

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Misc. Application No. 626 of 2021

Applicant : Mst. Sonia w/o Afzal Khan, through
 Mr. Maqbool Ahmed, advocate

Respondents No.1 to 4 : Additional District & Sessions Judge -III,
 Karachi (West) & three others, through
 Mr. Siraj Ahmed Khan Chandio, Addl. P.G.

Respondent No.5 : PI Roshan Karara (*nemo*)

Date of hearing : 02.03.2022

Date of order : 02.03.2022

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ORDER

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ZAFAR AHMED RAJPUT, J.- Through instant Cr. Misc. Application, under section 561-A, Cr.P.C., the applicant has assailed the order, dated 24.09.2021, whereby her Cr. Misc. Application bearing No. 2612 of 2021, under section 22-A & 22-B, Cr.P.C., (*Re: Mst. Sonia wife of Afzal Khan v. The Senior Superintendent of Police, District West Karachi & another*) was dismissed by the IV-Additional Sessions Judge/Ex-Officio Justice of Peace, Karachi-West.

2. Briefly stated, the relevant facts are that the applicant filed aforementioned Cr. Misc. Application, seeking directions to respondent No.4 (*S.H.O. P.S., Surjani Town*) for taking action against the proposed accused (*Respondent No.5*) under the penal law, investigate the matter, recover Rs. 13,00,000/= and motorcycle from him and hand over the same to her and submit challan.

3. It is alleged that the applicant's husband went to Bangladesh for selling his property and stuck there due to Covid-19, however, he sent money. On 17.08.2021 at 4:00 a.m., the proposed accused namely Roshan Karara, the then S.H.O. P.S. Gabol Town alongwith police party raided the

house of applicant and took the amount of Rs.1300,000/- and also took away her son, namely, Muhammad Bilal and Honda motorcycle, bearing Registration No.KLE-3358, and they also misbehaved with the daughters of applicant. It is further alleged that on the next day, in the evening, applicant received phone call from police station Gabol Town that his son was booked in F.I.R. No.327/2021, under section 6/9A; she immediately rushed there but police did not allow her to meet her son; thereafter, on the next day her son was released from police custody on personal surety. Applicant tried her best to recover her amount from the police but all in vain and then, on 27.8.2021, she submitted an application at Police Station Surjani Town Karachi for lodging of F.I.R., taking legal action against the proposed accused to recover her amount and motorcycle, which was received by the duty officer but the S.H.O. P.S., Surjani Town failed to take any action against the proposed accused; hence she filed Cr. Misc. Application No. 2612 of 2021, which was dismissed by the IV-Additional Sessions Judge/Ex-Officio Justice of Peace, Karachi-West, vide impugned order, operative part thereof is reproduced as under:

“I have examined the complainant/application, police report and other material placed before me and it comes to my determination that the allegations set up by the applicant against the proposed accused persons are not convincing, fabricated and not justifiable. In view of the above facts and circumstances the prayer of the applicant for lodging of the F.I.R. against the proposed accused persons is declined. However, the SHO of Surjani Town police station is directed to provide legal protection to the applicant and her family members from the said proposed accused persons in accordance with law, if required.

4. I have heard the learned counsel for the petitioner, learned Addl. P.G appearing for the State, and perused the material available on record.

5. It may be relevant to mention here that after investigation, F.I.R. No.327/2021, registered under section 6/9A, CNS, Act against the son of the applicant, namely, Muhammad Bilal was disposed of by police under "B" Class of Police Rules and such report under section 173, Cr. P.C. was approved by the Judicial Magistrate-IV, Karachi-Central vide order dated 01.10.2021, observing as under:

3. *Investigation officer in his 173 Cr.P.C. report submitted that accused Bilal was unlawfully taken from home at Lyari 36 by police officers in plain clothes. During the course of investigation I.O. ASI Syed Faisal was called by DSP of F.B. Ind. Area and enquired about the instant case when I.O. Syed Faisal got to know that mother of accused Bilal Mst. Sonia had complained against S.H.O. Inspector Roshan Karara that he took Rs.13,00,000/- amount from her house and also unlawfully took her son and implicated him in a false case. SIP Abdul Jabbar appeared before DSP F.B. Ind. Area and disclosed that he works for S.H.O. Inspector Roshan Karara and on his directions he lodged instant case. I.O. in his report has mentioned that he obtained the CDR record of Inspector Roshan Karara and found his and his accompanying police officials presence in the residential area of accused Bilal. Also regarding said incident, the mother of accused Bilal Mst. Sonia w/o Afzal Khan filed petition No.261/2021 which is pending hearing. Hence on the grounds of statements of accused, her mother and CDR record of S.H.O. Inspector Roshan Karara and his police party, the I.O. concluded the investigation of instant case to be lodged falsely and thus B-Class.*

6. There can be no cavil to the proposition that once the allegation with respect to the commission of a cognizable offence is communicated to police, the police is duty bound to register a case; and in case of refusal or resorting to delaying tactics; the aggrieved person is well within his rights to approach the Justice of Peace under section 22-A, Cr. P.C, with a prayer for registration of the case, and if the Justice of Peace comes to the conclusion that a cognizable offence is apparent from the data available on the record,

he can pass an order for registration of the F.I.R. As such, the Justice of Peace is saddled with the administrative duty to redress the grievances of the complainants aggrieved by refusal of police officer to register their reports. However, he is not authorized to assume the role of investigating agency or prosecution. Even minute examination of the case and fact finding upon the report of police is not included in the function of the justice of Peace. It may be observed that every citizen has got a right to get his complaint registered under Section 154 Cr.P.C. with local police when complaint makes out a cognizable offence, and a safeguard against false complaint is provided under Section 182, P.P.C. whereby a person giving false information to an officer in-charge of a police station can be prosecuted for an offence punishable under Section 182 or Section 211, P.P.C. if such information is found to be false.

7. So far the instant case is concerned, apparently, the findings of the learned Justice of Peace while refusing to redress the grievances of the applicant, are erroneous for the reason that the information conveyed by her *prima facie* discloses the commission of a cognizable offence. As a consequence, there was no option for the learned Justice of Peace, but to pass a direction to S.H.O. P.S., Surjani Town for registration of the F.I.R.

8. For what has been discussed above, I am of the considered view that the learned Justice of Peace has committed serious error while passing impugned order, dated 24-09-2021, which is hereby set-aside by allowing instant application as prayed. Consequently, respondent No. 4 (*S.H.O. P.S., Surjani Town*) is directed to record the statement of the applicant under section 154, Cr. P.C. in verbatim and thereafter if any cognizable offence is made out from the statement, he shall proceed further in accordance with

law. However, if after investigation it appears that the complaint so lodged by the applicant is false, he shall be at liberty to prosecute her in accordance with law.

JUDGE

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