

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Miscellaneous Application No.S-124 of 2024
(*Muhammad Hashim Mahesar Vs. SSP Sukkur & others*)

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.

Date of hearing and order 20.05.2024

Mr. Abdul Sattar Shar, Advocate for applicant.
Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General.

ORDER.

Adnan-ul-Karim Memon J:- The Applicant Muhammad Hashim has filed Crl. Misc. Application under section 561-A Cr. P.C., assailing the order dated 03.02.2024 passed by the learned Additional Sessions Judge-III/Ex-Office Justice of Peace, Sukkur in Crl. Misc. Application No.272 of 2024 whereby he has allowed the application filed by respondent No.3 with direction to SHO to record his statement under section 154 Cr.P.C.

2. Learned counsel states that learned justice of peace has not appreciated the case of the applicant and condemned him unheard. He further submitted that before filing of the subject Crl. Misc. Application, the son of respondent No.3 namely Shahnawaz was arrested on 17-01-2024 in Crime No. 64/2024 for offence under section 379 PPC and succeeded to obtain order for raid which was failed as per mashirnama of arrest, which annoyed him to file petition with malafide intention. He prayed for setting aside of the impugned order.

3. Learned Additional P.G states that this matter needs to be resolved by the SSP Pakistan Railway as to whether the applicant

being a police official of Pakistan Railway is involved in the subject case or otherwise.

4. The applicant claims to be an employee of Pakistan Railway and has been involved in false case by the private respondent on the allegation of theft of motorcycle and demand of Bhatta; that the applicant is Police Constable and he has been dragged by the private respondent.

5. I have given due consideration to the submission made by the parties present in Court 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 Sessions Judge-III/Ex-Officio Justice of Peace, Sukkur in CrI. Misc. Application No.272 of 2024.

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.

8. 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.

9. 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.

10. 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 police official is resisting for recording the statement of the applicant-complainant, which is apathy on his part being police official who is bound to protect and not to abduct.

11. 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.

12. Today respondent No.3 is called absent though he has been served as per police report.

13. In view of state of affairs this matter is remitted to the SSP Pakistan Railway Sukkur, who shall ascertain the factual position of the case as the private respondent is not turning up; 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, as well as disciplinary action, if he is a police constable in Pakistan Railway, 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.

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

J U D G E

Nasim/P.A