

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc. Appl. No. S- 587 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
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15.1.2013.

Mr. Ghulam Qadir H. Siyal, advocate for the applicant.
Mr. Shahzado Saleem, A.P.G. for the State.

NADEEM AKHTAR, J: Through this criminal miscellaneous application, the applicant has impugned the order dated 11.10.2012 passed by the Ex-officio Justice of Peace/ VIth Additional Sessions Judge Hyderabad, whereby the learned Judge declined to issue directions to the concerned SHO for registration of FIR as prayed by the applicant. The learned counsel for the applicant submits that, while deciding the applicant's application, the Justice of Peace was required only to examine the contents of the application and the allegations made therein. The Justice of Peace was not required to discuss the merits of the case and/or to look into the veracity of the allegations. The learned counsel further submits that the contents of the applicant's application and the allegations made therein were prima facie sufficient to show that the applicant had made out a cognizable offence for registration of FIR against the accused proposed by him.

The submissions made by learned counsel for the applicant appears to be correct as the applicant had made categorical allegations in his application against the proposed accused, which have been noted by the Justice of Peace in the impugned order. It was observed by the Justice of Peace that whenever report is called from the concerned S.H.O., the Justice of Peace acts accordingly in pursuance of such report. In this context, I may observe that it is not the duty of the Justice of Peace to call for the report from the S.H.O., while examining the contents of the application before him. The Justice of Peace is required only to issue directions to the concerned S.H.O., for registration of F.I.R., when a cognizable offence is made out. In the present case the applicant was directed to pursue his application before the police authorities and the concerned S.H.O., was directed to dispose of the applicant's pending application. Such a direction by the Justice of Peace is not in accordance with the sprit of Section 22-A Cr.P.C. as the application filed by the applicant cannot be treated as an FIR. The Justice of Peace has erred in law by giving his finding in the impugned order that the applicant was trying to pressurize the proposed accused on account of old enmity.

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. 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. 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 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.

In view of the above, the concerned Station House Officer is directed to record the statement of the applicant, and in case the applicant succeeds in making out a cognizable offence, to register an F.I.R. and to proceed strictly in accordance with law.

This criminal miscellaneous application is disposed of in the above terms.

JUDGE