

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Miscellaneous Application No. 172 of 2012

For Katcha Peshi.

07.09.2012. Mr. Zulfiqar Ali Naich, Advocate for the applicant.  
Mr. Muntazir Mehdi, A.P.G.

Through this application, the applicant has impugned the order passed on 27.02.2012 by the learned Sessions Judge / Justice of Peace, Ghotki, in Criminal Miscellaneous Application No. 217 of 2012, whereby her prayer for issuance of a direction to the concerned Station House Officer for recording her statement and for lodging F.I.R. against the accused nominated by her, has been turned down and her application has been disposed of with the observation that she has an alternate and adequate remedy of filing a direct complaint before the court having jurisdiction.

2. The case of the applicant is that several armed persons trespassed into her house on 21.02.2012 at 01-00 AM and took away valuable articles, cash and jewelry from her after beating her. When the applicant cried for help, some persons mentioned in the application came for her help, but no one could help her as the intruders / robbers were armed with deadly weapons and as they had threatened to kill the applicant. The applicant was able to identify some of the intruders / robbers, whose names are disclosed in this application. According to the applicant when she and her witnesses went to the Dharki Police Station in the morning for lodging FIR in respect of this crime, the Station House Officer refused to register her FIR. In this background, the applicant filed an application before the learned Sessions Judge / Justice of Peace, Ghotki, which was not entertained as stated above.

3. Mr. Zulfiqar Ali Naich, learned counsel for the applicant, has submitted that the learned Justice of Peace ought to have given the directions as prayed by the applicant, as it was his duty under the law. He has further submitted that the impugned order is contrary to the decisions given by High Courts, including this Court, and the law laid down by the Hon'ble Supreme Court. In support of his submissions, the learned counsel for the applicant relied upon

one authority of the Hon'ble Supreme Court and many reported cases of High Courts. Since the findings and conclusion in the cases referred to by the learned counsel are almost the same, I would discuss the authority of the Hon'ble Supreme Court and only two reported cases of High Courts. The other cases cited by the learned counsel have just followed the earlier decisions on this point.

4. In the case of Muhammad Bashir V/S Station House Officer, Okara Cantt. and others, reported as **PLD 2007 Supreme Court 539**, the Hon'ble Supreme Court was pleased to hold *inter alia* that the only jurisdiction which could be exercised by an Ex-officio Justice of the Peace under section 22-A(6) Cr.P.C was to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence, and if it did, then to direct the concerned S.H.O. to record an F.I.R. without going into the veracity of the information in question. It was further held in this authority that refusal to record, in the register of F.I.Rs. the information conveyed to him by complainant which information did disclose the commission of a cognizable offence, was illegal and equally invalid was the exercise undertaken by Ex-officio Justice of the Peace wherein the application of complainant was rejected.

5. In the case of Mst. Bhaitan V/S the State and 3 others, reported as **PLD 2005 Karachi 621**, it was held *inter alia* by this Court that Ex-officio Justice of the Peace who is a senior Judicial Officer has to form his own independent opinion about the offence being cognizable or non-cognizable from the facts narrated to him by the complainant orally or in writing, and for such purpose he is not required to issue notice to accused or to police officer or to anyone else. It was further held in the above cited case that the entire criminal judicial system revolves around the basic principle that no offence should go unchecked and no offender should go unpunished, therefore, Ex-officio Justice of the Peace is required to pass immediate orders on the application or complaint of non-registration of F.I.R. by adopting summary procedure to his satisfaction, firstly that cognizable offence appears to have been committed, and secondly that according to the material produced before him F.I.R. has not been registered. It was also held in this case that Officer Incharge of police station is bound to register F.I.R. under Section 154 Cr.P.C, and he has no power to refuse to register the same if from the information a cognizable offence is made out, whether such information is false or correct.

6. Similarly, in the case of Salah-ud-Din Khan, S.H.O. and 2 others V/S Noor Jehan and another, reported as **PLD 2008 Peshawar 53**, the Peshawar High Court has taken the same view by holding *inter alia* that it is mandatory for the police to record F.I.R. under section 154 Cr.P.C if a cognizable offence was alleged ; that Superior Courts had time and again reiterated the requirement of strict compliance of Section 154 Cr.P.C ; and that refusal of registration of FIR when commission of a cognizable offence was reported to the police was a sheer neglect on the part of concerned police officer in performance of his duty which must expose him to departmental disciplinary action. It was also held in the above cited case that the Ex-officio Justice of Peace has been given supervisory administrative jurisdiction over police officers / officials relating to registration of F.I.R, and in a case where Ex-officio Justice of Peace finds that the incident of cognizable offence was reported to police, but no F.I.R. was registered, he was required by law to issue a direction for registration of case.

7. Regarding the application filed by the applicant before the Justice of Peace, whereby she had prayed for a direction that respondent No.1 / S.H.O. Police Station Daharki be directed to record her statement for registering her complaint / F.I.R., law on this point is now well settled as already observed and discussed in the aforementioned reported cases. The result of the above discussion is that, when an oral or written complaint is made before the Justice of Peace in respect of an offence, he is bound under section 22-A(6) Cr.P.C. to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence, and if it did according to his own independent opinion as per the facts narrated by the complainant, then he is bound to immediately direct the concerned S.H.O. to register an F.I.R. without going into the veracity of the information in question. The Justice of Peace is bound to give such direction where the concerned S.H.O., despite applicant's request or approach, has refused to lodge an F.I.R. in respect of the same cognizable offence which has been alleged before him by the complainant. The Ex-officio Justice of Peace has no judicial powers or functions to perform under section 22-A Cr.P.C., but all his powers and functions are administrative and ministerial in nature. This is the reason that he cannot go into the veracity of the information disclosed before him by the complainant. Upon a direction issued by the Justice of Peace as stated above, the concerned S.H.O. shall be bound to register F.I.R. under Section 154 Cr.P.C, whether the information received by him is false or correct, and he shall have no power to refuse to register the

same if the offence appears to be cognizable from the information received by him. The concerned S.H.O. shall be failing in his duty if an F.I.R. is not registered by him where a cognizable offence is made out, or if he does not comply with the direction issued in this behalf by the Justice of Peace.

8. In the above context, I would like to refer to the case of Noorul Amin and another V/S Muhammad Hashim and 27 others, reported as **1992 SCMR 1744**. In this authority, the Hon'ble Supreme Court was pleased to hold that it is well settled that procedural laws are meant for advancing the cause of justice and they cannot be made a vehicle of oppression to suppress remedies. Section 22-A Cr.P.C. provides a specific procedure in respect of the proceedings before the Justice of Peace, and the said Section also defines his powers. Section 22-B Cr.P.C. deals with the duties of Justice of Peace. Applying the aforementioned authority of the Hon'ble Supreme Court, it can be safely held that the procedural law regarding proceedings before the Justice of Peace are meant for advancing the cause of justice and not for oppression or suppression of remedies. In case the Justice of Peace passes an order by not following the procedure prescribed by law, as has been done in the present case, such an order shall not be for advancement of the cause of justice. In the present case, the impugned order amounts to oppression and suppression of remedy of the applicant as direction to the concerned S.H.O. to record the statement of the applicant was not issued by the learned Justice of Peace although the said S.H.O. had refused to register an F.I.R. on applicant's complaint.

9. The impugned order is not a speaking order as no valid reason has been mentioned therein in order to show that the prayer made by the applicant was declined after proper and full application of mind. In view of the above, the impugned order is a nullity as per the settled principle of law and the same is liable to be set aside on this ground alone. Moreover, in the impugned order the learned Justice of Peace has not dealt with the main and basic questions, that is, whether the information disclosed before him by the applicant did or did not constitute a cognizable offence, and whether the concerned S.H.O. refused to register her complaint despite her request. The Justice of Peace is duty-bound under law to grant immediate relief to an applicant if the applicant succeeds in making out a cognizable offence which has not been registered by the concerned police station, otherwise the entire concept of providing speedy justice in criminal cases, especially for lodging F.I.R. without delay, shall be completely defeated.

10. Accordingly, the impugned order is set aside and this application is allowed as prayed. The applicant shall be at liberty to approach respondent No.1 / S.H.O. Police Station Daharki, District Ghotki, for recording her statement. She may also file her complaint in writing before the respondent No. 1. In either case, if any cognizable offence is made out by the applicant that may have occurred within the jurisdiction of respondent No.1, the respondent No.1 shall record her statement and shall proceed with in accordance with law.

J U D G E