

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

Cr. Misc. A. No. S- 660 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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22.10.2021

Mr. Altaf Sachal Awan, Advocate for applicant

ADNAN-UL-KARIM MEMON, J.- Through instant Cr. Misc. Application, applicant Imam Ali has called in question the order dated 24.9.2021 passed by learned Ex-Officio Justice of Peace / Additional Sessions Judge-II, Kotri.

2. Brief facts of the case are the applicant moved an application before learned Ex-Officio Justice of Peace / Additional Sessions Judge-II, Kotri for registration of FIR against his wife and his parents as his wife in connivance with his relatives and parents got his fetus aborted. The said application was dismissed relying on the report submitted by SHO PS Jamshoro as according to him the applicant wants to lodge FIR against his wife, his father-in-law, brother-in-law, and mother-in-law as the wife of applicant wants to get a divorce from him and the applicant to throw a wide net against all family members of his wife wants to lodge FIR. Hence the instant application.

3. Heard learned counsel for the Applicant on the maintainability of the instant criminal Miscellaneous Application and perused the material available on record.

4. The questions, which agitate the controversy at hand, could be reduced to whether the order passed by learned Ex-Officio Justice of Peace refusing to give direction to police to register a case could interfere under Section 561-A Cr. P.C; and, whether the findings of learned Ex-Officio Justice of Peace is clear in its terms that no cognizable offense was made out as per police report thus could not be incorporated in 154 Cr. P.C book; and, 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?

5. Prima facie, the dispute between the parties is of criminal side and the same has been taken care of by the competent Court of law vide order dated 24.9.2021 as discussed in the preceding paragraph.

6. In the circumstances when we confronted the learned counsel for the applicant that the procedure of direct complaint is much available to the applicant under Section 200, Cr. P.C to meet such eventualities. Learned counsel for the Applicant replied that accusation against the proposed accused disclosed commission of a cognizable offense and as such a statutory duty was cast upon the Station House Officer to register a formal First Information Report to investigate the same and his failure was amenable to interference; that in the present case there are extraordinary circumstances in which registration of FIR is the only proper course; and, adopting the alternate course provided in Section 200, Cr. P.C, that could not be equally efficacious for the applicant. He also emphasized that law required that a police officer should first register a case and then form an opinion whether the facts stated in the FIR were true or not.

7. Prima facie, this assertion of the applicant is not tenable under the law. As the Honorable Supreme Court in the case of *Younas Abbas and others v. Additional Sessions Judge Chakwal and others* (PLD 2016 Supreme Court 581), *Mst. Sughran Bibi v. The State* PLD 2018 SC 595 and *Abdul Rehman Malik Vs. Synthia D. Ritchie, Americans National, and other* 2020 SCMR 2037 has already dilated upon the subject wherein the vires of interference by the Justice of Peace with the functionality of police/investigation had been questioned without success.

8. In the above backdrop, I have not been able to find any jurisdictional error or flaw in the impugned order calling for interference in remission of the issue to the Justice of Peace for a decision afresh within the framework of law declared by this Court; accordingly, this criminal Miscellaneous Application is not maintainable,

9. In view of the above, this criminal Miscellaneous Application stands dismissed in the above terms along with pending application(s) with no order as to costs. However, the Applicant may avail his remedy before the competent Court of law for the aforesaid purpose.

JUDGE