

## ORDER SHEET

### IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. S – 2575 of 2012

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Date

Order with signature of Judge

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18.9.2012.

For Katcha Peshi :

Mr. Shabbir Ali Bozdar, Advocate for the petitioner,  
along with the petitioner.

Mr. Abdul Ghaffar Memon, State Counsel.

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**Nadeem Akhtar, J.:** This Constitutional Petition has been filed by the petitioner against the Government of Sindh and a number of Police functionaries, who are respondents No. 1 to 8, as well as against seven private parties, who are respondents No. 9 to 15. The petitioner has prayed, *inter alia*, that respondent No.2 (S.S.P., District Ghotki) be directed to recover the cattles and other valuables stolen from her house by respondents No. 4 to 15 ; and that respondent No.3 (S.H.O., P.S. Wasti Jiwan Shah) be directed to record the statement of the petitioner, and if any cognizable offence is made out, then to register F.I.R. against respondents No. 4 to 15.

2. In her petition, the petitioner has alleged that private respondents 9 to 15 had some dispute with one Mour Tart, who was a wanted notorious criminal and was the resident of petitioner's village ; that on 27.8.2012, the said private respondents attacked the house of Mour Tart and murdered him ; and that on the next morning the said private respondents alongwith police officials (respondents No.4 to 8) came to petitioner's village to collect the dead body of Mour Tart, whereafter they concocted a fake encounter of Mour Tart in order to get his head money and other rewards from the Government. The petitioner has further alleged that when the above mentioned private and official respondents came to her village, they raided the house of the petitioner, and during such raid they not only misbehaved, maltreated, humiliated and disgraced the petitioner, but they also took away 12 cows, 15 buffaloes, 30 maunds of wheat and other household articles belonging to the petitioner.

3. In this petition, it has been stated by the petitioner that she alongwith her witnesses approached the Police Station, Wasti Jiwan Shah, in the morning immediately after the incident and tried to report the same to the police. However, her complaint was neither entertained nor registered, and her statement was also not recorded by the police. It has been alleged in this petition that respondent No.4 (SIP/SHO, P.S. Wasti Jiwan Shah, District Ghotki) informed the petitioner that all the stolen cattles and articles were handed over to the private respondents, and in case of any action by the petitioner either against the said private respondents or against the respondent No.4, false criminal cases will be made against the petitioner and her family. According to the petitioner, the entire incident as well as the high handedness of the respondent No.4 was reported by her to respondent No.2 / SSP, District Ghotki, but he also refused to take any action either against the respondents or for recovery of the stolen cattles and articles.

4. 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 in the presence of the petitioner that after refusal by the concerned police station / functionaries to record her statement and to register her complaint / F.I.R., the petitioner did not approach the Justice of Peace for redressal of her grievance. In this context, it may be noted that the law on this point is very clear that Officer Incharge of a police station has no authority to refuse to record an F.I.R., and in case a complaint is not entertained by the concerned S.H.O. or statement of the complainant is not recorded by him or an F.I.R. is not registered by him, 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 S.H.O. for recording of F.I.R. A number of cases have been decided and reported on this subject, but I would like to refer only to the following :

- a) 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 Officer Incharge of a police station or anyone else has no authority to refuse to record an F.I.R. ; and that under section 22-A(6) Cr.P.C., the Justice of Peace 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 case by the Hon'ble Supreme Court that powers of an Ex-officio Justice of Peace under Section 22-A(6) Cr.P.C. could not be equated with the Constitutional jurisdiction of High Courts.

b) 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 Peace 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 if he finds that cognizable offence appears to have been committed, and according to the material produced before him F.I.R. has not been registered, then he is required to pass immediate orders on the application or complaint of non-registration of F.I.R. by adopting summary procedure. It was also held in this case that the 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.

c) 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 had 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 would be 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.

6. In this case, it is an admitted position that the petitioner approached the concerned police station and then respondent No.2 (S.S.P., District Ghotki) for recording of her statement and for registration of her complaint, but no action was taken on her complaint. It is also an admitted position that the petitioner did not file any application / complaint before the Justice of Peace against non-recording of her statement and non-registration of her complaint / F.I.R. The petitioner failed in availing the alternate remedy, which was an efficacious, adequate and the only remedy available to her under the law. This petition is not maintainable in view of the above discussion and also as the relief sought by the petitioner cannot be granted under the Constitutional jurisdiction of this Court, especially with regard to powers of an Ex-officio Justice of Peace under Section 22-A(6) Cr.P.C. that cannot not be equated with the Constitutional jurisdiction of this Court as held by the Hon'ble Supreme Court in PLD 2007 Supreme Court 539 (*supra*). The prayer for recovery of stolen cattles and articles is also not maintainable under the Constitutional jurisdiction of this Court. The petitioner, if she is so advised, may approach the Justice of Peace regarding her complaint, and may initiate proceedings in accordance with law for recovery of her stolen cattles and articles.

The petition stands disposed of in the above terms.

JUDGE