

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No.192/2025

Applicant : Ahmed Bux Morio son of Morio Faqueer
Through Mr. Ali Muhammad Kakepoto,
advocate

Respondents : SHO of P.S Gaddap City
SSP Malir Karachi
Saleem Burfat son of Khamiso Burfat
Muhammad Siddique
Ms. Huma Sadiq, advocate for
Muhammad Siddique.

State Mr. Muhammad Mohsin Mangi, APG.

Date of hearing : 11.04.2025

Date of order : 28.04.2025

ORDER

Khalid Hussain Shahani, J:- Applicant Ahmed Bux Morio has invoked the inherent jurisdiction of this court against an order dated 03.02.2025, passed by the court of learned Additional Sessions Judge-II / Ex-Officio Justice of Peace, Malir at Karachi in a Criminal Miscellaneous Application No. 192 of 2025, whereby prayer clause for registration of FIR was declined, however protection granted.

2. The applicant contends that the learned Ex-Officio Justice of Peace has passed the impugned order erroneously, by relying on the version advanced by the proposed accused. In support of the present application, learned counsel for the petitioner contended that the petitioner is a permanent resident of Morio Faqueer Jokhio Goth, where an old ancestral graveyard is located, containing the graves of his forefathers. On 10.01.2025, during a routine visit to the said graveyard along with his companions, the petitioner noticed a dumper loaded with *Retti Bajri* operating in the vicinity. Upon inquiry, the driver of the dumper disclosed that he was acting on the instructions of Saleem Barfat (proposed accused No.1), who was present at the site (*Daka*). The petitioner confronted Saleem Barfat, who claimed that the extraction activity was being carried out pursuant to a government-issued license and advised the petitioner to contact Muhammad Siddique (proposed accused No.2) in case of any

objection. Learned counsel further submitted that despite the petitioner's protest, proposed accused No.1 categorically refused to cease operations and extended threats of dire consequences. Subsequently, on 13-01-2025, the petitioner, accompanied by his brother, visited the office of the DHA Department and met with proposed accused No.2 to raise objections against the extraction of *Retti Bajri* from the graveyard. However, instead of addressing the grievance, the proposed accused reiterated the threats. It was argued that the petitioner approached the local police by submitting a written application, but no action was initiated, thereby compelling the petitioner to invoke the jurisdiction of this Court.

3. Conversely, learned counsel for the proposed accused No.2 opposed the maintainability of the application and contended that the alleged mining work is being carried out at a site that lies considerably distant from the graveyard and falls within the territorial jurisdiction of District Jamshoro. He asserted that the petitioner has concocted a false narrative to exert undue pressure and extract monetary benefits from legitimate business operations. Such mala fide practices, it was argued, are becoming increasingly common and ought not to be entertained or legitimized by this Court.

4. In continuation of the petitioner's submissions, instant application is made against the findings of the learned trial court, which dismissed the prayer for registration of FIR while allowing the request for legal protection. This Court stand with the well-reasoned order of the learned trial court, which was passed after due judicial deliberation and is consistent with the principles laid down by the superior courts, including the judgment in *Younis Abbas and others v. Additional Sessions Judge, Chakwal* (PLD 2016 SC 581). The learned trial court, upon examining the police inquiry report, noted that proposed accused No.1 categorically denied any relationship with the petitioner and claimed to be a resident of Saffar Khan Barfat Goth, Taluka Kotri, District Jamshoro. It was further reported that the excavation site lies approximately 150 feet away from the graveyard and falls squarely within the territorial jurisdiction of District Jamshoro. The report also observed that the petitioner appears to have an ulterior motive and is possibly attempting to claim control over a public thoroughfare under the guise of protecting the graveyard.

5. Learned court of Ex-Officio Justice of the Peace correctly observed that the nature of the dispute, allegedly concerning removal of *Retti Bajri* near a graveyard, raises complex questions of fact, including the precise location and jurisdiction of the activity, and whether the graveyard was indeed encroached upon. These issues, it was held, cannot be resolved through the mechanical lodging of an FIR. Rather, the petitioner was advised to seek redress before the relevant forum, such as the Revenue Department or the competent Tribunal, especially since he relied upon a judgment of the Anti-Encroachment Tribunal in support of his claim. The learned trial court rightly declined the request under Section 22-A Cr.P.C. to direct registration of an FIR, noting that the Ex-officio Justice of Peace is not to act mechanically upon the allegations of one party, but must exercise judicial mind to determine whether the material on record discloses the commission of a cognizable offence. In this regard, reliance was aptly placed on the judgments reported as *Muhammad Hussain v. The State* (2017 PCrLJ Note 107) and *Munawar Alam Khan v. Qurban Ali Mallano* (2024 SCMR 985), both of which underscore the need for restraint and caution in exercising jurisdiction under Sections 22-A and 22-B Cr.P.C. to prevent frivolous or malicious prosecution and abuse of process of law.

6. Nonetheless, the learned trial court rightly held that insofar as the petitioner's request for legal protection is concerned, it falls within the ambit of his fundamental rights. Accordingly, the concerned SHO was directed to extend necessary protection to the petitioner, while clarifying that such direction shall not impede lawful proceedings initiated by any person or authority against him.

7. In view of the above, the impugned order appears to be in accordance with law and settled judicial principles. The learned trial court exercised its discretion soundly, ensuring that the petitioner's rights are protected without allowing the criminal justice process to be misused for personal vendetta or civil disputes. Application stands dismissed with above observation.

J U D G E