

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Misc. Application No. 709 of 2020

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| Date | Order with signature of Judge |
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For hearing of main case

08.11.2023

Syed Nihal Hashmi advocate for the applicant
Ms. Rahat Ehsan APG along with Inspector Ali Muhammad SHO PS Thatta, SI Mushtaq Hussain PS Thatta, PC Muhammad Meenh Wasayo, PC Azizullah, and PC Zamir Ahmed all from PS Thatta

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C, the applicant Ashique Ali Qureshi has assailed the legality of the order dated 06.09.2023 passed by the learned IInd Additional District Judge Thatta, in Criminal Miscellaneous Application No. 899 of 2020 whereby direction to SHO concerned for registration of F.I.R against the Police officials of Thatta was declined on the premise that the applicant was/is an absconder in various criminal cases. For convenience sake, the relevant portion of the order dated 06.09.2023 is reproduced as under:-

“Prima facie per police report the applicant has not approached the court with clean hands. In fact the applicant is a fugitive of law in FIR No 47 of 2023 under sections 3 & 4 Gutka Act at police station Gharo The local police went for the search/arrest of the absconding accused in the area but the applicant managed his escape good from there. The allegations are general in nature and malafide on the part of the applicant for causing harassment to the police officials dealing with his case. Needless to mention previously his friend Shoair Qureshi filed a similar application before the Honorable Sessions Judge, Thatta but the same was dismissed, but such fact has not been disclosed by the applicant in the instant application. Accordingly, the instant application in its present form and shape is not maintainable and the same is dismissed.”

2. I have given due consideration to the submission made by the parties and have carefully gone through the contents of the instant Criminal Miscellaneous Application as well as the application addressed to the SHO concerned and learned IInd Additional District Judge Thatta.

3. The rationale beyond the conferring of powers upon the Justice of Peace was to enable the aggrieved person to approach the Court of Justice of Peace for the redressal of his grievances i.e. non-registration of FIRs, excess of Police, transfer of investigation to the Courts situated at district level or Session or at particular Sessions Division. The main purpose of section-22-A(6) Cr.PC., was to create a forum at the doorstep of the people for their convenience. Primarily, proceedings before the Justice of Peace are quasi-judicial and are not executive, administrative, or ministerial to deal with the matters mechanically rather the same are quasi-judicial powers in every case before him demand discretion and

judicial observations and that is too after hearing the parties. It is, therefore, observed that the Justice of Peace before passing any order for the registration of the FIR shall put the other party on notice against whom the registration of FIR is asked for.

4. The grounds taken in the application under section 22-A Cr.PC appears to be that on the evening of 05.07.2023, his house was raided by the respondent police officials who mishandled him on the plea that he was/is involved in the criminal cases. Per learned counsel for the applicant he had already been granted bail by the trial court in the subject case, however, respondents insisted on his arrest without warrants, though their jurisdiction is confined to the concerned Police Station. If this is the position of the case, prima facie, no prejudice would be caused to the respondents if the statement of the applicants is recorded under the law. As it is settled law that even if there is no direction of the Court, the S.H.O. has no authority to refuse to record the statement of the complainant in the relevant register irrespective of its authenticity/correctness or falsity of such statement. In this context the Supreme Court in the case of Muhammad Bashir vs. Station House Officer, Okara Cantt. and others (PLD 2007 Supreme Court 539) in para-25 and 26 have categorically held that S.H.O. has no authority to refuse to register FIR under any circumstances. He may refuse to investigate a case but he cannot refuse to record FIR.

5. The check against the lodging of false F.I.Rs was not the refusal to record such F.I.Rs, but the punishment of such informants under Section 182, P.P.C., etc. which should be, if enforced, a fair deterrent against misuse of the provisions of Section 154, Cr.P.C.

6. In my humble opinion, certain offenses as argued by learned counsel for the applicant have to be ascertained by DIG Hyderabad and if he finds something fishy on the part of Police personnel, he would direct the concerned SHO to record the statement of the applicant under section 154 Cr.P.C., however, the aforesaid exercise shall be undertaken within one week after providing the opportunity of hearing to all concerned.

7. This Criminal Miscellaneous Application is disposed of in the above terms. Consequently, the impugned order dated 06.09.2023 passed by the Justice of Peace is set aside.

JUDGE