

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
Cr. Misc. Application No.S-228 of 2018

Date	Order with signature of Judge
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For orders on office objection at flag 'A'  
For hearing of main case

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Mr. Sohail Ahmed Khoso, Advocate for the applicant  
Mr. Amjad Hussain Laghari, Advocate for private Respondents  
Mr. Abdul Rehman Kolachi, DPG

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Date of hearing: 17.06.2019  
Date of order: 24.06.2019

**ORDER**

**Adnan-ul-Karim Memon, J:-** Through instant Criminal Miscellaneous Application, the applicant has impugned the order dated 15.03.2018, whereby the learned Additional Sessions Judge-IV/Ex-officio Justice of Peace, Khairpur dismissed the Criminal Miscellaneous Application No.767/2018, filed by the Applicant for registration of 2<sup>nd</sup> FIR of the incident already stood lodged by ASI Ghulam Nabi on behalf of the State bearing crime No.30 of 2018 registered for offences under section 302,120-B, P.P.C. At police station Mirwah.

2. The case of the Applicant is that the aforesaid Respondents had directly fired upon Applicant, his daughter Sanfaroz and brother Asadullah, in which his daughter namely Sanfaroz succumbed to injuries and died. The Respondents have taken the plea that the Applicant is responsible for the death of his daughter in order to revenge, over the landed property, such incident was reported to the police station Mirwah, whereby police lodged criminal case against the Applicant and finally charged sheet was submitted against them in the Court of law; that his earlier C.P.D-

No.476 of 2018, was disposed of by this court vide order dated 21.3.2018, with direction to the trial court to dispose of an Application under section 265-K Cr.PC. The Applicant has filed the present Criminal Miscellaneous Application with malafide intention in order to lodge second F.I.R of the incident to save his skin from the case lodged against him.

3. Mr. Sohail Ahmed Khoso learned counsel for the applicant states that the impugned order being contrary to facts and law is not sustainable. He further states that a cognizable offence was made out by the applicant in his Criminal Miscellaneous Application, which he filed before the Ex-Officio Justice of Peace but the same was dismissed by the learned Ex-Officio Justice of Peace without applying his judicious mind. Learned counsel for the applicant placed his reliance on the cases of *Mst.Murad Khatoon vs SHO Police Station Warrah and 2 others* (2013 MLD 845), *Mst. Haseena vs SHO Police Station Kotdiji and another* (2015 P.Cr.L.J 790), *Zahid Ali vs Station House Officer, Police Station Patni, Taluka Rohri, District Sukkur and another* (2012 P.Cr.L.J 180), *Allah Bakhsh vs Station House Officer and another* (2013 MLD 885), *Mst. Nazeeran vs SHO Police Station, Daharki and another* (2013 YLR 268) and *Wajid Ali Khan Durani and others vs Government of Sindh and others* (2001 CMR 1556). He lastly prayed for allowing the instant Criminal Miscellaneous Application.

4. In rebuttal, learned Deputy Prosecutor General, Sindh assisted by Mr. Amjad Hussain Laghari learned Counsel for the private Respondents raised the question of maintainability of the instant Criminal Miscellaneous Application on the ground that the FIR of the present incident bearing Crime No.30/2018, for offences

under section 302, 120-B PPC has already been against the present Applicant, who wants to lodge 2nd FIR of the same incident; that the Applicant has filed the instant Criminal Miscellaneous Application in order to pressurize the police department and private respondents, even otherwise no cognizable offence has been made out to attract section 154 Cr.P.C. He supported the Impugned order passed by the learned Justice of Peace; that alternate and efficacious remedy for filing Direct Complainant is available to Applicant, which can be availed by the Applicant if he is so aggrieved. He lastly prayed for dismissal of the present Criminal Miscellaneous Application.

5. I have heard learned counsel for the parties and perused the material available record and case law cited at the bar.

6. In order to appreciate the submissions advanced and to answer the opinion expressed in the impugned order it is necessary to reproduce the Section 22-A & B, Cr.P.C to understand, whether Justice of Peace is empowered to direct registration of second F.I.R of the same incident, which stood already registered on behalf of the State as provided under section 154 Cr.P.C or otherwise :-

**“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'.]"

7. The issue before this court is very simple in its nature, which is as under:-

Whether a separate FIR can be registered for every new version of the same incident when commission of the relevant cognizable offence already stands reported to the police and an FIR already stands registered in that regard or not. An ancillary issue is that if no separate FIR can be registered for any new version of the same incident then how can such new version be recorded and investigated by the police.

8. Section 154, Cr.P.C. is the legal provision under which an FIR is registered in respect of commission of a cognizable offence and the relevant part of that provision reads as follows:

“154. Information in cognizable cases. Every information relating to the commission of a cognizable offence if given orally to an officer incharge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf. ---”

9. In the light of foregoing provision of law, in my view once the “case” already stands registered through an FIR and thereafter any person can supply any information about the facts and circumstances of the case to the investigating officer. There is no bar in the matter against information which may disclose circumstances and culprits different from those mentioned in the FIR. According to section 173(1) (b), Cr.P.C. the action taken under section 173(1), Cr.P.C. by the officer-in-charge of the police station is to be communicated through the public prosecutor “to the person, if any, by whom the information relating to the commission of the offence was first given” and no fresh FIR needs to be registered on the basis of a new information provided by a different person. The legal position is that an FIR to be registered under section 154, Cr.P.C. is only information about commission of a cognizable offence and not information about the circumstances in which such offence was committed or by whom it was committed. If the information supplied to the police not only reports

commission of a cognizable offence but also contains a story as to how and by whom the offence was committed then such further information is just a version of the informant and during the investigation the investigating officer is free to entertain any number of versions advanced by any number of persons and it is his duty "to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person" as mandated by Rule 25.2(3) of the Police Rules, 1934. All subsequent or divergent versions of the same occurrence or the persons involved therein are to be received, recorded and investigated by the investigating officer in the same "case" which is based upon the one and only FIR registered in respect of the relevant "offence" in the prescribed book kept at the local police station. The party seeking registration of a second FIR that "the alleged culprits could have otherwise escaped from their criminal liability successfully at the very initial stage without even being charged for the offence on the basis of misleading contents of earlier FIR." However, the exception is that such divergent version can be investigated by the police only after registration of a separate FIR in that regard as discussed supra.

10. Now coming to the powers of the Ex-officio justice of peace under Section 22-A and 22-B. 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.”

11. 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 15.3.2018 by dismissing his Application on the premise that no cogent ground existed for registration of second F.I.R of the same incident.

12. During the course of hearing of this Application I had inquired from the learned counsel for the Applicant as to why he was insisting upon registration of a separate FIR in respect of his version of the incident. In response to that query the he had categorically stated that the applicant wanted the accused person in his version of the incident to be arrested, which was not possible through the medium of a Private Complaint as provided under section 200 Cr.P.C. Such understanding of the law on the part of the Applicant, which understanding is also shared by a large section of the legal community, has been found by the Honorable Supreme court in its various pronouncements to be erroneous and fallacious, for the simple reason that by virtue of the provisions of section 202(1), Cr.P.C. a court seized of a private complaint can “direct an inquiry or investigation to be made by any Justice of the

Peace or by a police officer or by such other person as it thinks fit". If in a given case the court seized of a private complaint deems it appropriate to direct an investigation to be carried out in respect of the allegations made then the powers available during an investigation, enumerated in Part V, Chapter XIV of the Code of Criminal Procedure, 1898 read with section 4(1)(l) of the same Code, include the powers to arrest an accused person and to affect recovery from his possession or at his instance. Such powers of the investigating officer or the investigating person recognize no distinction between an investigation in a State case and an investigation in a complaint case.

13. The impression entertained by the applicant that if a separate FIR is registered in terms of his version of the incident then the accused person nominated would automatically be arrested has been found by this court to be not only misconceived but also discomfoting. The law does not permit arrest of a person merely on the basis of a bald allegation leveled against him. The powers of the police to arrest a person accused of commission of an offence are provided in sections 54 and 55, Cr.P.C. and some provisions in the Police Rules, 1934 also deal with the same.

14. Reverting to main case. Record reflects the following factual position of the case:-

i). FIR of the present incident bearing Crime No.30/2018, for offences under section 302,120-B PPC has already been registered against the present Applicant and his accomplices.

ii). Challan had already been submitted against them in the competent court of law.

iii). The applicant has filed C.P.D-No.476 of 2018, the same was disposed of vide order dated 21.3.2018, with direction to the trial court to disposed of an Application under section 265-K Cr.P.C, filed by the applicant if any.



iv). Dispute over landed property exists between the parties. And so many criminal cases have been registered against each other's.

15. The issue in hand has already been decided by the Honorable Supreme Court in the case of Mst. SUGHRAN BIBI Vs. The STATE (PLD 2018 SC 595) and held as follows:

“According to section 154, Cr.P.C. an FIR is only the first information to the local police about commission of a cognizable offence. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard.

If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.

Upon registration of an FIR a criminal “case” comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter.

During the investigation conducted after registration of an FIR the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161, Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case.

During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 “It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.”

Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness

of the allegations leveled against such suspect or regarding his involvement in the crime in issue.

Upon conclusion of the investigation the report to be submitted under section 173, Cr.P.C is to be based upon the actual facts discovered during the investigation irrespective of the version of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person.”

16. The primordial question involved in the present proceedings is whether registration of F.I.R is the only solution or the applicant has another remedy of filing the direct complaint as provided under section 200 Cr.P.C?

17. The object and purpose of registration 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 case of the applicant if he approaches and file direct complaint against the alleged action of police and private party.

18. As discussed supra an FIR of the same incident had already been registered regarding the same occurrence and the offences allegedly committed therein and upon completion of the investigation of the case a Challan had been submitted before the trial court, a trial is already in progress in connection with the aforesaid case, therefore, ordering registration of another FIR based upon the applicant's version of that very incident is not legally warranted.

19. The case law cited by the learned Counsel for the Applicant are distinguishable from the facts obtained in the present case.

20. In view of above, the captioned Criminal Miscellaneous Application is without any merit, the same stands dismissed. However the Applicant is at liberty to approach the concerned Magistrate and file Direct Complaint for redresal of his grievances if so advised, and the same is required to be decided in accordance with law, if filed.

JUDGE