

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P.NO.S-672 of 2015

DATE ORDER WITH SIGNATURE OF JUDGE(S)

Date of Hearing : 27.02.2018.

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Mr. Mumtaz Ahmed Lashari, Advocate for petitioner.
None present for the respondents.

ORDER

AGHA FAISAL, J: The present petition was instituted in the year 2014 as Criminal Miscellaneous Application No.S-537 of 2014.

2. This matter was subsequently converted into a writ petition, vide Order dated 13.07.2015, whereafter it was numbered as stated in the title hereof. The relief sought in the present petition is reproduced herein below:

- “(a) It is therefore prayed that this Honourable Court may be pleased to set aside the Impugned Order dated 12-08-2014 passed by the learned 3rd Additional Sessions Judge & Ex-Officio Justice of Peace Shaheed Benazirabad.*
- “(b) To direct the respondent No.2 not to lodge the false FIR against the above named applicant and other co-accused.*
- “(c) Any other relief which this Honourable Court deems, fit, just and proper may also be awarded in the circumstances of the case.”*

3. The present petition assails the order dated 12.08.2014 (hereinafter referred to as the “Impugned Order”) passed by the learned 3rd Additional Sessions Judge Shaheed Benazirabad (hereinafter referred to as the “Trial

Court”) and the relevant content of the Impugned Order is reproduced herein below:

“It is mandatory duty of the police officer to record the statement of informer and from the perusal of statement if, cognizable offence is made he should act in accordance with law. It has been held in 2010 P.Cr.L.J 296 that Justice of Peace can pass order with direction to SHO concerned to record the statement and proceed further according to law. SHO should record the statement U/S 154 Cr.P.C of complainant and hand over copy of FIR to petitioner without any delay. Looking to the facts and circumstances of the case, the SHO Mari Jalbani is directed to entertain the complaint of applicant and record her statement; if cognizable offence is made out he should take action in accordance with law. Instant application is hereby disposed of accordingly.”

4. The learned counsel for the petitioner stated that the Impugned Order is *void ab-initio* on the basis of following grounds:

- i. The constitutional rights of the petitioner to be dealt with in accordance with law and hence provisions of Article 4 of the Constitution have been violated.
- ii. The learned counsel stated that the Impugned Order is violative of Article 9 of the Constitution as it encroaches upon the security of the petitioner.
- iii. The learned counsel further stated that the Impugned Order was also in derogation of the Article 14 of the Constitution, which protects the dignity of the petitioner.

5. It was the contention of the learned counsel for the petitioner that the Impugned Order was *prima facie* in violation of the fundamental rights of the petitioner hence it was imperative that the same be set aside by this Court.

6. The role and powers of an Ex-officio Justice of Peace under section 22-A Cr.P.C have been conclusively determined by the august Supreme Court of Pakistan in the case of YOUNIS ABBAS AND OTHERS V.

ADDITIONAL SESSIONS JUDGE, CHAKWAL AND OTHERS, reported in PLD 2016 SUPREME COURT 581, the pertinent passages wherefrom are reproduced herein below:

“11. The duties, the Justice of Peace performs, are exclusive administrative, preventive and ministerial as is evident from sub-sections (1), (2), (3), (4) and (5) of Section 22-A and 22-B of the Cr.P.C. Such duties have not been a subject matter of controversy nor have they ever been caviled at by anybody. Controversy emerged with the insertion of subsection (6) in Section 22-A and Section 25 of the Cr.P.C. when Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-Officio Justice of Peace. The functions, the Ex-Officio Justice of Peace perform, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with thing mechanically. His functions as described in Clauses (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.P.C., are quasi-judicial as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind. Every lis before him demands discretion and judgment. Functions so performed cannot be termed as executive, administrative or ministerial on any account. We thus don't agree with the ratio of the judgments rendered in the cases of Khizar Hayat and others v. Inspector General of Police (Punjab), Lahore and others (PLD 2005 Lah. 470) Muhammad Ali v. Additional I.G. (PLD 2015 SC 753), inasmuch as it holds that the functions performed by the Ex-Officio Justice of Peace are executive, administrative or ministerial.

12. Now we are to see whether the insertion of this provision has advanced and hastened or obstructed and delayed dispensation of justice. A brief look into the past and its comparison with the present would answer the question. In the past if a person aggrieved went to report the commission of a cognizable case his report was not registered. If he had means he could file a petition for issuance of an appropriate writ in the respective High Court. By the time his petition matured for being heard and decided in his favour, a great deal of evidence was either lost or destroyed. The relief so granted was almost equal to the relief declined barring exceptions, which were not more than a few. With the insertion of subsection (6), an aggrieved person could get in time at his doorstep what he could not get despite approaching the High Court. As against that, grievance of a person having no means and resources went unattended and un-redressed altogether. Wealthy, well off and well connected people exploited this situation. They committed the crime and yet went scot-free. But ever since the day the Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-Officio Justice of Peace, no rich and well off person could break the law with impunity or obstruct

the person oppressed and assaulted from seeking remedy at his doorstep. If the SHO of a Police Station, owing to the influence and affluence of any, refused to register a case, resort could be had to the Ex-Officio Justice of Peace for the issuance of an appropriate order or direction by moving a simple application. Aggrieved persons, who could not afford the luxury of engaging a lawyer in the past for filing a writ petition in a High Court to get the desired relief, could seek an order or direction from the Ex-Officio Justice of Peace without spending much. He could complain against the neglect, failure or excess committed by the Police Authorities in relation to its functions and duties which in the past was no less than living in Rome and fighting with the Pope.

13. Transfer of investigation from one police officer to another was, no doubt, in vogue but it was done only at the bidding of wealthy and well off people. A poor man, whose entry in the well guarded offices of the high-ranking police officers was well nigh impossible, could never dream of getting such relief even in the wildest of his dreams, Article 18(6) of the Police Order also provides a remedy for change of investigation but it, in a set up where the police do not have operational independence, is illusory and inadequate. It is more so where even the high-ranking police officer are posted and transferred with the intervention of the class wielding influence inside and outside the lounges of power. In this state of despair, a legislation establishing equality before the law and breaking the idols of influence and affluence was desperately needed. The legislature rose to the occasion, enacted subsection(6) of Sections 22-A and 25 of the Cr.P.C and enabled the poor and downtrodden to see eye to eye with those who infringed their rights with impunity in the past. We need not to discuss how the Justice of Peace acts or acted in the United Kingdom, the United States of America or the Union of India. We are to see whether this insertion, giving powers to the Ex-Officio Justice of Peace, has harmed the people by and large or empowered them, who on account of economic constraints and compulsions resigned to their unhappy lot. Yes, it is not heal-all as was contended by one of the learned Advocates General because the side effects have added to the backlog which is already mountain-high in the District Courts as well as the High Courts. But these side effects like those of antibiotics have to be borne by the patients for their rapid recovery. Needless to say that someone has to travel a mile extra to restore balance of the society.

7. In a Divisional Bench judgment of this Court in the case of SYEDA INAMMAH ALI AND 5 OTHERS V. MUHAMMAD YAQOOB AND 3 OTHERS, reported as 2017 MLD 806, it was held as follows:

“8. The insertion of subsection (6) in Section 22-A and Section 25 of the Cr.P.C. whereby Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-Officio Justice of Peace, has advanced and hastened or obstructed and delayed dispensation of justice. The object of insertion of subsection (6) was that an aggrieved person could get remedy in time at his doorstep earlier what he could not get despite approaching the High Court. The grievance of a person having no means and resources went unattended and un-redressed altogether. Wealthy, well off and well connected people exploited this situation. They committed the crime and yet went scot-free. But ever since the day the Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-Officio Justice of Peace, no rich and well off person could break the law with impunity or obstruct the person oppressed and assaulted from seeking remedy at his doorstep. If the SHO of a Police Station, owing to the influence and affluence of any, refused to register a case, resort could be had to the Ex-Officio Justice of Peace for the issuance of an appropriate order or direction. Aggrieved persons, who could not afford the luxury of engaging a lawyer in the past for filing a writ petition in a High Court to get the desired relief, could seek an order or direction from the Ex-Officio Justice of Peace without spending much. He could complain against the neglect, failure or excess committed by the Police Authorities in relation to its functions and duties which in the past was no less than living in Rome and fighting with the Pope. Reliance is placed on the most recent larger Bench case of Younus Abbas and others v. Additional Sessions Judge, Chakwal and others (PLD 2016 Supreme Court 581).”

8. In a Divisional Bench judgment of the Honourable Lahore High Court in the case of MALIK SOHAIL ASLAM V. SUPERINTENDENT OF POLICE (OPERATION), LAHORE AND 3 OTHERS, reported as 2017 YLR 1548, it was held as follows:

“Through this Intra Court Appeal in terms of Section 3 of the Law Reforms Ordinance, 1972, Malik SohailAslam appellant has assailed the legality of order dated 16.9.2015 passed by the learned Single Judge-in-Chambers, whereby Writ Petition No.14986 of 2014 filed by respondent No.4 was allowed.

2. Succinctly the facts leading to this Intra-Court-appeal are that the appellant lodged an application under sections 22-A and 22-B of Cr.P.C before the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Lahore seeking registration of case against respondent No.4. The learned Additional Sessions Judge/Ex-Officio Justice of Peace, Lahore while entertaining the petition under Sections 22-A and 22-B

of Cr.P.C, requisitioned the comments of SHO concerned for 8.5.2014. on the said date learned Additional Sessions Judge/Ex-Officio Justice of Peace, Lahore disposed of the said petition in the following manner.

“3.The contention of the petitioner is that the proposed accused issued two cheques in his favour which was subsequently dishonored by the concerned Bank on presentation copies of the same attached with instant petition. The documentary evidence in the form of copy of dishonor cheque and its slip is available with the file. Prima facie cognizable offence is made out. In these circumstances, I while exercising powers vested in my under Sections 22-A and 22-B, Cr.P.C. directed the petitioner to approach the SHO concerned and produce before him the original dishonor cheque and slip whereas SHO concerned is directed to record the statement of the petitioner while satisfying the mandatory requirement of section 154, Cr.P.C. and due action under the law would follow.

4. In view of direction given above, this petition stands disposed of.”

3. Respondent No.4 being aggrieved challenged the vires of above said order through Writ Petition No.14986/2014 which was allowed by the learned Single Judge-in-Chambers vide Impugned Order dated 16.9.2015 in the following manner.

“3.After hearing the learned counsel for the parties and perusing the record, it is noticed that the petitioner and Dr. Farhan established a medical center under the name and style of “The Mall Medical Center” and respondent No.2 had invested the amount on monthly profit basis. This fact is evident from “Mutual Investment Deed” executed between the parties. According to the petitioner the respondent had also invested Rs.700,000/- in the business of the petitioner and in lieu of that amount cheque valuing Rs.700,000/- was issued in favour of the respondent as guarantee, which he got returned from the respondent after payment of that amount. The respondent has not stated about cheque of Rs.700,000/- in his application, therefore, the stance taken by the petitioner seems to be plausible. Learned Ex-Officio Justice of Peace while issuing the direction against the petitioner did not appreciate the afore-noted facts thus the Impugned Order requires interference of this Court.”

4. We have heard the arguments advanced by the learned counsel for the parties as well as learned Law Officer and have perused the record minutely.

5. With reference to the arguments advanced by the learned counsel for the appellant, it is pertinent to mention that the Superior Courts in Pakistan have travelled a long way in

developing and interpreting the law of procedure viz-a-viz role and functions of the Ex-Officio Justice of Peace in respect of the complaints regarding failure of the police to register a case. Needless to mention that in terms of section 22-A(6), Cr.P.C, the learned Ex-Officio Justice of Peace may issue appropriate directions to Police Authorities concerned on a complaint regarding non-registration of criminal case. There is no cavil to the proposition that the word "may" used in the above noted provision confers discretionary power upon Ex-Officio Justice of Peace in this regard. No doubt learned Ex-Officio Justice of Peace is obliged to exercise powers vested in him under the law in a judicious manner with application of mind taking into consideration the facts and material of the case. Bare perusal of application constitutes commission of cognizable offence, but the concerned SHO has not registered a case which constrained the appellant to file a petition under sections 22-A and 22-B, Cr.P.C, before the learned Ex-Officio Justice of Peace, who has issued a direction for registration of case against respondent No.4.

6. Moreover, perusal of the application which has been made to the SHO concerned with respect of the dishonor of the cheques is sufficient to constitute an offence under Section 489-F, P.P.C as the liability or obligation has accrued against the cheques. There is no cavil to this proposition that if the liability is accrued and the cheques have been issued for the fulfillment of an obligation, then the case should have been registered.

7. Besides above, the FIR is a pertinent document in the criminal law procedure and its main object is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps to trace and to bring to book the guilty.

8. In the attending circumstances, the learned Ex-Officio Justice of Peace has rightly abided the celebrated judgment of Honourable Supreme Court of Pakistan delivered in case title "Muhammad Bashir v. Station House Officer, OkaraCantt and others" (PLD 2007 Supreme Court 539) wherein, the following ration has been decided:--

"No authority vested with an Officer Incharge of a Police Station or with anyone else to hold any inquiry into the correctness or otherwise of the information which was conveyed to the S.H.O. for the purpose of recording of an FIR. Any FIR registered after such an exercise i.e. determination of the truth or falsity of the information conveyed to the S.H.O, would get hit by the provisions of section 162, Cr.P.C. Existence of an FIR was no condition precedent for holding of an investigation nor was the same a prerequisite for the arrest of a person concerned with the commission of a cognizable offence; nor does the recording of an FIR mean that the S.H.O. or a police officer deputed by him was obliged to

investigate the case or to go through the whole length of investigation of the case mentioned therein or that any accused person nominated therein must be arrested.”

9. *We are unanimous in our view that admittedly the cheques were dishonoured and dishonoured clips are attached with the record but this material aspect perhaps escaped notice of the learned Single Judge-in-Chambers. Guidance in this respect can also be sought from “Younas Abbas and others v. Additional Sessions Judge, Chakwal and others” (PLD 2016 Supreme Court 581).*

10. *For the reasons recorded herein above, this appeal is allowed, the order dated 16.9.2015 passed by the learned Single Judge-in-Chambers is set aside and the order dated 8.5.2014 passed by the learned Ex-Officio Justice of Peace is up-held.”*

9. A Divisional Bench judgment of the Honourable Peshawar High Court in the case of MALIK SOHAIL ASLAM V. SUPERINTENDENT OF POLICE (OPERATION), LAHORE AND 3 OTHERS, reported as 2017 YLR 1548, dealt with similar issues, and maintained as follows:

“A bare perusal of the above provisions of law would show that in the first place of Ex-Officio Justice of Peace is empowered to issue appropriate directions to the police authorities concerned on a complaint regarding non-registration of criminal case; which, indeed, could be either under section 154 in a cognizable case leading to registration of FIR or investigation/inquiry under section 157, Cr.P.C. prior to registration of FIR under section 154, Cr.P.C; but only in case when there is mere suspicion of 157, Cr.P.C. prior to registration of FIR under section 154, Cr.P.C; but only in case when there is mere suspicion of commission of a cognizable offence. The proceedings adopted by the police in such a case, ordinarily, is to enter the report in the daily diary of the police station; and then convert the same into FIR if after investigation/inquiry under section 157, Cr.P.C., the police arrive at the conclusion that cognizable offence did not take place. However, in either of the case, and even in a case of cognizable offence, the law vests an absolute discretion in a police officer under section 54, Cr.P.C. to arrest a person accused of commission of a cognizable offence without a warrant or, conversely dispense with arrest of such a person; which, in any case, is not an essential pre-requisite for conduct of investigation into a cognizable case under section 156, Cr.P.C. or into a case where cognizable offence is only suspected, under section 157, Cr.P.C.

7. *Adverting to the merits of this case, in the light of aforementioned provisions of law, the allegation and counter allegations of the parties against each other in view of their visible acrimonious relations certainly need prior probe/inquiry before the opposite party is put to undue hardships. Moreover, though making an observation with regard to contents of the petition under section 22, Cr.P.C. constituting an offence of assault, torture, abuse of authority, in his Impugned Order dated 30.10.2015, the learned Additional Sessions Judge-II/Ex-Officio Justice of Peace, Haripur, stopped short of issuance of a direction for registration of FIR under the sections of law mentioned in the petition and left the scope open for investigation while making observation that "it is yet to be looked into as to who are the culprits in case the allegations of commission of offence is found correct during investigation."*

8. *Therefore, no illegality or legal infirmity is discernible from the Impugned Order of the learned Justice of the Peace to warrant interference by this Court in its constitutional jurisdiction. However, we feel constrained, in view of the above quoted provisions of law, to observe that it is not incumbent upon the police to embark on the harassment and arrest of a person against whom even allegations of commission of a cognizable offence is leveled, simply because that is neither the requirement of law nor a *slin qua non* for a just and fair investigation. We may further observe that every civil/government servant, especially those enjoying the powers of curtailing the liberty and freedom of citizens, to invariably act in accordance with the letter and spirit of the constitution and laws of the country, besides conducting themselves in a reasonable and responsible manner not only to uphold rule of law but also to maintain harmony in the society in the interest of peace and law and order; which are, indeed, desperate need of the hour.*

9. *The writ petition is disposed of accordingly."*

10. The aforesaid case law clearly dilates upon the powers available to an Ex-officio Justice of Peace under section 22-A & B of the Cr.P.C.

11. It is observed that the Impugned Order does not transgress upon any fundamental right of the petitioner, including those enshrined in Articles 4, 9 and 14 of the Constitution. On the contrary the Impugned Order merely requires the concerned law enforcement officer to entertain the complainant, record her statement and if any cognizable offence is

made out therein then requires that action should be taken in accordance with law.

12. This direction issued vide the Impugned Order appears to be in due conformity with the law and this Court has been unable to see any infirmity therein.

13. It is the considered view of this Court that not only was the Impugned Order in terms of the requirements of the law but that the present petitioner prima facie appears to have sought to hinder the due process of the law.

14. It is for these reasons that this Court was pleased to have dismissed the subject petition vide a short order issued earlier today, content whereof is reproduced herein below:

“Heard the learned counsel for the petitioner and for the reasons to be recorded later on, this petition is dismissed. “

15. These are the reasons for the short order stated above wherein this constitutional petition was dismissed.

16. It is pertinent to record that the observations made hereinabove are of tentative nature and shall cause no prejudice to the adjudication of any dispute between the parties before any forum of competent jurisdiction.

JUDGE