

Order Sheet
 IN THE HIGH COURT OF SINDH, KARACHI
 Cr. Misc. Application No.540 / 2023
 [Shahid Ali vs. Abid Awan]

Date	Order with signature of Judge
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Priority Cases

1. For hearing of main case
2. For hearing of MA 9191 /2023 [Stay/A]

Date of Hg: 17.01.2024

Mr. Liaquat Ali Khan, Advocate for the applicant.
 Mr. Ghulam Qadir Mughari, Advocate for Respondent No.1.
 Mr. Abrar Ali Khan , Addl. Prosecutor General Sindh

ARSHAD HUSSAIN KHAN.J. Through this Cr. Misc. Application the Applicant has assailed the order dated 22.07.2023, passed by learned VIIIth Additional Sessions Judge / Ex-Officio Justice of Peace, South, Karachi, whereby Application under Section 22-A & 22-B Cr.P.C. filed by the applicant was allowed.

2. Briefly the facts of the matter are that in instant application respondent No.1 [Muhammad Abid Awan] filed application under Section 22-A(iii) and 22-B Cr.P.C., before VIIIth Additional Sessions Judge / Ex-Officio Justice of Peace, South, Karachi, stating therein that the private respondent namely; Shahid Ali [applicant herein] remained his business partner in past. Now, he is harassing not only to him but also to his family members, which application was allowed by learned VIIIth Additional Sessions Judge / Ex-Officio Justice of Peace, South, Karachi, through the order dated 22.07.2023, which is impugned herein by the applicant Shahid Ali.

3. Learned counsel for the applicant while reiterating the contents of his application submits that VIIIth Additional Sessions Judge / Ex-Officio Justice of Peace, South, Karachi, while passing the impugned order, despite having notice of the fact that there is a business dispute between the parties, has failed to consider that the dispute pertains to a civil nature. He has further argued that the application under Sections 22-A & 22-B Cr.P.C. was filed on the basis of false and frivolous story. He has further submitted that the applicant has obtained the impugned order by concealing the material fact with regard to his issuing cheques to the present applicant which was bounced upon presentation. He has further submitted that when the applicant approached to the concerned police station for registration of FIR against the

bouncing of cheques, respondent No.1 approached to the Ex-Officio Justice of Peace, who without issuing notice to the present applicant passed the impugned order. He has also argued that the report was called in Cr. Misc. Application No.2399/2023, relating to the matter in hand, by the VIIIth Additional Sessions Judge / Ex-Officio Justice of Peace, South, Karachi, which is available on the record, wherein it has been clearly mentioned that there is a business dispute between the parties. Despite this fact, the concerned Ex Officio Justice of Peace has allowed the Application under Sections 22-A & B Cr.P.C., which is against the factual position as well as the law. Lastly, learned counsel has argued that on the other hand respondent No.1 himself continuously harassing to the applicant and made his life miserable. He has urged that since the matter is of civil nature, which fact has also been mentioned in the impugned order while discussing the report of the Complaint Cell of the police, the application under section 22-A & 22-B Cr. P.C. would have been dismissed. Hence, the impugned order being bad in law is liable to be set aside.

4. Conversely, learned counsel for Respondent No.1 [Muhammad Abid Awan] has argued that the impugned order has been passed in accordance with the facts and the law as the applicant [herein] continuously issuing threats and harassment to respondent No.1 and his family members, therefore, he has filed the Application under Sections 22-A & 22-B Cr. P.C praying for protection and directions to the concerned SHO to record the statement of the respondent and lodge the FIR, which was allowed by the VIIIth Additional Sessions Judge / Ex-Officio Justice of Peace, South, Karachi. He has further argued that according to Articles 4,9, and 25 of the Constitution of Islamic Republic of Pakistan, 1973, the official respondent are duty bound to protect the life, liberty and property of every citizen of Pakistan. He has argued that the applicant has no other alternative or adequate remedy available under any law, except to invoke the door of the Court of law. He has lastly argued that keeping in view the necessity of the protection and the circumstances, which are being faced by the respondent Muhammad Abid Awan, learned VIIIth Additional Sessions Judge has rightly allowed the Application under Section 22-A & B Cr.P.C. Hence, instant Cr.Misc. Application is liable to be dismissed as the applicant has not approached to this Court with clean hands.

5. Learned Addl.P.G has also not supported the impugned order.

6. Heard learned counsel for the applicant and perused the material available on the record.

From perusal of the report dated 18.07.2023, filed by the concerned SHO in the Cr. Misc. Application No.2399/2023, before the learned VIIIth Additional Sessions Judge South, Karachi, as well as the Report dated 13.09.2023 filed in the instant Cr. Misc. Application, it appears that there is a civil nature dispute between the applicant and the private respondent. Moreover, from perusal of both the Applications under Sections 22-A & B Cr.P.C filed by Respondent No.1 [Muhammad Abid Awan] and the present Application under Section 561 Cr.P.C., it appears that both the parties are alleging threats and harassment against each other.

7. Learned counsel appearing for respondent No.1 when confronted with the documents annexed with the present application with regard to the cheques and legal notices issued by him. He has very candidly admitted that the cheque was issued by respondent No.1, which was bounced.

8. From perusal of the impugned order, it appears that the learned Additional Sessions Judge while allowing the application under Section 22-A & 22-B Cr.P.C. has also observed *that there is business dispute between the parties.*

9. In view of the aforesaid factual and legal position, it seems that the learned Additional Sessions Judge has passed the impugned order in a hasty manner without taking into consideration the relevant law and the principles laid down by the Superior Courts in that regard. Hence, the impugned order cannot be said to have been passed in accordance with the law and the norms of justice, thus cannot be sustained in the eye of law. Consequently, instant Criminal Misc. Application is allowed and the impugned order is set aside. However, the concerned police is directed to provide protection, if necessary to the parties, in accordance with the law. The parties are at liberty to approach the civil forum regarding their civil dispute, if needed.

JUDGE