

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

C.P. No. D – 2073 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present: Aqueel Ahmed Abbasi & Yousuf Ali Sayeed, JJ

Petitioner: Muhammad Khan, through, Mr. Faisal Nadeem Abro, Advocate.

Respondents: Province of Sindh & Others, Nemo.

Date of hearing 12.06.2017

Date of Judgment

JUDGMENT

YOUSUF ALI SAYEED, J. In terms of the instant Petition under Article 199 of the Constitution, the Petitioner has inter alia sought issuance of directions to the Station House Officer, P.S. Hala, District Matiari (the Respondent No.3) to verbatim register an FIR as per the version of the Petitioner against the arrayed respondents, including both private persons as well as police personnel and the functionaries of the Irrigation Department of the said District, and, further, that the police be directed to provide protection to the Petitioner as per law.

2. The Petitioner had previously filed Criminal Miscellaneous Application No.206 of 2017 under S.22-A, Cr. P.C. with similar prayers before the learned Additional District & Sessions Judge Hala in his capacity as Ex-Officio Justice of Peace. Such proceedings were disposed of vide Order dated 25.05.2017, whereby the prayer for registration of an FIR was declined on the basis that from the contents of the Application and the report of the concerned SHO, the matter apparently pertained to a dispute regarding the alleged encroachment of a watercourse and irrigation land, which was *sub judice* before this Court in cross-petitions bearing CP Nos. 2364/16 and 3199/16 respectively. As such, the matter was not deemed to be a fit case for issuance of directions to register an FIR.

3. Whilst assailing the aforementioned Order, learned counsel for the Petitioner simply maintained that same was contrary to law, as the learned Justice of Peace was obliged to direct the concerned SHO to lodge an FIR against the proposed accused as per the facts narrated by the Petitioner in as much as such alleged facts disclosed the commission of a cognizable offence.

4. From the Petition and documents annexed therewith, it is apparent that the substance of the Petitioner's allegations is that the Respondents Nos. 4 to 17 had been extending threats to the Petitioner and his relatives to change their political affiliations or vacate their houses, and, on their refusal, had *en masse* entered upon the home of the Petitioner and attacked and beaten him and his relatives. It was said that the functionaries of the irrigation department extended threats that the Petitioner and his relatives would be killed unless they vacated their houses, as Watercourse No. 9-AL had to be dug through their land. It was also loosely alleged that, previously, after an election said to have taken place on 18.01.2016, threats and attacks had been orchestrated by these Respondents on several occasions, when the homes and shops of the Petitioner and his relatives had been looted of valuables worth lacs of rupees.

5. Having heard learned counsel and perused the record, we are unable to reconcile the series of events on the basis of which the Petitioner has sought to advance his case, and it appears from the content thereof that at the root of the matter is the aspect of the dispute inter se the Petitioner and the irrigation department, which has repeatedly been mentioned by the Petitioner, albeit in roundabout terms. Indeed, the Petitioner has himself filed a copy of the plaint of Suit No. 36 of 2017 also filed by him along with other persons in the Court of the Senior Civil Judge, Hala, seeking declaration and permanent injunction against the Province of Sindh, as well as the Sindh

Irrigation Development Authority and its functionaries, and from a plain reading thereof it is apparent that there is an ongoing dispute as to status of the land in possession of the Petitioner and other plaintiffs in as much as the same is being claimed by the Irrigation Department as being its property. To our minds, this forms the crux of the dispute and, as rightly discerned by the learned Justice of the Peace, appears to be the primary motive for institution of criminal proceedings. Hence, the learned Justice of the Peace has seen fit not to direct the registration of an FIR.

6. On consideration of the matter, we do not find any error in the approach of the learned Justice of Peace warranting interference by this Court, as it is apparent from the Order dated 25.05.2017 that the substance of the allegations was considered and weighed in juxtaposition with the material available. In our opinion, a Justice of Peace, acting in exercise of S.22-A, is not to proceed and act mechanically simply on the basis of the version of events narrated by a party applying for registration, but instead, in order to safeguard against misuse or abuse of such process, must apply his mind and satisfy himself that, prima facie, there is some material available on the record to support such version. We are fortified by the additional note appended to the main judgment of the Honourable Supreme Court in the case reported as *Younas Abbas & others v. Additional Sessions Judge, Chakwal* PLD 2016 SC 581, where it was observed as follows:

“The past experience of around 14 years (since the insertion of these provisions into the Code of Criminal Procedure) would unmistakably reveal that these provisions especially Section 22-A of the Code of Criminal Procedure, though beneficial and advantageous to the public at large, yet in myriad cases, it has been misused and abused.

Once a false criminal case is registered against an individual, it becomes exceedingly difficult for him/her to get rid of it. The time and money which is spent on acquiring a clean chit by way of cancellation of the case or acquittal is not hard to fathom. There is no denying the fact that at times false and frivolous cases are got registered just to

humble and harass the opposite party. In such a milieu, powers given to an ex-officio Justice of the Peace under subsection (6) of Section 22-A, Code of Criminal Procedure, to issue appropriate directions on a complaint filed by an aggrieved person for registration of a criminal case (Clause-i) and for transfer of investigation from one police officer to another (Clause-ii) though efficacious and expeditious besides being at the doorstep, but at the same time, these provisions should not be unbridled or open-ended. These provisions must be defined, structured and its contour delineated to obviate misuse by influential and unscrupulous elements.

Therefore:-

(i) The ex-officio Justice of the Peace, before issuance of a direction on a complaint for the non-registration of a criminal case under subsection (6)(i) of section 22-A, Code of Criminal Procedure must satisfy himself that sufficient material is available on the record, such as application to the concerned SHO for registration of the criminal case and on his refusal or reluctance, complaint to the higher police officers i.e. DPO, RPO etc., to show that the aggrieved person, before invoking the powers of ex-officio Justice of the Peace, had recourse to the high ups in the police hierarchy.

(ii)..."

7. Moreover, the Petitioner is at liberty to pursue the proper remedy of filing a direct complaint under S.200 Cr. P.C. provided there is some incriminating material against the Respondents Nos. 4 to 17 available with the Petitioner, and in the presence of such alternate remedy a petition under Article 199 is not maintainable, as held by the Honourable Supreme Court in the case reported as Rai Ashraf & others v. Muhammad Saleem Bhatti & others PLD 2010 SC 691.
8. As regards the aspect of protection, it merits consideration that whilst dismissing the Application to the extent of the prayer for registration of an FIR, the learned Justice of Peace nonetheless allowed the prayer for protection and issued appropriate directions in that regard, and in the face of such a

pre-existing directive the like prayer in these proceedings is quite evidently infructuous.

9. In view of what has been discussed herein above, we are of the view that the Petition is misconceived and the Order dated 25.05.2017 made by the learned Justice of Peace does not admit to any interference.

10. These are the reasons for our short Order dictated in open Court on 12.06.2017 whereby the Petition was dismissed *in limine*.

JUDGE

JUDGE

Hyderabad
Dated _____