

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Criminal Misc. Application No.S-133/2019

Aijaz Ali

Applicant through: Mr. Ghulam Asghar Mirbahar advocate

Deputy Inspector General of Police

Shaheed Benazirabad & others

Respondents through: Nemo for respondents

Date of hearing: 08.3.2019

Date of decision: 08.3.2019

ORDER

ADNAN-UL-KARIM MEMON, J. Through this Criminal Miscellaneous Application, Applicant has called into question the order dated 23.2.2019, passed by learned 1st Additional Sessions Judge, Shaheed Benazirabad in Criminal Miscellaneous Application No.399 of 2019, whereby he rejected the Application of the Applicant under Section 22-A & B, Cr.P.C on the premise that the Applicant has come with unclean hands and the court lacks the jurisdiction to dilate upon the issue of reinvestigation of the criminal case. Applicant being aggrieved by and dissatisfied with the impugned order has filed the instant Criminal Miscellaneous Application under Section 561-A Cr.P.C on 2.3.2019.

2. Brief facts of the case as mentioned in the memo of application are that Respondent No.6 lodged an FIR bearing Crime No.45 of 2018 under Section 302/34 PPC, thereby he has implicated the Applicant and his brother namely Ahmed Dino son of Khawand Dino. After lodging FIR, Police investigated the case and submitted challan before the competent court of law against the applicant and others.

3. Mr. Ghulam Asghar Mirbahar learned counsel for the applicant has contended that the name of applicant has been included in challan after lapse of 20/23 days of the alleged incident; that neither Applicant nor his brother was present at the place of incident nor the Complainant/ Respondent No.6 is eyewitness of the alleged incident; that Investigating

Officer has not recorded the statements of real eyewitnesses of the incident and *mala fide*ly involved the Applicant in the present case; that learned trial Court has passed the impugned order, which is erroneous one, without application of judicial mind. He next contended that learned trial Court has wrongly observed that it has no jurisdiction to entertain the application under Section 22-A & B, Cr.P.C; that the trial Court is vested with the power under Section 22-A & B, Cr.P.C. for change/re-investigation of criminal case at any stage of case. Counsel further contended that reinvestigation of the case is very much necessary for just and proper conclusion of the case; that learned trial Court due to misunderstanding the real facts has not appreciated the version of the Applicant and has also not appreciated the evidence adduced by the Applicant. The order impugned herein is not a speaking order and the same is liable to be set aside.

4. I have considered the submissions of learned counsel for the Applicant and examined the record carefully.

5. In order to appreciate the arguments advanced and to answer the opinion expressed in the impugned order it is necessary to reproduce the Section 22-A & B, Cr.P.C:-

22-A. Powers of Justice of the Peace. (1) A Justice of the Peace for any local area shall, for the purpose of making an arrest, have within such area all the powers of a Police Officer referred to in section 54 and an officer in-charge of a police-station referred to in section 55.

(2) A Justice of the Peace making an arrest in exercise of any powers under subsection (1) shall, forthwith, take or cause to be taken the person arrested before the officer in-charge of the nearest police-station and furnish such officer with a report as to the circumstances of the arrest and such officer shall thereupon re-arrest the person.

(3) A Justice of the Peace for any local area shall have powers, within such area, to call upon any member of the police force on duty to aid him:

(a) in taking or preventing the escape of any person who has participated in the commission of any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having so participated; and

(b) in the prevention of crime in general and, in particular, in the prevention of a breach of the peace or a disturbance of the public tranquility.

(4) Where a member of the police force on duty has been called upon to render aid under subsection (3), such call shall be deemed to have been made by a competent authority.

(5) A Justice of the Peace for any local area may, in accordance with such rules as may be made by the Provincial Government:

(a) issue a certificate as to the identity of any person residing within such area, or

(b) verify any document brought before him by any such person, or

(c) attest any such document required by or under any law for the time being in force to be attested by a Magistrate, and until the contrary is proved, any certificate so issued shall be presumed to be correct and any document so verified shall be deemed to be duly verified, and any document so attested shall be deemed to have been as fully attested as if he had been a Magistrate.

22-B. Duties of Justices of the Peace. Subject to such rules as may be made by the Provincial Government, every Justice of the peace for any local area shall,

(a) on receipt of information of the occurrence of any incident involving a breach of the peace, or of the commission of any offence within such local area, forthwith make inquiries into the matter and report in writing the result of his inquiries to the nearest Magistrate and to officer in charge of the nearest police station.

(b) if the offence referred to in clause (a) is a cognizable offence, also prevent the removal of anything from, or the interference in any way with, the place of occurrence of the offence;

(c) when so required in writing by a police-officer making an investigation under Chapter XIV in respect of any offence committed within such local area.

(i) render all assistance to the police-officer making such an investigation.

(ii) record any statement made under expectation of death by a person in respect of whom a crime is believed to have been committed'.]

6. The insertion of subsection (6) in Section 22-A and Section 25 of Cr.P.C. whereby Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-officio Justices of Peace, has advanced and speeded the 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 this 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 Justices 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 by moving a simple application to the Ex-officio Justice of Peace for issuance of an appropriate order or direction. Aggrieved person, who could not afford the luxury of engaging a lawyer in the past for filing writ petition in this 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 safely placed in the case of *Younus Abbas and others v. Additional Sessions Judge, Chakwal and others* (PLD 2016 Supreme Court 581.)

7. The larger Bench of the Hon'ble Supreme Court in *Younus Abbas and others* (supra) while discussing powers of the Ex-officio justice of peace under Section 22-A and 22-B has held as follows:

“The duties, the Justice of Peace performs, are executive, administrative, preventive and ministerial as is evident from subsections (1), (2), (3), (4) and (5) of Sections 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 Justices of Peace. The functions, the Ex-officio Justice of Peace performs, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with things 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) and *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.”

8. The record of the present case shows that upon application of applicant under Section 22-A, (6) (i), the learned Ex-Officio Justice of Peace passed the order on 23.2.2019, relevant portion whereof is reproduced as under:-

“ At this point of time, I am fortified with recent case law reported as SBLR 2017 Sindh 1671, wherein it has been held that “ Justice of Peace is not bound to issue direction to police in each and every case to record the statement of complainant, if apparently no cognizable offence is made out or complaint is tainted with malice

and based with ulterior motives, he can call report from SHO concern to examine the authenticity of the allegations leveled by the complainant. Justice of Peace should also keep in his mind this aspect that any direction issued unnecessarily or in routine manners shall cause humiliation, harassment and mental agony to the proposed accused and it would take years to conclude the criminal trial of the case arisen out of any FIR”

In view of the above circumstances and peculiar facts of the matter, I do not find merit in this application, hence, the same stands dismissed.

However, the case law cited by the learned counsel for the applicant is distinguishable from the facts and circumstances of the case in hand, therefore, same is not applicable.

Accordingly, the present application stand disposed of in view of above terms”.

9. The learned counsel for the applicant submitted that provision of Section 22-A & B, Cr.P.C when examined in juxtaposition with Section 154 of Criminal Procedure Code bears material similarity between the two and thus justice of peace is also empowered to order for registration of a criminal case under Section 154 Cr.P.C or order for re-investigation of the criminal case.

10. Before dilating further on the aforesaid proposition, it may be stated that the presence of F.I.R. however does not, in anyway, take away or affect the powers of justice of peace to order for further investigation of criminal case as provided under Section 22-A & B, Cr.P.C. Therefore it would be appropriate for Ex-Officio Justice of Peace before issuance of such direction for re-investigation of the criminal case to satisfy himself from the available record regarding re-investigation of the criminal case thus, he has rightly declined the request of the applicant for re-investigation of the matter.

11. The primordial question arises whether once challan is submitted in the Court of law and the Court has taken the cognizance of the matter, no new investigation can be ordered by the police?

12. To address the aforesaid proposition, I am of the view that there is no bar to re-investigation of a criminal case and the police is always at liberty to submit supplementary Challan even after submission of final report under Section 173 Cr.P.C. Reliance can be placed in the case of Raja Khurshid Ahmad vs. Muhammad Bilal and others (2014 SCMR 474), Bahadur Khan vs. Muhammad Azam and 2 others (2006 SCMR 373), Khalid Javed vs. Board through Deputy Inspector-General of Police

(Investigation), Lahore and 5 others (PLD 2009 Lahore 101) and Qari Muhammad Rafique vs. Additional Inspector General of Police (Inv.), Punjab and others (2014 SCMR 1499. I have noted that the challan had been submitted in the Court on 29.10.2018 i.e. four (04) months prior to passing of order on 29. 2.2019. Though I am cognizant of the fact that there is no absolute bar to the reinvestigation of a criminal case, and the police authorities are at liberty to file supplementary challan even after submission of the final report under Section 173 Cr.P.C. However, this cannot be done after the case has been disposed by the learned trial Court. However the order for re-investigation at such a belated stage is not approved by the honorable Supreme Court in the case of Muhammad Nasir Cheema v. Mazhar Javed and others (PLD 2007 SC 31) whereby it is held as under:-

“ At this stage, the learned Additional Advocate-General informs us that some Additional I.G Police had passed some order on 15.7.2006 and had changed the investigation. We are surprised at this order passed by the Addl.I.G. Police (Investigation Branch), Punjab for more than one reasons. Firstly, because the report under section 173, Cr.P.C. had already reached the trial Court as noticed above where the further investigation in the matter thereafter was an exercise unsustainable in law. Secondly, because the matter related only to a document which had been examined in depth, by the learned Election Tribunal comprising an Hon’bel Judge of the High Court and which document had then been re-examined by this Court in an appeal filed by Mazhar respondent and what further investigation was required in the matter is beyond comprehension.”

13. The object and purpose of investigation as well as reinvestigation of a criminal case is to probe and find evidence and place all such material before a court of competent jurisdiction and not to satisfy the complainant/aggrieved person and if any such material is provided by the investigating agency, that would definitely help the Court for arriving at just conclusion. Nothing has been pointed out that the impugned order shall prejudice the proceedings before the learned trial Court.

14. In view of above, the application in hand is without any merit, the same stands dismissed in limine.

15. For the above reasons, this Cr. Misc. Application was dismissed in court by short order dated 8.3.2019.

JUDGE