

ORDER SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.**

Cr. Misc. Appln. No.S- 204 of 2022.

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Date	Order with signature of Hon'ble Judge
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- 1.For orders on office objection as flag A.
- 2.For hearing of main case.

28.7.2022.

Mr. Faiz Muhammad Larik a/w applicant

Mr. Ali Anwar Kalhoro, Addl. P.G.

Proposed accused SIP Ahmed Ali Odho SHO P.S Darri & WHC Abdul Rasheed Bhutto, PS Darri are present.

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By this application, the applicant has assailed the order dated 14.7.2022 passed by learned IVth Additional Sessions Judge/Ex-Officio Justice of Peace, Larkana whereby her application U/S 22 A & 22 B (6) (i) Cr.P.C seeking directions to the SHO concerned for registration of FIR was dismissed.

The facts giving rise to filing of the instant application are that on 03.7.2022 at about 8.30 pm while parking her car in the parking area, one Ahmed Ali Kanasiro and two unidentified accused persons annoyed and misbehaved for which she alongwith her relative/witness Shakeel Ahmed S/O Noor Ahmed approached the proposed accused No.1 Ahmed Ali Odho, SHO P.S Darri for registration of the case against said Ahmed Ali Kanasiro and others but SHO made her sit in his office and then asked that her grievance will be resolved if she satisfies his sexual desire to which she refused. Then proposed accused No.2/WHC Abdul Rasheed Bhutto also pressurized herto accept the proposal of SHO and on her refusal, the SHO with the help of WHC Abdul Rasheed Bhutto forcibly touched her body, ripped her clothes on which her body was exposed, and attempted or commit rape when she cried on which her witness came there on which proposed accused extended threats that unless she agrees her grievance will not be redressed. She further stated that being odd hours of night she did not complain to higher-ups and on the following day she approached SSP Larkana but to no avail, therefore, the applicant moved application under Section 22 A & 22 B (6) (i) Cr.P.C before learned Ex-Officio Justice of Peace which was dismissed vide order dated 14.7.2022 which is challenged through the instant application.

Today applicant is present in person and levels serious allegations against the proposed accused repeating the story incorporated by her in application under Section 22 A & 22 B (6) (i) which is denied by the proposed accused present in Court.However, they submit that they are ready and willing to submit a personal Bond before this Court to the effect that they neither

harassed the applicant nor they intend to do so in future; and further submit that no harm shall be caused to her and/or her family members at their hands. Let them furnish such Bond with the Additional Registrar of this Court.

It is contended by learned counsel for the applicant that the proposed accused have committed the cognizable offense for which the SHO concerned is duty bound to register FIR and the veracity of the allegations could be ascertained through impartial investigation, but yet learned Justice of Peace has dismissed her application under impugned order which is liable to be set aside.

Mr. Arif Ali Kalhoro, counsel files power on behalf of proposed accused SIP Ahmed Ali Odho SHO P.S Darri & WHC Abdul Rasheed Bhutto, PS Darri alongwith their preliminary objections supported by certain documents, which are taken on record. He contended that allegations leveled against the proposed are false and that there is a previous record against the applicant which shows that she is habitual in moving complaints from time to time against several persons and then withdrawing from her stand on private settlement.

I have heard the learned counsel for the parties and perused the record.

Primarily, women often experience obstacles in gaining access to mechanisms of redress, including legal aid, counseling services, and shelters. They are re-victimized and exposed to further risk of violence. Violence against women is systematic and occurs in the public and private spheres. It is underpinned by the persistence of patriarchal social norms and inter- and intra-gender hierarchies. Women are discriminated against and subordinated not only based on sex but other grounds too, such as caste, class, ability, sexual orientation, tradition, and other realities. Violence against women has already been defined that “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”

Coming to the main case the larger Bench of the Hon’ble Supreme Court in *Younus Abbas and others* while discussing powers of the Ex-officio justice of the peace under Section 22-A and 22-B has settled the issue once and for all needs no further deliberation on our part.

The record of the present case shows that upon the application of the applicant under Section 22 A & 22 B (6) (i) Cr.P.C, the learned Ex-Officio Justice of Peace passed the order on 14.7.2022, and declined the request of the applicant on the analogy that no case for a cognizable offense made out.

It is now well established that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of the Constitution, and if there is any error on the point of law committed by the Courts below or the tribunal or their decision takes no notice of any pertinent provision of law, then obviously this court may exercise Constitutional jurisdiction subject to the non-availability of any alternate remedy under the law. This extraordinary jurisdiction of the High Court may be invoked to encounter and collide with an extraordinary situation. This Constitutional jurisdiction is limited to the exercise of powers in the aid of curing or making correction and rectification in the order of the Courts or Tribunals below passed in violation of any provision of law or as a result of exceeding their authority and jurisdiction or due to exercising jurisdiction not vesting in them or non-exercise of jurisdiction vested in them. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the object to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. As far as the exercise of the discretionary powers in upsetting the order passed by the court below is concerned, this court has to comprehend what illegality or irregularity and or violation of law has been committed by the courts below which caused miscarriage of justice.

Adverting to the present case, a careful examination of the order impugned in the present proceedings and the record shows that the learned Ex-Officio Justice of Peace while passing the impugned order failed to consider the contents of the application in terms of the ratio of judgment passed by the Hon'ble Supreme court in the case of Younus Abbas and others v. Additional Sessions Judge, Chakwal and others **PLD 2016 Supreme Court 581**, and thus, the order impugned is declared to be of no legal consequence.

Accordingly, this criminal miscellaneous application is disposed of with the direction to the Deputy Inspector General of Police Larkana to take cognizance of the matter and probe the allegations himself by calling the parties, and if a cognizable offense is made out direct concerned SHO to register the F.I.R of the alleged incident by recording the statement of applicant.

The aforesaid exercise shall be undertaken within one week.

Instant application stands disposed of in the above terms.

**J U D G E**