

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

Crl. Misc. A. No. S- 386 of 2021. : Ghulam Qadir & others vs. The State & others.

For the Applicants : Mr. Nisar Ahmed Abro, Advocate.

For respondent No.3 : Mr. Suhail Ahmed Veesar, Advocate.

For the State : Mr. Ali Anwar Kandhro, Addl. P.G.

Date of hearing : 04.07.2022.

Date of announcement : 04.07.2022.

### **ORDER**

**Adnan-ul-Karim Memon, J.** Through instant Criminal Miscellaneous Application, applicants have called in question the order dated 04.11.2021 passed by learned Ex-Officio Justice of Peace / Additional Sessions Judge-VI, Larkana whereby he while allowing the application filed by respondent No.3 directed SHO PS Badeh to record the statement of the complainant/ respondent No.3 and incorporate in the book under Section 154 Cr.P.C. with further direction to concerned to investigate the case and I.O of the case was directed to report under Section 182 PPC if the information proved to be false. For convenience sake, an excerpt of the order dated 04.11.2021 is reproduced:

“Considering the facts and circumstances of the case as well as material brought on record, I find it appropriate to direct the respondent No.1 to record statement of the applicant on his appearance at Police station and if cognizable offence is made out, then to act as per law, if he found false statement of complainant then take action against him. The instant application stands disposed of accordingly.”

Mr. Nisar Ahmed Abro learned counsel for the applicants contends that the private respondent has another remedy of filing the Direct Complaint to record his version as provided under section 200 Cr. P.C. He further contended that allegations and counter allegations, could only be thrashed out after a thorough probe and that could only be determined if the parties bring their case before the concerned Magistrate under section 200 Cr. P.C. He further submitted that the learned Ex-Officio Justice of Peace even failed to consider the report of SHO, whereby he stated that no such incident had taken place as narrated by the private respondent and he wanted to settle his score with the applicants, over the matrimonial issue.

In the circumstances when I confronted the learned counsel for the private respondent that the procedure of direct complaint is much available to the private

respondent under Section 200, Cr. P.C Mr. Suhail Ahmed Veesar learned counsel for the private respondent has categorically stated that he wanted the accused persons in his version of the incident to be arrested which was/is not possible through the medium of a private complaint. He further submitted that accusation against the proposed accused disclosed commission of a cognizable offense and as such a statutory duty was cast upon the Station House Officer to register a formal First Information Report to investigate the same and his failure was amenable to interference; that in the present case there are extraordinary circumstances in which registration of FIR is the only proper course; and, adopting the alternate course provided in Section 200, Cr. P.C, that could not be equally efficacious for the private respondent. Such understanding of the law on the part of the private respondent is erroneous and fallacious.

Heard the learned counsel for the parties on the subject issue and perused the material available on record.

Prima facie, this assertion of the private respondent is not tenable under the law. As the Honorable Supreme Court in the case of *Younas Abbas and others v. Additional Sessions Judge Chakwal and others* **PLD 2016 Supreme Court 581**, and *Abdul Rehman Malik Vs. Synthia D. Ritchie, Americans National, and other* **2020 SCMR 2037** has already dilated upon the subject wherein the vires of interference by the Justice of Peace with the functionality of police/ investigation had been questioned without success.

Without touching the merits of the case, prima-facie the reasons assigned by respondent No.3 in his application before learned Ex-Officio Justice of Peace / Additional Sessions Judge-VI, Larkana needs a thorough probe, in terms of the ratio of the decision rendered by the Honorable Supreme Court in the case of *Younus Abbas and others* supra which could be done, if he approaches the learned Magistrate concerned as provided under section 200 Cr. P.C for the simple reason that by the provisions of section 202(1), Cr.P.C. a Court in a private complaint can direct an inquiry or investigation to be made by any Justice of the Peace or by a Police Officer or by such other person as it thinks fit. If in a given case the Court in a private complaint deems it appropriate can direct an investigation to be carried out in respect of the allegations made then the powers available during an investigation, enumerated in Part V, Chapter XIV of the Code of Criminal Procedure, 1898 read with section 4(1) (l) of the same Code, including the powers to arrest an accused person. Such powers of the Investigating Officer or the investigating person recognize no distinction between an investigation in a State case and an investigation in a complaint case.

The object of investigation under section 202 of the Code is to enable the Court to scrutinize the allegations to protect a person complained against from being summoned to face frivolous accusations. Section 202 of the Code is an enabling provision to empower the Court to hold an effective inquiry into the

truthfulness or otherwise of the allegations leveled in the complaint to form an opinion on whether there exist sufficient grounds to proceed further or not. Therefore, inquiry/ investigation under section 202 of the Code is not a futile exercise and is to be taken into consideration by the Court while deciding whether the process is to be issued or not.

Resultantly, this application is hereby allowed in the above terms setting aside the impugned order dated 04.11.2021, passed by learned Ex-Officio Justice of Peace / Additional Sessions Judge-VI, Larkana. However, the respondent No.3 is at liberty to approach the learned Magistrate concerned by filing Direct Complaint to record his version as provided under section 200 Cr. P.C., if his cause still subsists.

**J U D G E**