

ORDER SHEET

IN THE HIGH COURT OF SINDH CIRCUIT COURT, LARKANA.

Cr. Misc. Application No.S-04 of 2025.

DATE	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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- 1. For orders on office objection "A".
- 2. For hearing of main case.
- 3. For hearing of M.A No.103/2025 (S/A)

10-03-2025

Mr. Habibullah G. Ghouri, advocate for the Applicant.

Mr. Muhammad Afzal Jagirani, advocate for the Respondent-4.

Mr. Nazir Ahmed Bhangwar, DPG for the State.

Khalid Hussain Shahani, J.- The applicants, Ajaz Mehmood Malik and Mushtaque Ahmed Shaikh, have invoked the inherent jurisdiction of this Court under Section 561-A Cr.P.C, seeking judicial review of the order dated 08.01.2025, passed by the learned Sessions Judge/Ex-Officio Justice of Peace, Kashmore @ Kandhkot, in Criminal Miscellaneous Application No.2078/2024. The impugned order, issued under Section 22-A & B Cr.P.C, directed the SHO concerned to record the statement of the applicant in accordance with the provisions of Section 154 Cr.P.C.

2. The stance taken by Respondent No.4 is that he hails from a Syed and pardanasheen family, maintains an esteemed reputation in society, and, as a consumer of SSGC, has been consistently paying the requisite monthly bills with no outstanding dues. However, on 18.12.2024 at about 01:00 p.m, the applicants, who are SSGC officials, allegedly misused their official authority by unlawfully entering his premises, accompanied by 15-20 unidentified individuals, including police officials, without obtaining a search warrant. The purported justification for this intrusion was a baseless allegation that Respondent No.4 had installed an engine/generator connected to the gas pipeline, though no such evidence was found. Furthermore, it is alleged that the applicants issued threats to Respondent No.4. Upon being denied relief by the concerned SHO regarding the registration of an FIR, Respondent No.4 proceeded to file an application under Sections 22-A & B Cr.P.C. before the learned

Sessions Judge/Ex-Officio Justice of Peace, which resulted in the granting of the requested relief.

3. It is a well-settled principle of law that the jurisdiction conferred under Section 22-A Cr.P.C. serves to protect the rights of aggrieved individuals by facilitating access to legal remedies when law enforcement authorities fail to register a cognizable offense. However, such jurisdiction must be exercised with due diligence and judicial prudence, particularly in cases where the allegations are speculative, lack substantive evidentiary support, or appear to be influenced by ulterior motives.

4. Learned counsel for the applicant argued that the learned Ex-Officio Justice of Peace failed to properly assess the evidentiary and circumstantial aspects of the case and erroneously issued the impugned order without due application of judicial mind. He contended that the applicants, being officials of SSGC holding responsible positions, lawfully conducted a raid along with SSGC staff and police officials. However, following the unsuccessful outcome of the raid, Respondent No.4 demanded a line clearance certificate from the SSGC staff, and upon refusal, he filed the application under Sections 22-A & B Cr.P.C. Counsel further argued that the allegations leveled by Respondent No.4 were misconceived and lacked legal merit. He maintained that the learned Ex-Officio Justice of Peace, in violation of the principles of natural justice, passed the impugned order, which is a nullity in the eyes of law, as no cognizable offense was made out in the application. Furthermore, he emphasized that the applicants, in the lawful discharge of their official duties, conducted the raid in accordance with the law, in the presence of two female police officials.

5. Learned counsel for Respondent No.4 supported the impugned order, contending that the law does not empower SSGC officials to enter the premises of a private individual without obtaining a valid search warrant. Therefore, the applicants acted beyond their legal authority and in contravention of established legal principles.

6. Upon a thorough examination of the arguments presented by learned counsel for both parties, it is evident that the applicants, being officials of SSGC, conducted a raid at the residence of Respondent No.4. This act aggrieved Respondent No.4, prompting him to seek legal recourse, initially by approaching the concerned SHO and subsequently by filing an application before the Ex-Officio Justice of Peace.

7. Prior to examining the merits of the case, it is imperative to interpret the legislative intent underlying the relevant statutory provisions. Section 154 Cr.P.C. unequivocally mandates that the Officer In-charge of a police station is duty-bound to record information pertaining to a cognizable offense in writing, either personally or under their direction, and subsequently read the recorded statement to the informant. Such information, whether submitted in writing or reduced into written form, must be officially entered into a register as prescribed by the Provincial Government. The use of the term “shall” in this provision underscores the obligatory nature of registering an FIR in cases involving cognizable offenses, without subjecting the veracity of the information to preliminary scrutiny at this stage.

8. Under Section 22-A(6) Cr.P.C., the authority vested in the Ex-Officio Justice of Peace is discretionary, as evidenced by the use of the term “may”, this legislative choice underscores the intent to allow the Justice of Peace to exercise judicial discretion in determining whether directions for the registration of an FIR should be issued, contingent upon the merits of the information provided. The functions conferred upon the Ex-Officio Justice of Peace under clauses (i), (ii), and (iii) of subsection (6) of Section 22-A Cr.P.C. are intended to facilitate the dispensation of justice in an expeditious manner; however, such powers are neither absolute nor unfettered. The Honorable Supreme Court of Pakistan, through various precedents, has emphasized that an Ex-Officio Justice of Peace must act with caution and diligence while exercising such jurisdiction. It is incumbent upon them to conduct a careful evaluation of the allegations to ensure that the rights of individuals against whom an FIR is sought to be registered are adequately protected. The fundamental principle of due process necessitates that the opposing party be granted an opportunity of hearing before any order is passed, thereby preventing the misuse of legal provisions.

9. The Learned Sessions Judge/Ex-Officio Justice of Peace, Kashmore @ Kandhkot, though called reports from the applicants, but apparently it seems that the assertions made therein were overlooked. In Para No.3 of the parawise reply/comments, it was asserted that raid was conducted on 18-12-2024 by SSGC officials along with lady searcher in pursuance of section 23 of Gas (Theft Control and Recovery) Act, 2016, through raid letter duly received at police station Ghauspur. Learned Ex-Officio Justice of Peace in the

impugned order relied upon reported case (PLD 2007 SC 539), wherein it is held that, the only jurisdiction which could be exercised by Ex-Officio Justice of Peace u/s 22-A(6) Cr.P.C was to examine whether the information disclosed by the applicants did or did not constitute a cognizable offence and if it did then to direct the concerned SHO to record an FIR without going into the veracity of information in question, and no more. Means thereby, it was incumbent upon the learned Justice of Peace to have a look, whether the information so supplied by the Respondent No.4 constitutes a cognizable offence or otherwise, which has been ignored, for the obvious reason that allegation leveled in the application was to the extent that the applicants being SSGC officials transgressing their authorities conducted raid at the house of Respondent No.4. As against, the plea taken by the applicants was that their act was strictly in accordance with the law, after seeking due permission from the higher authorities of the SSGC. Besides, their act was covered u/s 23 of Gas (Theft Control and Recovery) Act, 2016. For ready reference such provision is reproduced hereunder:-

23. Power to search in case of theft and suspected theft—
Notwithstanding anything contained in any other law for the time being in force, any officer or employee of a Gas Utility Company not below BPS-17 or equivalent authorized in this behalf by the Gas Utility Company, may search any premises where gas is supplied or consumed in a manner that is or may constitute an offence under this Act.

10. Suffice to mention, the applicants being SSGC officials are/were authorized to search the premises not only in the case of theft, but suspected theft too. Sufficient material was placed in this respect by the applicants including letter dated 21-11-2024 to AGM Regional Office SSGC Larkana, seeking permission for conducting raid at the pointed place. Besides, the SHO PS Ghauspur in his report negated the assertions made by the Respondent No.4 and submitted, after communicating information to the police station Ghauspur on 18.12.2024, in presence of two lady police officials, raid was conducted. The Supreme Court of Pakistan, in multiple precedents, has emphasized that where the police inquiry negates the occurrence of an alleged incident, compelling law enforcement to register an FIR would be an exercise in futility. Judicial discretion must be exercised prudently to prevent the abuse of legal provisions, and the registration of an FIR under such circumstances, absent substantive evidence, would serve no lawful purpose.

11. Bare reading of the impugned order shows that learned Ex-Officio Justice of Peace has been influenced from the situation wherein, nothing was taken into possession by the raiding team from pointed place, as no clamp was found and simply it is assumed that cognizable offence is/was made out. Such observations seem to be based on assumptions and not sustainable under the law, as learned Presiding Officer has failed to point out, what cognizable offence(s) was made out for issuing directions to the SHO concerned to record statement of applicant, incorporate the same in 154 Cr.P.C book.

12. Upon careful scrutiny of the facts and circumstances presented by the applicants, it is evident that no cognizable offense has been established. Therefore, it is not mandatory for courts to direct the police to register an FIR when the allegations appear to be mala fide or lack substantive grounds. Judicial prudence demands that before issuing such directives, the court must ensure that they are not granted in a routine or mechanical manner, as doing so could infringe upon the fundamental rights of individuals against whom such orders are passed. The impugned order, therefore, warrants interference, accordingly set aside and Cr. Misc. Application allowed.

JUDGE