

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

Cr. Misc. A. No. S- 606 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE
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22.10.2021

For orders on office objections  
For hearing of main case

Mr. Maqbool Ahmed Nizamani, Advocate for applicant  
Mr. Subhan Ali Panhwar, Advocate for Proposed accused  
Ms. Sana Memon, A.P.G.

**ADNAN-UL-KARIM MEMON, J.-** Through instant Cr. Misc. Application, applicant Muhammad Riaz has called in question the order dated 31.8.2021 passed by learned Ex-Officio Justice of Peace/ District Judge, Tando Allahyar.

2. Brief facts of the case are the applicant moved an application before learned Ex-Officio Justice of Peace / District Judge, Tando Allahyar for registration of FIR against proposed accused as according to him he along with his two brothers inherited agricultural land admeasuring 250 acres situated in Deh Pak Singhar. On 20<sup>th</sup> August 2021 when he along with his brother Shamoo went to his lands he found one truck was being loaded with bananas from his lands and one Nazeer Thakur / proposed accused along with his son Naeem Qaimkhani were standing near a double cabin vehicle while holding deadly weapons in their hands, besides one Shabir Mallah, Karimdad and two unknown persons duly armed with repeater were also available. The applicant tried to restrain them from loading banana crops upon which the proposed accused started indiscriminating firing upon the applicant on the instigation of Nazeer Thakur, hence they went away. The accused persons along with the banana crop had also taken his two licensed weapons from his otaq, one gobal of 16 plates, one six-wheeler sugarcane trolley, wheat thrasher. The applicant along with his brothers reached the police station for registration of FIR but could not succeed, hence he filed Cr. Misc. Appl. before learned Ex-Officio Justice of Peace Dadu which was also dismissed.

3. Learned counsel for the applicant argued that the order learned Ex-Officio Justice of Peace is contrary to law, facts of the case, and principles of criminal justice; that learned trial court failed to consider the material aspects of the case while passing the impugned order that the legal and lawful rights of the applicant were denied by respondent No.2; that learned trial court while passing the impugned Order has itself assumed the role of investigation officer which is not the scheme of criminal justice whereas there were witnesses of the alleged incident; that there is no cavil to the proposition that civil and criminal litigation cannot go together. In the case reported in 2020 MLD 1028, it is held that whenever a criminal offense in a dispute of civil nature is reported same was to be decided side-by-side; that learned trial court was required to issue direction to the SHO concerned to record the statement of the applicant and if the cognizable offense is made out register the FIR as per verbatim of the applicant but without seeking the heinousness of the offense the learned trial court discarded the request of the applicant which has caused the grave miscarriage of justice.

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

5. 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?

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. In response to the query as discussed in preceding paragraph, the learned counsel for the applicant has categorically stated that he wanted the accused persons in their version of the incident to be arrested which was/is not possible through the medium of a private complaint. Such understanding of the law on the part of the applicant, which understanding is also shared by a large section of the legal community in our country, has been found to be erroneous and fallacious. By the provisions of section 202(1), Cr.P.C. a Court in 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 in a private complaint deems it appropriate can 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) (I) of the same Code, including the powers to arrest an accused person. 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.

8. To go ahead with the aforesaid proposition, the object of investigation under section 202 of the Code is to enable the Court to scrutinize the allegations to protect a person complained against from being summoned to face frivolous accusations. Section 202 of the Code is an enabling provision to empower the Court to hold an effective inquiry into the truthfulness or otherwise of the allegations leveled in the complaint to form an opinion whether there exist sufficient grounds to proceed further or not. Therefore, inquiry/investigation under section 202 of the Code is not a futile exercise and is to be taken into consideration by the Court while deciding whether the process is to be issued or not.

9. Nothing has been pointed out that the impugned order shall prejudice the case of the applicant if he approaches and files a direct complaint against the purposed action of police and private party.

10. 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.

11. 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.

12. Before dilating further on the aforesaid proposition, it does not, in any way, take away or affect the powers of Justice of Peace to order for registration 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 registration of the criminal case to satisfy him from the available record regarding registration of the criminal case thus; he has rightly declined the request of the applicant for registration of the criminal case under the peculiar circumstances of the case.

13. In view of the above, this criminal Miscellaneous Application stands dismissed in the above terms along with the 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