

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
**Cr. Misc. Application No.708 of 2023**

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Date

Order with signature of Judge

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1. For hearing of main case.
2. For hearing of MA No.11377/2023.

**12.12.2023**

Syed Ejaz Shirazi, advocate for the applicant.

Ms. Samreen Ali Rizvi, advocate for respondent No.3.

Mr. Muntazir Mehdi, APG along with SI Faiz Ali, PS Darakhshan.

Through this Criminal Miscellaneous Application under Section 561-A Cr. P.C., the applicant M/s Saakh Pharma (Pvt) Limited has assailed the legality of the order dated 21.09.2023 passed by the learned Additional Judge II/ Ex. Officio Justice of Peace (South) Karachi in Criminal Miscellaneous Application No. 2814 of 2023 (re-Ningbo High pharm Medichem Co. Ltd. ) whereby, the SHO PS Darakhshan was directed to record the statement of the representative of the respondent company under section 154 Cr. P.C.

2. At the outset, I asked 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 representative respondent No.3 but he has not been able to satisfy this Court in that regard and insisted on the plea that the the matter is of civil nature as such no offense of whatsoever in nature has been committed. Learned counsel further submits that if there is no cognizable offense such FIR cannot be registered. He further submitted that the applicant company has not played any role in the alleged transaction and whatever the business transaction is between the two companies it is a matter of civil nature and the civil Court can take cognizance to decide the commercial dispute, as such they are not liable to be prosecuted as portrayed by the respondent Ningbo High pharm Medichem Co. Ltd Ningbo. He prayed for allowing the instant Criminal Miscellaneous Application by setting aside the order of the learned Justice of Peace Karachi South.

3. The learned counsel for respondent No.3 has supported the impugned order dated 21.09.2023 passed by the learned Justice of Peace

Karachi South in Criminal Miscellaneous Application 2184 of 2023 and submitted 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. She further submitted 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. However, she insisted that her senior counsel would appear and further argue the matter.

4. 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 Additional Judge II/ Ex. Officio Justice of Peace (South) Karachi in Criminal Miscellaneous Application No. 2814 of 2023.

5. This Court vide order dated 24.11.2023 directed both parties to appear before SHO Darakshan to record their statement and submit a report. Today SHO has submitted a compliance report with the narration that the matter between the parties is civil and does not fall within the cognizance of the Darakshan Police Station in terms of Section 154 Cr. P.C. At this stage learned counsel for respondent No.3 has objected the stance of the SHO with the assertion that the respondent No.3 is out of the country as such he could not record her statement before the SHO concerned which report if any is one-sided cannot be acted upon, however, she requested for allowing the authorized agent of respondent No.3 to use the electronic device and record his statement before SHO PS Darakhshan.

6. 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.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.

7. 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. On the subject issue, 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. 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, however in the present case the applicants who are police officials are resisting for recording the statement of the complainant, which is apathy on their part being police officials who are bound to protect and not to abduct. 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.

9. Since the parties have leveled allegations and counter-allegations against each other on the issue of the alleged business transaction and issue of payment in the present proceedings, therefore, judicial propriety demands that the aggrieved party may take the resort of appropriate remedy under the law where the respondent company would be at liberty to bring the material to prove the case against the applicant company as in the present case the SHO PS Darakhsahn has opined that the matter between the party is of civil nature, however, the respondent No.3 is still insisting for the recording of the statement of the representative respondent company in terms of the impugned order. Be that as it may, it is open for the complainant to file a Direct Complaint if so advised, and if filed the same shall be decided on its own merits.

10. In view of the above facts and the report submitted by SHO PS Darakhshan, no case for registration of FIR is made out at this stage, however, it is open for respondent No.3 to resort to civil as well as criminal remedy under the law.

11. This Criminal Miscellaneous Application is disposed of in the above terms.

JUDGE