

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi

Mr. Justice Zulfiqar Ahmed Khan

C.P No.D-1136 of 2017

Wazir Ali PETITIONER.

Vs.

Province of Sindh and others RESPONDENTS.

1. For Katcha Peshi.
2. For hearing of MA 5126/17

10.05.2017.

Mr. Bhagwan Das Bheel, Advocate for petitioner.

Mr. Ashfaque Nabi Kazi, Assistant A.G.

None present for respondent No.4.

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O R D E R

ABDUL MAALIK GADDI, J –This writ petition is directed against the order dated 22.04.2017, passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Mirpurkhas in Criminal Miscellaneous Application No.256 / 2017 filed by respondent No.4 (Mst. Amir Zadi), whereby the application under Section 22-A Cr.P.C filed by her for registration of case against petitioner (Wazir Ali) was accepted.

2. Facts necessary for disposal of this petition are that respondent No.4 had filed an application under Section 22-A Cr.P.C before the learned Sessions Judge/Ex-Officio Justice of Peace, Mirpurkhas for registration of F.I.R. against the petitioner and other police officials on the ground that on 18.04.2017 when she was available in her house alongwith her sons, all of sudden at about 01:00 a.m (night) the petitioner alongwith other police officials entered into her house and maltreated her and her sons and after damaging the household articles took away her three sons out of them two were released subsequently whereas her son Allahdad is still missing. In support of her contention she has filed photocopies of Daily "Walk" and "Sind Express" Sindhi Newspapers dated 20.04.2017. According to respondent No.4 (Mst. Ameer Zadi) she approached to the high officials of the police for recovery of her missing son but the concerned authorities had paid no heed to it.

3. It is stated by the learned Counsel for petitioner that in fact no offence at all has been committed by the petitioner but the respondent No.4 has managed a false story in order to harass and humiliate the petitioner and other police officials. He further submits that the son of respondent No.4 namely Allahdad is criminal, notorious and involved in number of criminal cases and this fact has been mentioned by the S.H.O Police Station Gharibabad in his report submitted to the learned Sessions Judge and the learned Sessions Judge did not pay any heed to consider it and passed the impugned order which is not sustainable in law and is liable to be set aside. In support of his arguments learned Counsel for the petitioner has also reiterated the facts and grounds of the memo of petition and has relied upon the

case law reported in the case of (1) Sherin Zada and 8 others v. The State and 4 others (2015 MLD 386), (2) Nazir Ahmed v. Station House Officer, Police Station Adil Pur, District Ghotki and another (2015 P.Cr.L.J 846), (3) Muhammad Mujahid Iqbal v. Additional Sessions Judge, Rajanpur and 10 others (2009 YLR 330), and (4) Gul Waiz and others v. Zuhra Bibi and others (2010 P.Cr.L.J 45).

4. S.H.O P.S Gharibabad has filed his parawise comments which are taken on record. In the comments he has denied the allegations whereas other police officials have not filed parawise comments.

5. Learned Assistant A.G has supported the impugned order by stating that the learned Ex-Officio Justice of Peace has passed the impugned order after proper appreciation of law and facts available before him. According to him, it is a case of missing son of Mst. Ameer Zadi who still has not been recovered, therefore, according to him learned Ex-Officio Justice of Peace has rightly directed the S.H.O P.S Gharibabad to record statement of respondent No.4 and then to incorporate the same into 154/155 Cr.P.C book as the case may be.

6. We have carefully heard the arguments of learned Counsel appearing for the parties, perused the application under section 22-A and 22-B, Cr.P.C, report of the police, impugned order and the case law.

7. It is the case of Mst. Ameer Zadi that on 18.04.2017 petitioner alongwith other police officials entered in her house forcibly in the midnight and after damaging the household articles took away her three sons and thereafter her two sons were released, whereas, her son Allahdad is still missing and his whereabouts are still not known,

as such, she filed application under Section 22-A Cr.P.C against the police officials including petitioner before the learned Sessions Judge/Ex-Officio Justice of Peace, Mirpurkhas for registration of the case. Learned Sessions Judge after perusing the material placed before him passed the impugned order.

8. No doubt, it is legal duty of the police under Section 154 Cr.P.C to register a criminal case whenever commission of a cognizable offence is reported to it and if police is not registering a case regarding cognizable offence, an Ex-Officio Justice of Peace can issue appropriate direction under Section 22-A(6)(i), Cr.P.C to the concerned police authorities to register a criminal case in respect of complainant's allegations but here in this case it is alleged that complainant approached the police officials about the incident as alleged in her application but concerned authorities have not redressed her grievance.

9. It is alleged by Mst. Ameer Zadi that the proposed accused have taken away her son Allahdad and now have caused his disappearance. By alleging so, she sought for direction against the police to record her F.I.R. As per record, S.H.O P.S Gharibabad in his report has stated that son of the complainant is having criminal record and is absconding. Under these circumstances, learned Ex-Officio Justice of Peace, Mirpurkhas has passed the impugned order directing the S.H.O P.S Gharibabad to record the statement of Mst. Ameer Zadi and if cognizable offence is made out then case be registered and after registration of F.I.R and during investigation if the allegations found to be false then she could be prosecuted in accordance with law. While passing this order we are supported by

the case of Muhammad Bashir v. Station House Officer Okara Cantt. and others (PLD 2007 Supreme Court 539).

10. We have perused the impugned order which appears to have been passed after exercising of proper jurisdiction in given circumstances of the case, therefore, no illegality in the impugned order is made out. We, therefore, maintain the same. Consequently, this petition merits no consideration which is dismissed alongwith listed application.

11. The case law cited by the learned counsel for petitioner has been considered but the facts of the cited case law is distinguishable to the facts of the present case, therefore, of no help to the petitioner.

12. This petition was dismissed by our short order passed today in open court in the early part of the day after hearing the parties' Counsel and these are the detailed reasons for the same.

13. Copy of this order be sent to Senior Superintendent of Police, Mirpurkhas for information and further action in accordance with law.

JUDGE

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