

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**Cr. Misc. Application No.S-201 of 2023**  
[Qamar Zaman Samejo v. SSP Dadu & Ors]

Mr. Mashooque Ali Mahar, advocate for applicant

Date of hearing & decision: 10.04.2023

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**ADNAN-UL-KARIM MEMON, J.** Through captioned Cr. Misc. Application, applicant has called in question the legality of order dated 31.01.2023 (wrongly mentioned as 27.01.2023), whereby his application under Section 22-A & 22-B Cr. PC for registration of FIR against proposed accused has been rejected by learned Additional Sessions Judge/Justice of Peace Dadu.

2. Case of the applicant is that his salary was stopped by the competent authority without assigning any reason, hence he could not get proper treatment of his ailing son, who ultimately passed away, as such the proposed accused were/are liable to be taken to task for the aforesaid action under Section 322 PPC. His plea was rejected by learned Additional Sessions Judge/Justice of Peace Dadu on the ground that no case for cognizable offence was made out in the circumstances of the case.

3. Mr. Mashooque Ali Mahar learned counsel for applicant submits that the impugned order is opposed the law, facts and principles of natural justice; that as to how a person in service could be deprived of his salary as long as a person after appointment is working in the Department; that law provides procedure against the civil servant if there is any anomaly, which the government should follow; that the purpose of Section 22-A Cr.P.C. was to ensure immediate registration of FIR and it was a bulwark against interference in the administration of criminal justice by the influential. He argued that lodging of FIR could not be blocked merely because of service dispute if any; that a party could avail civil and criminal remedies simultaneously; that the facts alleged in the complaint against proposed accused constitute criminal offence under PPC as the applicant's son died due to negligence of proposed accused persons, therefore, directions may be issued to SHO concerned to

record the statement of applicant under Section 154 Cr.P.C and then incorporate it in FIR Book.

4. I have heard learned counsel for the applicant and perused the record with his assistance.

5. It appears from the record that Deputy Superintendent District Complaint Cell Dadu submitted his report to learned Additional Sessions Judge/Justice of Peace Dadu disclosing therein that there was a dispute between the parties over the issue of transfer and posing in revenue department and on the issue of stoppage of salary of applicant, the issue cropped up which had triggered the cause to the applicant to file application under Section 22-A & 22 B Cr.P.C. Keeping in view the aforesaid factual aspect of the case, learned Additional Sessions Judge / Justice of Peace Dadu dismissed his application being untenable under the law vide order dated 31.01.2023.

6. The Code classifies criminal offenses into two categories for certain purposes, namely cognizable and non-cognizable offenses. Sections 154 and 155(1) Cr.P.C. separately prescribe the procedure for dealing with them. If there is an information relating to the commission of a cognizable offence, it falls under section 154 of the Code of Criminal Procedure and a police officer is under a statutory obligation to enter it in the prescribed register. The condition precedent is simply two-fold: first, it must be an information and secondly, it must relate to a cognizable offence on the face of it and not merely in the light of subsequent events. A police officer is bound to receive a complaint when it is preferred to him, or where the commission of an offence is reported to him orally, he is bound to take down the complaint. If he does not incorporate the complaint so made in the register, he fails to perform a statutory duty as a public servant; therefore, renders himself to be dealt with by his superior officers for neglect of duty. Thus, it does not depend on the sweet will of a police officer who may or may not record it.

7. The Hon'ble Supreme Court in the cases of Muhammad Bashir v. Station House Officer, Okara Cantt. and others (PLD 2007 SC 539) and Younas Abbas & others vs. Additional Sessions Judge Chakwal and others (PLD 2016 SC 581) while dealing with powers of Ex-officio Justice of Peace under Section 22-A of the Cr.P.C has held that until and unless due recourse is exercised within the police hierarchy for initiation of proceedings under Section 154 Cr.P.C. petition under sections 22-A, 22-B Cr.P.C. is not

maintainable. Hence, in view of guidelines given by the Supreme Court in the Judgment supra, it is an obligatory for the court functioning as Ex-officio Justice of Peace, before taking cognizance in the matter of an application under Sections 22-A, 22-B, Cr.P.C., to satisfy that the applicant / petitioner has already approached the concerned quarter(s) meant for redressal of his grievance i.e. file application before SHO for registration of case, which was registered under a proper diary and the inaction by the SHO was further agitated before the higher police hierarchy (Superintendent of Police) under due receipt but with no effect. In view of the above pronouncement no further deliberation on the part of this court is required.

8. In view of the findings of Hon'ble Supreme Court in the above case this Criminal Miscellaneous Application is found to be misconceived and is dismissed in limine, leaving the applicant to avail his remedy as per law.

JUDGE

Sajjad Ali Jessar