

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

*Crl. Misc.A No.S-198 of 2024*

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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- 1. For orders on O/objection No.2 at flag-A*
- 2. For hearing of main case.*
- 3. For hearing of CMA No.1822/24.*

**10.05.2024**

Mr. Amjad Ali Almani, Advocate for applicant.  
Syed Sardar Ali Shah, Addl. Prosecutor General.

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Mr. Javed Ali Dhilloo, Advocate files power on behalf of respondent No.3, which is taken on record.

The Applicant Assadullah Almani has filed Crl. Misc. Application under section 561-A Cr. P.C., assailing the order dated 30.03.2024 passed by the learned III-Additional Sessions Judge/Justice of Peace, Naushehro Feroze in Crl. Misc. Application No.916 of 2024 whereby he has ordered to record the statement of the applicant as per his verbatim.

Learned counsel states that there is a civil dispute between the parties and he has already made payment to the private respondent as set out in the agreement. He further submits that there was/is no cognizable offence made out against the applicant, however, due to illegal payment so demanded by respondent No.3 he has been saddled with criminal liability and the police is bent upon lodging FIR against him to humiliate him just to please the complainant, he prayed for allowing the Application.

Today learned counsel for the private respondent has put his appearance and states that some amount is outstanding against the applicant which he has not yet paid and issued such cheque which has been dishonored as such cognizable offence is made out which needs to be checked by the SHO concerned.

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 III-Additional Sessions Judge/Justice of Peace, Naushehro Feroze in CrI. Misc. Application No.916 of 2024.

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.

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.R 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.

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 applicant whose brother is is police official is resisting for recording the statement of the respondent-complainant, which is apathy on his part being police official who is 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.

Since the parties have leveled allegations and counter-allegations against each other, therefore, the SSP Naushahro-Feroze shall ascertain the factual position of the case and if he finds something fishy on the part of the applicant, he would direct the concerned SHO to record the statement of the private respondent under section 154 Cr.P.C. forthwith, however, if he finds something fishy on the part of complainant he may propose action in accordance with law. The aforesaid exercise shall be undertaken within one week after providing the opportunity of hearing to all concerned.

In view of Crl. Misc. Application stands disposed of.

*J U D G E*

*Ihsan/\**