

ORDER SHEET**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

Criminal Miscellaneous Application No. 423 of 2012

For Katcha Peshi:

25.9.2012: Mr. Zulfiqar Ali Naich, Advocate for the applicant.
Mr. Zulfiqar Ali Jatoi, D.P.G.

Nadeem Akhtar, J. : Through this application, the applicant has impugned the order passed on 09.07.2012 by the learned 1st Additional Sessions Judge / Justice of Peace, Sukkur, in Criminal Miscellaneous Application No. 601 of 2012, whereby his prayer for issuance of a direction to the concerned Station House Officer for registering F.I.R. against the accused nominated by him, has been dismissed on the ground that the applicant has a remedy against the alleged accused before the civil court.

2. The case of the applicant is that he purchased a house from one Shah Muhammad Shah (vendor) in consideration of Rs.500,000.00 through an agreement which was reduced into writing ; that the agreement was signed by the applicant and the vendor as well as by two witnesses ; that the entire agreed sale consideration was paid by the applicant to the vendor, Rs.350,000.00 through cheques and remaining Rs.150,000.00 in cash ; that after paying the entire agreed sale consideration to the vendor, the applicant requested the vendor to hand over the said property to him and to complete the sale in his favour, but the vendor refused to perform his agreed part of the contract ; that because of applicant's repeated demands, the vendor and his sons extended threats of murdering the applicant ; that the concerned Station House Officer refused to entertain applicant's complaint when the applicant approached him ; that on 27.6.2012 when the applicant was present in his *Otaq* along with several witnesses, the vendor, his sons and some unknown persons came duly armed with weapons and threatened that the applicant will be murdered in case possession of the said property is again demanded by him ; and that the applicant tried to report this particular incident of 27.6.2012 on the same day in presence of his witnesses to the concerned Station House Officer for registration of F.I.R. against the accused nominated by him, but no action was taken on his complaint.

3. In the above background, the applicant filed Criminal Miscellaneous Application No. 601 of 2012 before the learned Sessions Judge / Justice of Peace, Sukkur, praying that the concerned Station House Officer be directed to register F.I.R. in respect of the above incident against the accused nominated by him. The said application was entrusted for adjudication to the 1st Additional Sessions Judge / Justice of Peace, Sukkur. The learned Justice of Peace called comments from the concerned Station House Officer, who submitted his comments / report dated 16.7.2012 wherein it was stated that no such offence, as alleged by the applicant, had been committed in his jurisdiction nor the applicant had approached him in respect of any such offence. On the basis of this report, the learned Justice of Peace dismissed the application filed by the applicant on the ground that since the dispute had arisen out of an agreement of sale between the parties, such dispute should be taken by the applicant to the civil court.

4. Mr. Zulfiqar Ali Naich, learned counsel for the applicant, has contended that by not appreciating the real purpose of filing the complaint and the serious allegations contained therein, the learned Justice of Peace has erred in law by not exercising jurisdiction and powers vested in him under Section 22-A Cr.P.C. He submitted that applicant's application contained specific allegations against the accused which were *prima facie* sufficient to make out a cognizable offence against them, and after refusal by the concerned Station House Officer to register applicant's F.I.R., filing of application before the Justice of Peace was the only remedy available to the applicant. The learned counsel argued that in such circumstances direction for registering F.I.R. ought to have been issued by the Justice of Peace irrespective of any civil dispute between the parties. In support of his submissions, Mr. Naich cited and relied upon the cases of Mst. Bhaitan V/S The State and 3 others reported as **PLD 2005 Karachi 621**, and Salah-ud-din Khan, S.H.O. and 2 others V/S Noor Jehan and another reported as **PLD 2008 Peshawar 53**.

5. On the contrary, Mr. Zulfiqar Ali Jatui, the learned D.P.G., has opposed this application by supporting the impugned order. According to the learned D.P.G., the admitted existence of civil dispute between the parties was sufficient for dismissal of applicant's application as the Justice of Peace has no jurisdiction in respect of such disputes. He has further contended that the application was malafide as the same was filed by the applicant in order to pressurize the vendor / alleged accused to complete the sale in his favour. He has placed reliance on the case of Muhammad Hussain V/S Additional Sessions Judge / Justice of Peace, D.G. Khan and 4 others reported as **2012 YLR 460**. The learned D.P.G. has prayed for dismissal of this application.

6. I will first discuss the aforementioned cases cited and relied upon by the learned counsel for the applicant :

- A. In the case of Mst. Bhaitan Supra, it was held *inter alia* by this Court that Ex-officio Justice of 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 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.
- B. Similarly, in the case of Salah-ud-Din Khan Supra, 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. In the above context, I would like to refer to a recent authority of the Hon'ble Supreme Court, namely, Muhammad Bashir V/S Station House Officer,

Okara Cantt. and others, reported as **PLD 2007 Supreme Court 539**, which is now being consistently followed. There are a number of other reported cases on this point, but the same have just followed either the aforementioned authority of the Hon'ble Supreme Court or the earlier cases discussed above. In the case of Muhammad Bashir Supra, 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 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 Station House Officer 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 Peace wherein the application of complainant was rejected.

8. The record shows that in the instant case comments were called by the Justice of Peace from the concerned Station House Officer who complied with such direction and submitted his report before the Justice of Peace. The impugned order shows that the application was decided / dismissed on the basis of the said report and not on the basis of the incident narrated and allegations made specifically by the applicant in the application. This clearly shows that the contents of the application were not examined by the Justice of Peace in order to determine whether any cognizable offence had been made out or not from the facts narrated before him by the applicant in his application. The Justice of Peace was duty-bound to determine the question of existence or non-existence of cognizable offence without going into the veracity of the information in question in view of the law laid down by the Hon'ble Supreme Court and also as held by High Courts in the cases discussed above. Thus the Justice of Peace committed a grave error in law by not examining the application in the above perspective and by not deciding the application in accordance with law.

9. Regarding the comments / report called by the Justice of Peace from the concerned Station House Officer, it may be observed that there is no provision in any law, including Sections 154 and 155 of Cr.P.C., which authorizes an Officer Incharge of a Police Station to hold any enquiry to assess the correctness or falsity of the information received by him before complying with the mandatory requirement of reducing the information into writing irrespective of the fact whether such an information was true or not. It is important to note that the correctness or falsity of accusations leveled against someone / accused

can be decided only by a competent court of law and not by a police officer or even by an Ex-officio Justice of Peace. It must also be kept in mind that an Ex-officio Justice of Peace / District and Sessions Judge is the higher forum than all the courts subordinate to him, including the trial court, with respect to certain offences and an appellate and revisional forum in other matters. Being the higher and appellate forum, an Ex-officio Justice of Peace / District and Sessions Judge has the power and jurisdiction to declare whether any offence had been committed or not and whether the accusations were false or not. On the basis of only a police report and without examination of evidence by the competent court of law, if it is held by the higher / appellate forum that no offence had been committed or that the accusations were false, as has been done in the instant case, it would tantamount to violating due process of law and mandatory requirements of trial of a criminal case. Thus, in my humble opinion calling comments or report by the Justice of Peace from the concerned Station House Officer is not necessary for deciding an application wherein it is alleged that a cognizable offence had been committed and the same was not registered by the concerned Station House Officer despite applicant's complaint. This view expressed by me finds support from plain reading of the language of Section 22-A(1) Cr.P.C. wherein it is specifically mentioned that a Justice of Peace shall have all the powers of a police officer referred to in Section 54 Cr.P.C. and those of an officer-in-charge of a police station referred to in Section 55 Cr.P.C. I have observed in a number of cases that instead of exercising his powers and jurisdiction under Section 22-A Cr.P.C., the Justice of Peace unnecessarily refers the matter to the concerned Station House Officer for comments / report and then decides the fate of the application pending before him on the basis of such report instead of performing his statutory duty by determining as to whether any cognizable offence has been made out or not from the facts narrated to him by the applicant and whether the complaint has been registered or not by the concerned Station House Officer.

10. The other important aspect which requires to be addressed is the existence of a private or civil dispute between the parties. Unfortunately the Justice of Peace does not hesitate in dismissing an application where he finds that any such dispute exists between the parties. In my humble opinion, this is a serious misconception for many reasons. The first reason is that if this had been the intention of the law makers, then a barring clause could have been very easily inserted in Section 22-A Cr.P.C. barring all such applications before the Justice of Peace wherein parties are involved in private or civil dispute. In the absence of any such provision, it cannot be assumed that an application before the Justice of Peace would not be maintainable in such cases. The second and more important reason is that parties may have private or civil

disputes, and at the same time or during the pendency of such disputes, one or both of the parties commit an offence against the other party. In such a situation, parties shall have both the remedies, one before the competent civil court and the other before the proper forum prescribed under the Code of Criminal Procedure. Both the said remedies and jurisdictions are separate and distinct from each other, and the parties cannot be compelled to seek their remedy before a wrong forum.

11. In the instant case, the applicant had not prayed before the Justice of Peace either for specific performance of the agreement or for possession or for mesne profits, etc. The applicant, if he is so advised, may or may not seek such relief before the civil court having jurisdiction. Before the Justice of Peace, the applicant had only prayed that the concerned Station House Officer be directed to register his F.I.R., which can neither be done nor is possible before a civil court. It may be noted that in his application, the applicant did not conceal about existence of a civil dispute between himself and the vendor / proposed accused. In fact the incident and offence reported by him was an outcome of the said civil dispute. The Justice of Peace failed to appreciate the facts and circumstances in which the incident and offence had occurred according to the applicant. In this context, I will refer to a very recent case of Rai Ashraf and others V/S Muhammad Saleem Bhatti and others reported as **PLD 2010 Supreme Court 691**, wherein the Hon'ble Supreme Court has been pleased to hold as under :-

“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 by this Court in Muhammad Saleem’s case 1994 SCMR 2213 and Mushtaq’s Ahmed case PLD 1973 SC 418. The relevant observation in Mustaq’s Ahmed 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. The case of Muhammad Hussain Supra cited by the learned D.P.G. is not applicable in the instant case, as the order passed by the Justice of Peace dismissing complainant’s application was upheld by the Lahore High Court in Constitutional jurisdiction on the ground that the complainant had an alternate and efficacious remedy available to him. Whereas, the instant application has not been filed in the Constitutional jurisdiction of this Court and, except for filing application before the Justice of Peace, the applicant had no other remedy as the concerned Station House Officer had admittedly refused to register his F.I.R.

13. 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 Station House Officer to register an F.I.R. without going into the veracity of the information in question and irrespective of any private or civil dispute between the parties. The Justice of Peace is bound to give such direction where the concerned Station House Officer, 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. In my humble opinion, this is the main reason that he cannot go into the veracity of the information disclosed before him by the complainant, or to see whether any private or civil dispute is pending between the parties. Upon a direction issued by the Justice of Peace as stated above, the concerned Station House Officer 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 whether any private or civil dispute between the parties is pending or not, 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 Station House Officer 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.

14. In his application before the Justice of Peace, the applicant had raised specific allegations against the proposed accused that they had forcibly entered into his *Otaq* armed with weapons and had threatened to murder him. Despite such serious allegations, the learned Justice of Peace has not dealt with the main and basic questions in the impugned order, that is, whether the information disclosed before him by the applicant did or did not constitute a cognizable offence, and whether the concerned Station House Officer refused to register his complaint despite his request. The impugned order is, therefore, 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.

15. 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 / Station House Officer, Police Station Sangi, for recording his statement. He may also file his 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 his statement and shall proceed with in accordance with law.

J U D G E