomro, A.A.G and Syed Meeral Shah D.P.G. for
the State.

---.

O R D E R

RASHEED AHMED SOOMRO,J:- Petitioner Bacho Laghari has called in question order dated 22.11.2016 passed by learned 2nd Additional Sessions Judge/Ex-Officio Justice of Peace, Tando Muhammad Khan in Criminal Miscellaneous Application No. 253/2016 on application under Section 22-A & B Cr.P.C, whereby application submitted for seeking directions to the S.H.O for registration of the F.I.R. has been dismissed.

Notices were issued to the A.A.G as well as A.P.G.

Learned Counsel for the petitioner submits that S.H.O was duty bound to register the F.I.R. as cognizable offence has been committed by the proposed accused SIP Sher Zaman, I/C DIB Tando Muhammad Khan, 2. ASI Raja Shah, I/C 15 Madadgar Tando Muhammad Khan and 3. Fayyaz Ali Bhatti posted in DIB Tando Muhammad Khan. It is argued that S.H.O concerned was duty bound to register the F.I.R. but he has failed to discharge his duty.

Learned D.P.G argued that learned 2nd Additional Sessions Judge/Ex-Officio Justice of Peace has assigned sound reasons for dismissal of the application. He also submitted that alternate remedy of filing the Direct Complaint is available to the petitioner. In support of his contention, he has relied upon the case reported as 2005

SCMR 951, HABIBULLAH versus POLITICAL ASSISTANT, DERA GHAZI KHAN and others.

After hearing the learned Counsel for the parties we have carefully perused the impugned order dated 22.11.2016. Learned 2nd Additional Sessions Judge/Ex-Officio Justice of Peace, Tando Muhammad Khan has dismissed the application filed by the petitioner mainly for the following reasons:-

“ It is observed that this application has been filed in order to save skin from the above said cases registered against his son and his brother Muhammad Ismail, who are nominated in above FIRs.

It has been held in the case of Jamil Ahmed Butt and another Vs. The State through Prosecutor-General Sindh, and 2-others, reported in 2014 P.Cr.L.J 1093 that;

“There are instance of misuse of provisions of section 22-A CrPC and, therefore, it is the duty of the court that such misuse should be taken care of and such application should not be lightly entertain in a mechanical manner for direction to the police to register a statement of complainant and start prosecuting the alleged accused persons. In forming this view, I find support from the judgment reported as Imtiaz Ahmed Cheema V. SHO , Police station Dharki, Ghotki (2010 YLR 189). In this case his Lordship Mr. Justice Amir Hani Muslim (as he then was judge of this court) has held as follows:-

“The provision of section 22-A Cr.P.C have been misused in a number of cases. The wisdom of legislature was not that any person who in discharging of duties takes an action against the accused would be subjected to harassment by invoking provision, of section 22-A Cr.P.C. The courts in mechanical manner should not allow application under section 22-A & B and should apply its mind as to whether the applicant has approached the court with clean hands or it is tainted with malice. Unless such practice is discharged, it would have far-reaching effect on the police officials who in discharge of duties take actions against them. The law has to be interpreted in a manner that its protection extends to everyone. I am, therefore, of the opinion that order of the Sessions Judge was passed in mechanical manner and the applicant approaching the Sessions Judge. As per the record reflects that it was tainted with malice”.

Keeping in view above discussion, the manner and nature of the offence shown in above said alleged offence, gets inference of malice as such, application has been filed in order to save skin from above said case registered against his son namely Punooh Laghari, he was/is nominated in number of above FIRs, in this context, I am of the view that all the powers vested authority for dispensation of justice the issuance of direction for registration of case would be an exercise in aid of justice but are never meant to be exercised in aid of injustice. Courts are never supposed to shut their eyes from other aspect of the case and to pass orders for registration of case on false report of any complaint, hence this application is motivated and outcome of malice, I therefore, find no merit in the application same is hereby dismissed.”

Learned D.P.G argued that impugned order is based upon sound reasons, he has relied upon the case of HABIBULLAH versus POLITICAL ASSISTANT, DERA GHAZI KHAN and others (2005 SCMR 951) in which the Honourable Supreme Court has held as under:-

“The petitioner could not point out any legal or factual infirmity with the impugned order so also could not controvert what has been stated in the report and para-wise comments furnished by respondent No.1. The High Court was under no obligation to issue direction for registration of F.I.R as the matter with regard to the issuance of direction for registration of case entirely rests with the Court and we have not been pointed out that the discretion of refusing to issue such direction was improperly exercised. The impugned judgment has also not shut the door of the petitioner to initiate criminal proceedings by lodging complaint and this Court normally would not interfere in the exercise of discretionary Constitutional jurisdiction of High Court except in case of grave injustice. It may be observed that filing of private complaint could provide an equal adequate relief to the petitioner because he could lead the entire evidence himself before the trial Court and his grievance could be adequately redressed considering also the fact that respondent/S.H.O., who in the report and para-wise comments has mentioned adverse to the petitioner’s case, therefore, it could not be expected from the concerned S.H.O. that he would carry independent and impartial investigation in the case. It may be stated that under the provisions of Article 199 of the Constitution of Islamic Republic of Pakistan it was not obligatory for the High Court to issue writ in each case irrespective of the facts and circumstances which could fall for exercise of judicial restraint in turning down the request for registration of

F.I.R. in view of the conduct of the party besides considering that adequate remedy in the form of private complaint being available to the petitioner. Reference may be made to decision of this Court (1) Muhammad Ijaz v. S.H.O Police station, Rajana, Faisalabad 1979 SCMR 490 and other reported case (ii) Muhammad Hassan v. S.S.P., Faisalabad and others 1992 PcR.lj 2307 (III) Muhammad Suleman v. Station House Officer, Police Station Civil Lines, Gujranwala 1994 PCr.LJ 2416 (iv) Zafar Iqbal and another v. Inspector-General of Police and others 1994 MLD 374 (v) Haji Muhammad Yaqoob v. S.P. Vehari and others 1997 PCr.LJ 876 (vi) Altaf Hussain v. Government of Sindh through Home Secretary Government of Sindh and another PLD 1997 Kar. 600 (vii) Muhammad Tufail alias Yaseen v. D.S.P. Pattoki and others 1998 PCr.LJ 1521(viii) Dr. Kashir Rahim v. S.P. Multan and others 1998 MLD 495, and (ix) Javed Tariq Khan v. Ahmed Raza Khan and others 1999 MLD 3230.”

From the perusal of the petition it transpired that petitioner seeks registration of the F.I.R. against the police officials who had already refused the petitioner to register his F.I.R. and apparently petitioner is aggrieved by police. In the case of Habibullah Supra cited by learned D.P.G it is held that adequate remedy of filing the direct complaint is available to the petitioner. Therefore, for above stated reasons we hold that this is not a fit case to issue directions to the S.H.O P.S Tando Muhammad Khan to record statement of the petitioner under Section 154 Cr.P.C.

Therefore, petition is dismissed for the above reasons. However, petitioner would be at liberty to file the direct complaint if advised so.

JUDGE

JUDGE