

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

Crl. Misc. A. No. S- 64 of 2022. : Mst. Fahmida Khoso vs. SHO P.S Tangwani & others.

For the Applicant : Mr. Ashfaq Hussain Abro, Advocate.

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

Date of hearing : 05.07.2022.

Date of Order : 05.07.2022.

## **ORDER**

**Adnan-ul-Karim Memon, J.** Through instant Criminal Miscellaneous Application, the applicant has called in question the order dated 14.03.2022 passed by learned Ex-Officio Justice of Peace / Additional Sessions Judge, Kandhkot, whereby he has dismissed the application filed by the applicant in terms of Section 22-A Cr.P.C. on the premise that no such incident took place to take cognizance of the matter. The aforesaid findings have been assailed inter-alia on the ground that it could only be ascertained when the investigation is to be made by the Police about the incident which was timely reported to Police, however, they were reluctant to register the crime, paving way for the applicant to approach the learned Ex-Officio Justice of Peace.

2. Heard the learned counsel for the applicant, and learned Addl. P.G. on the maintainability of the captioned Criminal Miscellaneous Application, and perused the material available on record.

3. The learned Ex-Officio Justice of Peace / Additional Sessions Judge, Kandhkot has premised his findings that the applicant filed a false application with mala fide intention. Learned Ex-Officio Justice of Peace further observed that no such incident as alleged by the applicant had taken place, with the following findings:-

“In the matter in hand, applicant Fahmeeda has shown the date of offense as 21.02.2022 and she has filed instant Crl: Misc: Application on 07.03.2022 after the lapse of 14 days of alleged date of the incident. According to the police report as well as the contention of the learned Advocate for the proposed accused, FIR No:09/2022 us/ 506/2, 353 PPC was registered by the proposed accused at PS Tangwani against Farooque Ahmed and Abdul Salam, husband, and father of applicant respectively on 03.03.2022. Thereafter, the applicant just to save her

husband and father, applied with malice to bow down the head of the proposed accused who was performing his legal duty and it is the duty of the Court to scrutinize the matter very vigilantly and care. Therefore, I am of the humble view that the applicant while presenting this baseless application intends to lodge false FIR against the proposed accused with mala fide intention. Real facts are suppressed by the applicant. As such, instant application merits no consideration, which is hereby dismissed accordingly.”

4. During the arguments, the learned counsel for the applicant was confronted with the factum that the procedure of direct complaint was/is much available to the applicant under Section 200, Cr. P.C., if at all the applicant was/ is aggrieved by the decision of learned Ex-Officio Justice of Peace, learned counsel categorically stated that he wanted the proposed accused person in her version of the incident to be arrested which was/ is not possible through the mode 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 SHO concerned to register a formal F.I.R to investigate the same and his failure was amenable to interference by this Court under the law; 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 applicant.

5. Primarily, such understanding of the law on the part of the applicant is fallacious. Even the applicant's assertion is not tenable under the law in terms of the report of the Station House Officer concerned as well as the decision of the learned Ex-Officio Justice of Peace / Additional Sessions Judge, Kandhkot. 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.

6. Prima-facie the reasons assigned by the applicant in her application before the learned Ex-Officio Justice of Peace / Additional Sessions Judge needs to be seen, 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 she

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.

7. 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.

8. For the foregoing reasons this application is hereby dismissed. However, the applicant would be at liberty to approach the learned Magistrate concerned by filling Direct Complaint to record her version as provided under section 200 Cr.P.C., if her cause still subsists.

**Judge**