

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Miscellaneous Application No.850 of 2023

Date	Order with signature of Judge
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For hearing of main case
For hearing of MA No. 13032/2022

06.12.2023

Mr. Imtiaz Ali Shah advocate for the applicant
Mr. Saleem Akhtar Buriro, Addl. A.G
Mr. Shahid Hussain advocate for respondent No.4

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant Rashid Mehmood has assailed the legality of the order dated 26.10.2023 passed by the learned District & Sessions Judge South Karachi in Criminal Miscellaneous Application No. 3164 of 2023 (*re-Azra v The State and others*) whereby, the SHO PS Defence was directed to record the statement of the respondent Mst. Azra under section 154 Cr. P.C., inter-alia on the ground that the applicant has already lodged FIR No. 202 of 2023 under Section 381 PPC against respondent No.4., who succeeded in obtaining post-arrest bail in the subject FIR being a female accused, and thereafter she convinced the trial Court to direct SHO PS Defence to record her statement as per her verbatim on the plea that the applicant attempted to kidnap her on the pretext that she had stolen gold ornaments from their house.

2. At the outset, inquired the learned counsel for the applicant to explain how the applicant's application filed under section 561-A, Cr.P.C. is competent and maintainable before this Court, against the impugned order passed by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C., whereby direction was issued to the police to record the statement of the respondent No.4 but he has not been able to satisfy this Court in that regard and insisted on the plea that the respondent No.4 filed the petition under Section 22-A and 22-B Cr. P.C. in the Court of learned District & Sessions Judge Karachi South. Learned counsel emphasized that respondent No.4 was working with the applicant and was found involved in the theft of gold ornaments and such report was lodged with the police station where she confessed her guilt to the extent that she committed theft of gold ornaments from the house of the applicant, such video of her confession was recorded by the Investigating Officer. He further submitted that respondent No.4 in connivance with his family members leveled false allegations of the alleged kidnapping and to pressure the applicant from withdrawing the subject criminal case pending against her moved an application to the SHO for registration of the FIR, which was rightly refused, however, the learned trial Court vide impugned order failed to appreciate the facts and erroneously directed for registration of the FIR, though it was not the scope

under Section 22-A(6) Cr. P.C. He further added that the applicant has a remedy under Section 200 Cr. P.C. as the main purpose of respondent No.4 is to show that her version was not recorded by the Investigating Officer in terms of law laid down by the Supreme Court. He prayed for setting aside the impugned order.

3. Learned counsel representing the respondent No.4 has supported the impugned order passed by the learned trial Court and prayed for dismissal of the instant Criminal Miscellaneous Application.

4. Learned Addl. P.G. has submitted that the FIR lodged by the applicant has been approved under Section 170 Cr. P.C. As such no further version of respondent No.4 is required to be recorded, however, he agreed to the proposition that the case registered by the applicant requires reinvestigation as no recovery has been shown in crime No. 202 of 2023 of PS Sahil, District South Karachi registered under Section 381 PPC.

5. 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 by respondent No.4 and the order passed by the learned Additional District & Sessions Judge/ Ex. Officio Justice of Peace Karachi South.

6. The law is quite settled by now that the jurisdiction of a High Court under section 561-A, Cr.P.C. can be exercised only in respect of orders or proceedings of a court and that the provisions of section 561-A, Cr.P.C. have no application viz executive or administrative orders or proceedings of any non-judicial forum or authority. In the present case, the police have powers under Sections 154 and 156, Cr. P.C., and a statutory right to investigate a cognizable offense without requiring the sanction of the Court. It is well settled law that if an investigation is launched malafide or is clearly beyond the jurisdiction of the investigating agencies concerned then it may be possible for the action of the investigating agencies to be corrected by a proper proceeding under the law.

7. 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 Court situated at district level or Session or at particular Sessions Division. The main purpose of section-22-A(6) Cr.P.C., 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. 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. 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.

8. So far as the contention of the learned counsel for the applicant that one criminal case has already been registered against respondent No.4 and she cannot make an excuse to record her version. Suffice it to say that in the case of Sughra Bibi reported as PLD 2018 Supreme Court 595, the Supreme Court has held that during the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person." Ordinarily, no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules, a suspect is not to be arrested straight away or as a matter of course, and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding the correctness of the

allegations leveled against such suspect or regarding his involvement in the crime in issue. It was further held in the judgment (**supra**) that upon conclusion of the investigation the report to be submitted under section 173, Cr. P.C. is to be based upon the facts discovered during the investigation irrespective of the version of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person.

9. From above, it is quite clear that an Investigating Officer is not bound to base his conclusion on the version of the informant or defense but on facts, discovered during the investigation. Such conclusion shall be submitted in the shape of a prescribed form, as required by section 173 of the Criminal Procedure Code.

10. In the present case, respondent No.4 simply sought direction to record her statement regarding the alleged incident that took place, whereby an attempt was made to kidnap her on the pretext she had stolen gold ornaments from the house of the applicant but during the investigation, no recovery of gold ornaments was made by the Investigating Officer, therefore either her version or her statement needs to be recorded in terms of Sections 154 Cr. PC and or 161 Cr.P.C. but it would be more appropriate to record her statement verbatim.

11. In my humble opinion, certain offenses as argued by learned counsel for respondent No.4 have to be ascertained by the SHO concerned, let respondent No.4 appear before the SHO, who shall see the things at his end, and if the respondent No.4 discloses a cognizable offense he may do the needful under law promptly in terms of law laid down by the Supreme Court in the case of Muhammad Bashir supra as well as the order dated 26.10.2023 passed by the learned District & Sessions Judge / Ex. Officio Justice of Peace Karachi South.

12. In view of the above facts and circumstances of the case, the SSP South is directed to conduct further investigation of the crime No. 202 of 2023 of PS Sahil for offense under Section 381 PPC; and, the version of respondent No.4 must be recorded as verbatim and report under section 173 Cr. P.C be submitted to the learned Magistrate for appropriate order.

13. The aforesaid exercise shall be completed within two weeks. Let a copy of this order be communicated to SSP South Karachi for immediate compliance.

14. The Criminal Miscellaneous Application stands disposed of in the above terms.

JUDGE