

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. S – 3029 of 2011

Date

Order with signature of Judge

For Katcha Peshi :

Mr. Shaikh Amanullah, Advocate for the petitioner.

Mr. Nisar Ahmed Bhanbhro, Advocate for respondents No. 2 and 3.

Mr. Abdul Ghaffar Memon, State Counsel.

Nadeem Akhtar, J.: This Constitutional Petition has been filed by the petitioner against the Province of Sindh, the Station House Officer Police Station Gambat, District Khairpur, and two private parties. The petitioner has prayed, *inter alia*, that respondent No.1 / Station House Officer Police Station Gambat, District Khairpur, be directed to register his F.I.R. against private respondents No. 2 and 3, and to investigate petitioner's case according to law ; and that private respondents No. 2 and 3 be directed to pay a sum of Rs.300,000.00 to the petitioner as compensation / damages for causing damage / injury to petitioner's reputation and for causing mental torture and agony to the petitioner. By a short order announced by me on 18.09.2012, this petition was dismissed. Following are the reasons for its dismissal :

2. In this petition, the petitioner has alleged that on 01.08.2011 private respondent No.3 lodged a false F.I.R. bearing Crime No.182/2011 against him at Police Station Gambat under Sections 61 and 62 of the Irrigation Act. The petitioner has further alleged that as the statements of several witnesses recorded by the Investigation Officer did not support the version / complaint of the respondent No.3, the complaint was found to be false and was recommended for disposal in 'C' Class. Accordingly, the case against the petitioner was disposed of in 'C' Class by the IInd Civil Judge / Judicial Magistrate vide order dated 30.09.2011. It has been alleged by the petitioner that in fact the offence alleged against him in the F.I.R. was committed by respondents 2 and 3 in collusion with each other, which fact was revealed by the petitioner in a press conference. According to the

petitioner, in order to take revenge from the petitioner, respondents 2 and 3 lodged false F.I.R. against him.

3. In the above background, this petition has been filed with the prayer as stated above. During the course of hearing, learned counsel for the petitioner conceded that the petitioner never approached the concerned Station House Officer, namely, the Station House Officer Police Station Gambat, District Khairpur, (respondent No.1) for recording of his statement or for registering / lodging of his complaint against respondents 2 and 3. The learned counsel further conceded that it is not the case of the petitioner that the concerned Station House Officer had refused to record his statement or had refused to lodge his F.I.R., and therefore, the petitioner did not approach the Justice of Peace for redressal of his grievance.

4. The law on this point is now well settled that in case of a cognizable offence the complainant has to approach the Officer Incharge of such police station under whose jurisdiction such offence is said to have been committed. In such an event, the Officer Incharge of the concerned police station or anyone else has no authority to refuse to record complainant's statement and/or to refuse to lodge an F.I.R. on his complaint. If the said concerned Officer Incharge fails or refuses to record complainant's statement and/or to lodge his F.I.R., then the complainant has to approach the Justice of Peace under Section 22-A Cr.P.C. On such complaint / application, if the Justice of Peace forms his independent opinion from the facts narrated to him by the complainant that a cognizable offence has been made out, the Justice of Peace is bound to issue a direction to the concerned Station House Officer for recording of F.I.R. This view expressed by me is fortified by a number of authorities of the Hon'ble Supreme Court and reported cases of High Courts, including **[1] PLD 2007 Supreme Court 539** (Muhammad Bashir V/S Station House Officer, Okara Cantt. and others), **[2] PLD 2005 Karachi 621** (Mst. Bhaitan V/S the State and 3 others), and **[3] PLD 2008 Peshawar 53** (Salah-ud-Din Khan, S.H.O. and 2 others V/S Noor Jehan and another).

5. In this case, it is an admitted position that the petitioner never approached the concerned Station House Officer, namely, the Station House Officer Police Station Gambat, District Khairpur, (respondent No.1)

for recording of his statement or for registering / lodging of his complaint against respondents 2 and 3. The petitioner failed in availing the alternate remedy, which was an efficacious, adequate and the only remedy available to him under the law. Without approaching the concerned Station House Officer and thereafter without approaching the Justice of Peace upon refusal by the said Station House Officer, the petitioner cannot file this petition directly under the Constitutional jurisdiction of this Court. The petition is not maintainable as the reliefs sought by the petitioner, including that of damages, cannot be granted under the Constitutional jurisdiction of this Court. The petition is, therefore, dismissed.

J U D G E