

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Misc. Application No.951 of 2023
[Zawwar Hussain Shah vs. Vth ADJ South Karachi & others]

Date	Order with signature of Judge
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FOR HEARING OF MAIN CASE.

Date of Hg: 15.01.2024
Date of Order 15.01.2024

Mr. Mumtaz Hussain Bhatti, Advocate for the applicant.
Ms. Seema Zaidi Addl. Additional Prosecutor General Sindh.

ARSHAD HUSSAIN KHAN J., Through this Cr. Misc. Application the Applicant has assailed the order dated 17.08.2023, passed by learned Vth Additional Sessions Judge, Karachi [South] in Cr. Misc. Appl. No.2249 /2023, whereby the Application under Section 22-A Cr.P.C. filed by the applicant for registration of FIR and providing protection against the respondents was declined to the extent of registration of FIR, however, the prayers with regard to the legal protection was allowed.

Learned counsel for the applicant, inter alia, has contended that the impugned order is not sustainable in law as the same has been passed without applying judicious mind and considering the material available on the record. He has further contended that learned ADJ/ Ex- Officio Justice of Peace erroneously declined prayer of the applicant for lodgment of the FIR on the premise that the dispute is of civil nature which is hardly a ground to refuse the relief sought by the applicant, even otherwise; it was a good case for issuance of directions to the concerned SHO for recording the statement of the applicant. He has further contended that the order of learned ADJ/Ex-Officio Justice of Peace is illegal and without legal justification. He has lastly contended that the applicant has prima facie made out a case of cognizable offence, as such; the SHO concerned cannot refuse to register FIR who is duty bound under section 154, Cr.P.C. to record the statement of the applicant.

Learned APG while supporting the impugned order submits that the concerned Additional Sessions Judge after carefully perusing the material available on the record and the law cited before him has rightly dismissed the application under Section 22-A Cr.P.C. and hence the impugned order does not warrant any interference by this Court.

Heard learned counsel for the applicant and the learned APG as well as perused the material available on the record.

Precisely the case of the applicant is that proposed accused No.1 (wife of the Applicant) along with other proposed accused hatched conspiracy against the applicant and usurped an amount of Rs. 1500,000/- which was kept with proposed accused as *Amanat*. Further the proposed accused along with others illegally entered into the house of the applicant and took away motor cycle, signed/blank cheques and golden ornaments. However, when the police did not register the FIR, the applicant filed the application under section 22-A, Cr.P.C., which was dismissed by learned Vth ADJ/ Ex-officio Justice of Peace, Karachi [South] through the order impugned in the instant proceedings. Relevant portion of the order for the sake of ready reference is reproduced as under:-

“8. Contents of the application and police report clearly reflects that parties are husband and wife and dispute as stated in the application for which material is lacking with regard to the cognizable offence, as applicant failed to show that on what date, time, and month the amount of Rs.15,00,000/- was taken nor any Mohallah people has been cited as witness. Moreover, another plea that proposed accused again entered in his house taken motorcycle, signed cheques of 5/6 lacks each and a 15 blank cheques and gold ornaments of 2.5 Tola, neither cheque numbers nor the description of Gold was mentioned and neither any Muhallah people nor any independent witness has been cited with regard to alleged incident, thus the applicant has failed to show that cognizable offence has been made out and I am of the view that this is not a fit case to issue direction to the SHO to lodge the FIR.”

From the record it appears that the applicant, in order to substantiate his stance in the case has failed to place on record incriminating material/evidence against the proposed accused. The learned Ex-Officio Justice of Peace has passed a legal order keeping in view all material facts of the case.

In the case reported as *Jamal Khan v. Secretary Home Department* [2021 SCMR 468], the Supreme Court of Pakistan, in a matter involving civil dispute, refused to interfere in the findings whereby registration of a criminal case was declined.

The facts and the circumstances of the case and perusal of the impugned order, shows that no any illegality is committed by learned Vth ADJ/ Ex-officio Justice of Peace while passing the impugned order, which may justify this Court to make interference with it, in exercise of its inherent jurisdiction. Consequently, instant Criminal Miscellaneous Application is dismissed in limine.

JUDGE