

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Misc. Application No.463 of 2022

Date	Order with signature of Judge
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For hearing of main case

14.07.2023

Mr. Sher Afzal, Advocate for the applicant.

Mr. Abdul Hameed, Advocate for the proposed accused.

Mr. Faheem Panhwar, DPG.

1. The applicant through the present application sought indulgence of this Court for issuance of directions to S.H.O concerned for registration of case against the proposed accused as his application filed by him before the learned 8th Additional Sessions Judge Karachi, East was dismissed vide order dated 23.07.2022 (“Impugned Order”).
2. Learned counsel for the applicant contended that the learned Justice of Peace/8th Additional Session Judge Karachi, East failed to apply his judicial mind while deciding the application and passed the impugned order. He further contended that the proposed accused has snatched an amount of Rs.175,00,000/- from the applicant/complainant, therefore, the proposed accused has committed a cognizable offence, therefore, the impugned order be set aside and directions be issued to the SHO concerned for registration of FIR.
3. Learned counsel for the proposed accused assisted by learned DPG supported the impugned order contending that the impugned order was passed by the learned Ex-officio Justice of Peace/8th Additional Sessions Judge Karachi East is according to law.

4. Heard the arguments and perused the record. The essence of impugned order is that applicant is named in the FIR No.89/2022 under Section 489-F PPC lodged by the proposed accused and that the applicant is bent upon to lodge a counter FIR against the proposed accused to frustrate the proceedings pending against the applicant.

5. The law in its true perspective is settled that duty of justice of peace is administrative in nature and he is saddled with the administrative duty to redress the grievance of complainant aggrieved by refusal of police officer to register their report and is not authorized to assume the role of investigating agency or prosecution. But Justice of peace is supposed to apply his judicial mind after perusing the facts of the application enumerated in the application and police report as to whether the facts introduced by applicant/petitioner is cognizable in nature or otherwise. The version of the applicant as introduced on record seems to be in mystery and no firm opinion can be drawn keeping in view the impugned order.

6. Section 22-A Cr.P.C does not permit Justice of Peace to go into the veracity of the pleadings in depth, which is introduced on record by the applicant lest object of filing 22-A Cr.P.C would become redundant. But it is settled that Justice of Peace is duty bound to apply his judicial mind in order to form a prima facie view that cognizable information has been brought on record by the applicant. From the facts of the application no cognizable information stated by the applicant/petitioner. It is now settled law that Ex-Officio/Justice of Peace is not bound to issue in all cases a direction to concerned SHO for the registration of FIR. The Section 22-A Cr.P.C. is an enabling and beneficiary piece of legislation and therefore the duty is also casts

upon the courts to save it to be misused and abused and to be used in only genuine cases.

7. In 2009 YLR 1533 Muhammad Arif v. the state this Court observed as under:-

“Not always necessary to direct the Police to register the F.I.R., if on the face of it application filed by the complainant appeared to be mala fide---No doubt before passing the order of registration of F.I.R., no enquiry was necessary, but Justice of Peace had to apply his mind to form an opinion about the commission of a cognizable offence and it was not obligatory for the Justice of Peace to issue direction in every case irrespective of the facts and circumstances of the case”.

8. In another judgment reported in 2010 YLR 189 mylord Mr. Justice Amir Hani Muslim (as his lordship then was) has been pleased to observe as under: -

“The provisions of section 22-A Cr.PC have been misused in a number of cases. The wisdom of legislature was not that any person who in discharging his duties takes an action against the accused would be subjected to harassment by invoking the provision of section 22-A Cr.PC. The Courts in mechanical manner should not allow application under section 22-A & B and should apply its mind as the applicant has approached to the Court with clean hands or it is tainted with malice. Unless such practice is discharged, it would have far reaching effect on the police officials who on discharge of duty take action against them. The law has to be interpreted in the manner that its protection extent to everyone”

.....” I do not want to comment upon the conduct of the complainant, however it would be open to complainant to file direct complaint against the applicant...”

9. The impugned order passed by the learned Ex-officio Justice of Peace/8th Additional Sessions Judge Karachi East does not need any interference and based on sound reasons, therefore, the application in hand is dismissed.

JUDGE

Aadil Arab.