IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Miscellaneous Application No. S-300 of 2018

Applicant: Mst. Reshman Khatoon d/o Jan Muhammad Abbasi through Mr. Muhammad Imran Abbasi, Advocate.

The State: *Through Mr. Khadim Hussain Khoohari, A.P.G.*

Date of hearing: ***20.12.2018***

Date of decision: ***20.12.2018***

O R D E R

Khadim Hussain Tunio, J. Through this Cr. Miscellaneous Application filed under Section 561-A Cr.P.C, the applicant has assailed order dated 31.10.2018 passed by the learned III[rd] Additional Sessions Judge/Ex-Officio Justice of Peace Larkana, whereby he has dismissed the application of the applicant to register the F.I.R against the proposed accused into the book u/s 154 Cr.P.C because no cognizable offence was made out.

2. Brief facts of the case of the applicant are that marriage of the applicant was solemnized with proposed accused Abdul Waheed on 24.03.2016 and from such wedlock she has one child; baby aged about 1½ years. After the marriage, her husband's behaviour was good with her but later on he changed his attitude towards the applicant and started torturing her. Thereafter, her husband drove her out from his house and since then she has been residing in her parents' house. She has filed a suit for dissolution of marriage, maintenance of her's and her child and recovery of dowry articles before Family Court Larkana. On 29.09.2018, she was present at her parents' house along with other family members including her brother Muzafar Ali and her maternal uncle Abdul Hafeez when at about 05:30 p.m, proposed accused Abdul Waheed armed with a pistol, Abdul Rauf armed with a pistol, Abdul Qadeer wielding a knife, Shabbir Ahmed Kalhoro armed with a pistol, Zain-ul-Abdin armed with a pistol and one unidentified person with uncovered face along with two unidentified women with muffled faces appeared at their house and declared the applicant as *kari* and also said that she will be murdered in

such a blame. Saying so, accused Bashir Kalhoro instigated the accused and on his instigation, accused Abdul Waheed made straight fire upon her in order to commit her murder on which she by saving herself fell down on Earth, then her brother caught her and she fell down inside the room. Thereafter, her family members gave the accused the sake of Holy Quran and also made hues and cries. Accused Abdul Rauf asked other accused to return back and that she would be dealt with later on. Saying so, they went away by issuing further threats of dire consequences.

3. Thereafter, finding no other way, the applicant filed the application u/s 22-A & B, Cr.P.C in the Court of Sessions Judge Ex-Officio Justice of Peace Larkana which was later transferred to the learned III[rd] Additional Sessions Judge Larkana vide order dated 31.10.2018, who dismissed the application, hence this application.

4. Learned counsel for the applicant has contended that the applicant is a victim of highhandedness of proposed accused as they, in collusion with each other, have fought with the applicant and fired upon her. The application, in the first instance, approached respondent No. 1 for registration of FIR of a cognizable offence but he did not pay any heed to the genuine grievances of the applicant and totally denied to register the FIR of the cognizable offence against the proposed accused; that the impugned order is against the law, facts and is liable to be set-aside; that if the FIR is not registered, the criminals involved will be encouraged to try again; that learned Ex-Officio Justice of Peace was required to direct concerned SHO to register the case rather than decide the matter on merits. He further submits that respondent No. 1 knowingly and deliberately did not register the FIR of the applicant who narrated him the facts of the cognizable offence as stated above, though the SHO was duly bound to register FIR of the applicant into the book u/s 154 Cr.P.C, against the proposed accused because they have committed a cognizable offence; that section 22-A & B Cr.P.C empowers the learned trial Court to issue directions to police concerned on complaint regarding non-registration of criminal case. He further submits that proposed accused have committed an offence, therefore they are liable to be dealt with in accordance with law. He has, therefore, prayed that the respondent No. 1 be directed to register the FIR against the proposed accused persons who have committed a cognizable offence.

5. On the other hand, learned A.P.G for the State fully supported the impugned order and opposed the present application.

6. Having heard the learned counsel for the applicant & learned A.P.G, perused the record with their assistance. From the perusal of record, it appears that the subject matter of the instant application is a family dispute between the parties and both the parties are related to each other. There are mere allegations of ***kari*** on the applicant and issuance of threats to her relatives of dire consequences. It further appears that the applicant has no evidence whatsoever of the alleged incident and considering such facts, learned Ex-Officio Justice of Peace dismissed her application. It appears that the applicant has not come to this Court with clean hands and filed the present application with the sole intention to drag the matter.

7. There are many precedents/instances regarding misuse of provisions of Section 22-A & B, Cr.P.C and it is the basic duty of the Court that such misuse be taken care of and such an application should not be treated lightly and decided in a mechanical manner for issuing directions to police for lodging the F.I.R, conducting investigation and prosecuting the alleged accused. I am fortified in my view in the light of the principle laid down in the case of ***Imtiaz Ahmed Cheema v. SHO P.S Dharki, Ghotki (2010 YLR 189)*** wherein it has been observed that:-

> *"The provisions of Section 22-A & B Cr.P.C have been misused in a number of cases. The wisdom of legislature was not that any person who in discharging of duties takes an action against the accused would be subjected to harassment by invoking provisions of Section 22-A Cr.P.C. The courts in mechanical manner should not allow applications under section 22-A & B and should apply its mind as to whether the applicant has approached the Court with clean hands or it is tainted with malice. Unless such practise is discharged, it would have far-reaching effect on the police officials who in discharge of duties take actions against them. The law has to be interpreted in a manner that its protection extends to everyone. I am therefore, of the opinion that order of the Sessions Judge was passed in mechanical manner and the applicant approaching the Sessions Judge. As per the record reflects that it was tainted with malice."*

8. Learned single bench of this Court has taken similar view while placing reliance on aforesaid decision/verdict in the case of ***Jamil Ahmed***

Butt & another v. The State through Prosecutor General, Sindh and 2 others (2014 P.Cr.L.J 1093).

9. The above seems to be the background which necessitated Apex Court in chalking out criterion to entertain such an application. The operative part of the case of ***Younas Abbas (PLD 2016 SC 581)***, being relevant is referred hereunder:-

> *"11. ... 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) & (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 lies before him demand discretion and* ***judgment****."*
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> *(emphasis supplied)*

10. The insertion of section 22-A(6)(iii), Cr.P.C. was never meant to necessary allow every such application or else the legislature would not have used the word "***may***" in subsection 6, which *(word* ***may****)* always speaks of *discretion* by application of mind. Thus, it is settled law that the Ex-Officio Justice of Peace may refuse to issue direction regarding registration of a case and may *competently* dismiss any application under Section 22-A (6) Cr.P.C, reminding the complaining person of his alternative statutory remedies under section 156(3) Cr.P.C and 190 Cr.P.C as well as the fact that he has a remedy available to him to file a criminal/private complaint under section 200, Cr.P.C. So also, there are cases where complainant party may be in a better position in pressing its allegations by filing criminal complaint rather than forcing the police to register their criminal case and to investigate when the police itself was not convinced of the complainant party's allegations being correct. In this respect, reliance may be placed upon cases of **Kizar Hayat & others v. Inspector General of Police (Punjab) Lahore & others (PLD 2005 Lahore 470)** and **Habibullah v. Political Assistant Dera Ghazi Khan & others (2005 SCMR 951)**.

11. The Hon'ble Supreme Court has been pleased to observe in case of **Rai Ashraf & others v. Muhammad Saleem Bhatti & others (PLD 2010 SC 691)** that *it is a settled law that each and every case is to be decided on its*

own peculiar facts and circumstances as law laid down in case of ***Muhammad Saleem (1994 SCMR 2213)*** *&* ***Mushtaq Ahmed (PLD 1973 418)****.* The relevant observation in Mushtaq's case *(supra)* is as follows:-

> *"Everything said in a judgment and more particularly in a judgment in a criminal case must be understood with great particularity as having been said with reference to the facts of that particular case."*

12. It has also been held by the Hon'ble Apex Court in the above referred case that:-

> *"It is admitted fact that petitioners have alternate remedies to file private complaint before the competent Court, therefore, constitutional petition was not maintainable and the High Court has erred in law to send the copy of the writ petition to the S.H.O. concerned. The direction of the High Court is not in consonance with the law laid down by this Court in* ***Jamshaid Ahmed's case (1975 SCMR 149)****. It is also a settled law that the learned High Court had no jurisdiction whatsoever to decide the disputed questions of fact in constitutional jurisdiction. In the case in hand, respondent No.1 has more than one alternate remedies ass alleged by him in the application that he had secured restraining order against the petitioners from the civil Court, therefore, Additional Sessions Judge/Ex-Official Justice of the Peace observed that respondent No.1 had to avail appropriate remedy for violation of status quo before the civil Court under the provisions of C.P.C. vide Order XXXIX, Rules 3 and 4, C.P.C. It is also admitted fact that there is a dispute qua the property in question between the parties as alleged by the petitioners and observed by the Courts below. It is a settled law that constitutional jurisdiction is discretionary in character which is to be exercised after proper application of mind with cogent reasons and same should not be exercised arbitrarily. The learned High Court had erred in law to exercise discretion in favour of the respondent No.1 without realizing that the respondent No.1 had filed application before the Additional Sessions Judge/Ex-Officio Justice of the Peace to restrain the public functionaries not to take action against him in accordance with the LDA Act 1975, Rules and Regulations framed thereunder, therefore, respondent No.1 had filed petition with mala fide intention and this aspect was not considered by the learned High Court in its true perspective."*

13. It is the duty of the Justice of Peace that while scanning averments of application for registration of F.I.R, he must apply his judicial mind being a Senior Judicial Officer and adjudge the entire set of allegations cautiously. 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 on ulterior motives, he can call for a report from SHO concerned to examine the authenticity of the allegations levelled against the defending party. Justice of Peace should also keep in his mind the aspect that any direction issued unnecessarily or in routine manner may cause humiliation, harassment and mental agony to the proposed accused and it would take years to conclude the trial of the case arisen out of any FIR.

14. For what has been discussed above, it appears that the applicant has failed to make out any case for taking cognizance of offence and no illegality has been committed by the Justice of Peace while passing the impugned order. Resultantly, instant Criminal Miscellaneous Application was dismissed vide short order dated 20.12.2018. These are the reasons for the same.

J U D G E