

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No. D – 6291 of 2017

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Priority:

1. For hearing of Misc. No.29248/2017
2. For hearing of Misc. No.26142/2017
3. For hearing of main case

01.02.2019

Mr. Abid S. Zuberi, Advocate for petitioner.
Mr. Muntazir Mehdi, DPG.
Barrister Mustafa Mahesar, Addl.A.G. a/w S.I. Aijaz.
Mr. Saifuddin, Advocate for intervenor.
Mr. Ghulam Shabbir Baloch, Assistant Attorney General.

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Omar Sial, J: On 23-8-2017 there was a heavy rainfall in Karachi during which a most unfortunate incident occurred. A little boy, Aryyan Siddiqui, aged 8 years, while playing in the rain was electrocuted due to current flowing from an electric pole and lost his life. Aryan's uncle, Shafiquddin Siddiqui, approached the local police to register an F.I.R against the Chairman, Chief Executive Officer and a General Manager of K-Electric but the police after preliminary enquiries declined to register the same. Shafiquddin Siddiqui thus filed an application under section 22-A Cr.P.C. before the learned Sessions Judge/Ex-Officio Justice of Peace, Karachi East seeking directions from him to the S.H.O. of the Model Colony police station to register an F.I.R. against the three officers of K-Electric. The learned Judge in his capacity as Ex-Officio Justice of Peace passed an order on 18-9-2017 that the S.H.O. of the Model Colony police station register a case if a cognizable offence is made out. It is this order that has been impugned in these proceedings.

2. We have heard the learned counsel for the petitioner Tayyab Tareen, who is the C.E.O. of K-Electric as well as the learned counsel for the aggrieved party and the learned AAG. Our observations are as follows.

3. Hon'ble Justice Mr. Manzoor Ahmad Malik, as a member of a Full Bench of the Hon'ble Supreme Court in **Younas Abbas vs Additional Sessions Judge, Chakwal and others (PLD 2016 SC 581)**, while referring to Section 22-A Cr.P.C. has observed that *"these provisions especially Section 22-A of the Code of Criminal Procedure, though beneficial and advantageous to the public at large, yet in a myriad of cases, it has been misused and abused."* The Hon'ble Judge went on to observe that *"The ex-officio Justice*

of the Peace, before issuance of a direction on a complaint for the non-registration of a criminal case under subsection (6)(i) of section 22-A, Code of Criminal Procedure must satisfy himself that sufficient material is available on the record, such an application to the concerned SHO for registration of the criminal case and on his refusal or reluctance, complaint to the higher police officers i.e. DPO, RPO etc., to show that the aggrieved person, before invoking the powers of ex-officio Justice of the Peace, had recourse to the high ups in the police hierarchy.” We have observed that in most cases, the learned Ex-Officio Justice of Peace are not following the observations made by the Hon’ble Supreme Court and as a consequence, without seeing whether the aggrieved party has actually approached the relevant S.H.O. and then his superior for redressal of his grievance or giving a reasoned opinion on their decision are merely directing the S.H.O. of a police station to record the statement of the aggrieved party and if a cognizable offence is made out then to register an F.I.R. As the Hon’ble Supreme Court in the Younas Abbas case (supra) has taken the view that the functions of the Ex-Officio Justice of Peace are not administrative but quasi-judicial in nature, it would be appropriate that the learned Ex-Officio Justice of Peace give cogent reasons for their orders. In the present case, while we notice that the learned Ex-Officio Justice of Peace has referred to the requirement for such reasoning but has then omitted to give the required reasons.

4. Prima facie it appears to us that a cognizable offence against the petitioner is not made out. It is not the complainant’s case that the petitioner himself intended the death of Aryan or that he deliberately ordered that the electric pole from which the current flowed should not be repaired by his company’s staff. The petitioner is the Chief Executive Officer of K-Electric and while it is true that the overall management of the company he leads will be within his domain, yet it cannot be said that he will incur criminal liability for each lapse that is made by the company. Holding the Chief Executive Officer liable criminally for each default would unjustifiably thwart the dynamism of managers and inevitably have a negative impact on the economy of the country. To us it also appears in the circumstances of the present case, that the petitioner has been roped into a charge of criminal liability due to the concept of deep pockets.

5. In view of the above, the order dated 18-9-2017 is set aside. We are cognizant however that in this unfortunate incident a little boy has lost his life ostensibly due to negligence. The aggrieved are at liberty to pursue the legal remedies available to them against the actual perpetrators, if so advised.

JUDGE

CHIEF JUSTICE