

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT**  
**HYDERABAD**

Criminal Miscellaneous Application No.S-220 of 2022

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
	1. For orders on office objections. 2. For hearing of main case. 3. For hearing of M.A. No.3262/2022.

**29.01.2024**

Mr. Riazat Ali Sahar, Advocate for applicant.

Mr. Ghulam Murtaza Shaikh, Advocate for respondent No.1.

Mr. Imran Ahmed Abbasi, Assistant Prosecutor General, Sindh, along with Lutfullah Buriro AXEN Drainage Dadu Division K.N Shah.

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**O R D E R**

**AMJAD ALI SAHITO, J:-** Through this Misc. application applicant Faisal Mustafa being aggrieved has assailed the order dated 09.08.2021 passed by the learned IV<sup>th</sup> Additional Sessions Judge/Ex-Officio Justice of Peace, Dadu on the application of respondent No.1/Iqbal Ahmed filed under section 22-A & B Cr.P.C wherein certain directions were issued by the Ex-Officio Justice of Peace to the Irrigation department to remove the Gandha lying in between 10-AR & 11-R and Juma Minor which according to applicant has not vested to him under the provision of section 22-A & B Cr.P.C.

2. Per learned counsel, in fact, the learned Ex-Officio Justice of Peace has no power to pass the order for removal of the Gandha from the Water Course No.10 R & 11 R Lower Noor Wah & Juma Minor. He further submits that the Ex-Officio Justice of Peace has limited scope only for issuing directions in respect of registration of FIR, harassment, protection and transfer of investigation. He next submits that while filing a Criminal Miscellaneous Application under section 22-A&B Cr.P.C the prayer of the private respondent Iqbal Ahmed was only to direct the opponent to register the FIR against all accused persons and record the statement of the applicant and incorporate the same into the book 154 Cr.P.C but the learned Judge gone beyond his scope and directed the official respondents to remove Gandha from water course mentioned

above; that without hearing of the Khatadar of the watercourse the learned judge passed the order against the applicant and other khatedar which in fact against their interest; that after removal of barricade the applicant being Khatadar will unable to get the water from the water course. He argues that the impugned order is against the law and the same may be set aside.

3. On the other hand, learned counsel appearing on behalf of private respondent No.1 filed certain documents including objections on this application which are taken on record. He states that the present applicant has no concerned with the impugned order as he was neither party to the proceedings undertaken before the learned Ex-Officio Justice of Peace nor any order was passed against him otherwise the directions if any issued by the learned Justice of Peace against the officials which are in accordance with the law, therefore, he prays for dismissal of instant Criminal Miscellaneous Application.

4. Learned APG argued that the learned Ex-Officio Justice of Peace has limited scope, as such, he has exercised his powers beyond the jurisdiction vested to him under the law thereby he has not supported the impugned order.

5. Heard and record perused.

6. From perusal of the record it reflects that respondent No.1 had filed a Criminal Miscellaneous Application under section 22-A & B Cr.P.C against the proposed accused Iqbal Ahmed Palejo and others with prayer to direct the SHO concerned to register FIR against all proposed accused and record his statement incorporate it into book 154 Cr.P.C. After filing the application, notices were issued and on 09.08.2021, the learned Ex-Officio Justice of Peace / IV<sup>th</sup> Additional Sessions Judge Dadu passed the order thereby directed the Irrigation Department to remove the Gandha from water course No.10 AR & 11 R. It is appropriate to reproduce the relevant paras of the impugned order:-

*“Now I would revert back to the controversy to find out answer to resolve it. It is a fact that there is shortage of water and exactly political personalities are main reason behind all the activities which prevents the Khatedars of their due share of water to irrigate their lands. Superintending Engineer, Southern Sindh Circle has extended his full cooperation but the Daroga/opponent No.3 seems interested in keeping the matter in cold state so that the other may take advantage of the situation and deprive the other Khatedars.*

*Apparently, the report of proposed accused / officials of Irrigation Depart are in conflict with the status and*

*chequered history of litigation. The proposed accused / officials of Irrigation Departments are directed to get the encroachments/barricade removed with the help of local police and the Rangers, if the people obstruct the removal process and resist an FIR may be lodged. At this juncture, I do not find it appropriate to entertain instant cr. petition for lodgment of FIR against the proposed accused if there is no restraint order and if there is such order holding field show it to the applicant and other interested persons, however, deem it appropriate to forward a copy of this order to Secretary, Irrigation and Chief Engineer for their information, hoping that they would redress the issue in proper manners and both of them may consider and in the observation recorded herein above against the Dargo/opponent No.3 may consider his immediate transfer in the interest of general public/Khatedars of 10 AR water course of Lower Noor Wah and there are other F minors Vs. 11R, 13R and Tail. Applicant and other Khatedars are at liberty to avail legal remedy.*

*Application stands disposed of in terms of above orders.”*

7. From the face of said order, it appears that there was a dispute between the parties in respect of civil nature which is over watercourse (s) for that both parties have already availed civil remedy by filing a Suit for declaration, mandatory and permanent injunctions and damages being F.C. Suit No.86 of 2005 and same was dismissed and the plaintiff-Sultan Ahmed in that suit preferred his appeal before the District Judge Dadu wherefrom same was transferred to the Court of 1<sup>st</sup> Additional District Judge, Dadu being Civil Appeal No.54 of 2010 and vide judgment dated 03.06.2011 the said civil appeal was allowed and judgment and decree dated 30.03.2010 & 05.04.2010 were set-aside and F.C Suit No.86 of 2005 was allowed to the extent of prayer clauses A & B. Being aggrieved, legal heirs of Kifayatullah filed Civil Revision 258 of 2011 re-Kifayatullah Vs. Province of Sindh before this Court for which learned counsel for the parties jointly made a statement same was disposed of vide order dated 12.12.2022. Photo copy of the order along with a statement filed by learned counsel for the applicant is taken on record.

8. The only controversy before this Court is whether the learned Ex-Officio Justice of Peace has power under section 22-A & B Cr.P.C to pass the order by directing the irrigation department to remove the barricade from the water course when the matter is/was already sub-judice before the competent Court of law and the parties have already availed the civil remedy. The justice of peace is saddled with the administrative duty to redress the

grievance of the complainant aggrieved by the refusal of police officers to register their report and is not authorized to assume the role of investigating agency or prosecution. His power is designed to aid and assist the criminal justice system, such power is not supervisory and judicial but administrative and ministerial in nature. The Justice of Peace is not authorized to access the correctness or falsity of the information received, instead, he is obliged to reduce the same into writing, irrespective of the fact rather such information is true or false. The power of Justice of Peace is very limited and such powers are to be exercised in the framework of Section 22-A & B Cr.P.C. Session Judge/Additional Session Judge in the capacity of Ex-Officio Justice of Peace is empowered to issue an appropriate direction to police authorized on a complaint regarding:

*(i) non-registration of criminal case;*

*(ii) transfer of investigation from one police officer to another; and*

*(iii) neglect, failure or excess committed by a police authority in relation to its functions and duties.”*

9. From the perusal of the record, it reflects that the applicant/Respondent No. 1 filed an application under Section 22-A & B Cr.P.C for the registration of the FIR against the proposed accused with the prayer that the SHO concerned may be directed to record his statement and incorporated the same in 154 Cr.P.C book. After filing the application, comments were called and a summon was issued to the proposed accused and vide order dated 09.08.2021, the said application was disposed of by directing the Irrigation Department to remove the barricade/encroachment with the help of local police and the Rangers, if the people obstruct the removal process and resist an FIR may be lodged. While passing the impugned order, the learned judge also detailed discussed the concerns of the applicant/respondent No.1 and said that he was deprived from irrigation water for his land and incurred loss when he approached the office of the proposed accused for removal of Gandha, but the official respondent did not pay any heed and the applicant/respondent No.1's uncle namely Sultan Ahmed Shaikh filed Civil Suit bearing No. 86/2005. It seems from the order that the learned judge, while exercising powers as Ex-officio Justice of peace assumed the power of civil court and discussed the facts of the case and passed the order on 6 pages. He has decided the suit

in a criminal proceeding which was the prayer of the parties in the civil suit. As discussed above, the ex-officio justice of peace has limited powers and is not supposed to enter into any deeper controversy, not embark upon any enquiry for the determination of the veracity of the representation placed before him. Ex-Officio Justice of Peace is empowered to direct registration of the case but has no jurisdiction to undertake a detailed analysis of the allegations and other material and record his own opinion thereon which needs investigation.

10. During the pendency of this application, the legal heirs of the deceased, Kifayatullah filed a Civil Revision Application No. 258 of 2011, Re Kifayatullah v Province of Sindh and others before this court and the said revision application was disposed of vide order dated 12.12.2022. It is appropriate to reproduce the relevant part of the said order which reads as under:

*“Learned counsels present agree that both the judgments in the matter be set-aside and the matter may be disposed of directing the Irrigation Authorities to provide water in accordance with the share list, the re-visiting of the said share shall be available in accordance with the law after hearing all concern. Accordingly, this revision application stands disposed of in the foregoing terms.”*

11. It is clear from the above order passed by this court that in the presence of both parties, the revision application was disposed of with a direction to the irrigation department to provide water to the parties in accordance with the share list.

12. In view of the above discussion the instant Criminal Misc. Application is allowed and the impugned order dated 09.08.2021 passed by the Learned Additional Session Judge-IV/ Ex-Officio Justice of Peace Dadu is set aside.

JUDGE

*Muhammad Danish\**