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**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

**Criminal Misc. Application No. S- 71 of 2017**

DATE	ORDER WITH SIGNATURE OF JUDGE
Applicants	: Muhammad Azam Brohi & Ahmed Ali, through Mr. Imdad Ali Mashori, Advocate
Respondent No.1	: Deedar Hussain, through Mr. Athar Abbas Solangi, Advocate
Respondents No 2 to 5	: S.H.O P.S. Miro Khan, D.S.P. Miro Khan, S.S.P. Kambar-Shahdad Kot @ Kambar, and The State, through Mr. Sardar Ali Shah, D.P.G
Date of hearing	: 12-06-2017
Date of order	: 30-03-2018

**ORDER**

**ZAFAR AHMED RAJPUT, J.-** The respondent No.1 herein, on 10.02.2017, filed Criminal Misc. Application bearing No. 243 of 2017, under section 22-A (6) (iii), Cr. P.C., before the Sessions Judge / Ex-Officio Justice of Peace, Kambar-Shahdad Kot @ Kambar, alleging therein that he was lawful owner of the property bearing Survey No. 159 and 397, situated in Deh Ali Shah Gopang, Taluka Miro Khan where he was having his rice mill on the name and style of Masha Allah Rice Mill (**"the subject property"**). It was further alleged by the respondent No.1 that he had purchased the paddy crops from the *Abadgars*, which was lying in rice mill under open sky. It was also alleged by the respondent No.1 that on 12.01.2017 Miro Khan police occupied the said rice mill and did not allow him to run his business; hence, he sought directions to SHO. P.S. Miro Khan and D.S.P. Miro Khan (respondent No. 2 and 3, respectively) not to create any hindrance in running the rice mill and not to cause any harassment to him.

2. During hearing of the said Criminal Misc. Application before the Sessions Judge/Ex-Officio Justice of Peace, Kambar-Shahdad Kot @ Kambar, present applicants who were not party in the said application, appeared as interveners and filed their Objections wherein they, raising the point of maintainability of the application and denying the assertions of the respondent No.1, claimed that they

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was the owner or possessor of the said rice mill by virtue of registered sale deed and the deed of sale was also mutated in their favour and the said rice mill was already with NRI, Larkana Branch. It was further averred that, on 12.01.2017, Miro Khan police came at rice mill along with the respondent No. 1 and his companions and seized the rice mill by taking over its possession on the pretext of law and order situation. It was also averred that the stock i.e. paddy, rice, broken rice and paddy straw available in the rice mill were also belonging to them.

3. The Sessions Judge / Ex-Officio Justice of Peace, Kambar-Shahdad Kot @ Kambar, vide order dated 26.04.2017 allowed the said Cr. Misc. Application, directing the respondent No. 4 i.e. S.S.P. Kambar-Shahdad Kot @ Kambar to issue directions to respondent No. 3 and 2 i.e. S.D.P.O Miro Khan and S.H.O. P.S. Miro Khan, respectively, to allow respondent No. 1 to run his business in said rice mill by providing legal protection. It is against that order, the instant Criminal Misc. Application has been maintained by the present applicants.

4. Learned counsel for the applicants has contended that prior to Criminal Misc. Application No. 243 of 2017, the respondent No. 1 had filed, on 14.01.2017, Criminal Misc. Application No. 73 of 2017, under section 22-A (6) (iii), Cr. P.C., seeking temporary possession of the rice mill and the Sessions Judge / Ex-Officio Justice of Peace, Kambar-Shahdad Kot @ Kambar, without hearing the present applicants passed an interim order directing the S.S.P. Kambar-Shahdad Kot @ Kambar to issue directions to S.H.O. P.S. Miro Khan to hand over the possession of the rice mill to respondent No. 1, which order was impugned by the present applicants in Cri. Misc. Application No. 04 of 2017 before this Court, and vide order dated 23.01.2017, this Court while allowing the said Cri. Misc. Application set aside the order observing that there is no provision in Section 22-A Cr. P.C. entitling an Ex-Officio Justice of Peace to grant interim relief. He added that the impugned order is against the spirit of section 22-A (6) (iii), Cr. P.C. as such, Ex-Officio Justice of Peace travelled out of his jurisdiction while entertaining the application of respondent No. 1 and passing the impugned order.

which is being illegal and without jurisdiction is liable to be set aside to secure the ends of justice. He has further contended that the dispute between the parties is purely of civil nature, such civil suit is already pending adjudication before the concerned civil court, and the Ex-Officio Justice of Peace has jurisdiction to entertain any dispute in respect of immovable property.

5. Conversely, learned counsel for the respondent No.1 while reiterating the facts of criminal miscellaneous application filed by the respondent No.1 before the Sessions Judge/Ex-Officio Justice of Peace, Kambar-Shahdad Kot @ Kambar has fully supported the impugned order. He has argued that the respondent No.1 was lawfully occupying the rice mill being its owner when it was seized by the police illegally on the apprehension of breach of peace. He added that the police submitted such report under section 145 Cr. P.C to Judicial Magistrate-II, Kambar but the latter refused to take cognizance, vide order dated 17.01.2017, for the reason that the parties had already approached to competent civil court; hence under such circumstances, the police instead of committing excess by restraining the respondent No.1 from running his rice mill, should have provided protection to him against the applicants and their associates, but when police neglected its duties and failed to perform its function, the respondent No.1 approached the Sessions Judge/Ex-Officio Justice of Peace, Kambar-Shahdad Kot @ Kambar in terms of Clause (iii) of sub-section (6) of Section 22-A Cr. P.C.

6. The learned D.P.G. while conceding the arguments of learned counsel for the respondent No.1 has asserted that apparently the S.H.O. Miro Khan acted into the matter negligently as he failed to provide legal protection to respondent No.1 against the applicants, who as per record, attempted to occupy the rice mill forcibly.

7. I have heard the learned counsel for the parties and perused the material available on record.

8. An ex-officio Justice of Peace i.e. Sessions judge and nominated Additional Sessions Judge in a relevant Districts, deriving jurisdiction under



section 25, Cr. P.C. has the power under section 22-A (6)(iii) Cr. P.C. to issue appropriate directions to the police authorities concerned on a complaint regarding non-registration of criminal case, transfer of investigation from one police officer to another and neglect, failure or excess committed by a police authority in relations to its function and duties.

9. It appears from the perusal of the record that the applicant No.1 and others, on 08.06.2013, filed a civil suit bearing No. 26 of 2013 before the Senior Civil Judge, Shahdad Kot for declaration and permanent injunction against Irfan and others, which is still pending adjudication and contested by the respondent No.1 herein as attorney of defendant No.1. The applicant No.1 & others in the said civil suit also filed an application under Order XXXIX, Rule 1 & 2, C.P.C., inter alia, seeking interim orders restraining the defendants from interfering with their possession over the subject property; so also, restraining the Micro Filming Officer keeping further entries in the record, and the said application was disposed of by the civil Court, vide order dated 18.02.2014, refusing the interim relief with regard to interference with possession, as the applicant/plaintiffs failed to establish their claim of possession over the subject property. The applicants did not assail said order in any appeal; hence, it has attained finality. It also appears that the said civil Court, out of the pleadings of the parties, has framed issues that include an issue with regard to possession of the subject property. It further appears that, on 14.01.2017, the respondent No.1 filed Cr. Misc. Application No. 63 of 2017 before the Sessions Judge/Ex-Officio Justice of Peace, Kambar-Shahdad Kot @ Kambar, under section 22-A (6) (iii), Cr. P.C., praying therein for initiating legal action against the applicants and their associates, on the grounds that, on 12.01.2017, they entered into rice mill on the strength of lethal weapons. On that the said Sessions Judge/ Ex-Officio Justice of Peace, passed the order on 16.02.2017 directing the S.H.O Miro Khan to record the statement of respondent No.1 under section 154 Cr. P.C. and to lodge the report, if any cognizable offence is made out. As such, an F.I.R being Crim No. 09 of 2017 was registered against the applicants and their associates o

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