

Order Sheet

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

Mr. Justice Jawad Akbar Sarwana

Criminal Miscellaneous Application No. 740 of 2024

Nazar Muhammad Jokhio v. The State and Seven (7) Others

Applicant:	Nazar Muhammad Jokhio s/o Muhammad Ismail Jokhio through Wajid Ali Jokhio
Respondent No.1:	The State. Nemo
Respondent Nos.2 & 3:	SSP District Malir Karachi and Station House Officer Police Station Shah Lateef Town, Karachi through DPG
Respondent No.4:	Sarfraz Ali s/o Abdul Ghafoor through Asadullah Burdi
Respondent No.5:	Asad Channa s/o Not Known. Nemo.
Respondent No.6:	Khalid Phal Poto s/o Not Known. Nemo
Respondent No.7:	Danish S/o Not Known. Nemo.
Respondent No.8:	Irshad s/o Not Known through Feroz Gul Tunio, Advocate
Date of Hearing:	20.12.2024
Date of Order:	20.05.2025

**ORDER**

Jawad Akbar Sarwana, J.: This Criminal Miscellaneous Application filed on 22.07.2024 challenges the Order dated 19.07.2024 passed by the I-Additional Sessions Judge Malir/Ex-Officio Justice of Peace Malir, Karachi, allowing the Respondent No.4's ("Sarfraz Ali") Cr. Petition No.2077/2024, directing the SSP/SHO ("Police Authorities") to record the Statement of the Petitioner verbatim and convert the same into an FIR as provided under Section 154 Cr. P.C. It may not be out of place to mention here that when this Application was filed on 22.07.2024, this Court, by its interim Order passed on the even date suspended the operation of impugned Order dated 19.07.2024 till the next date of hearing. Consequently, when this case was heard and reserved, the impugned Order was temporarily suspended, meaning that neither a Statement under

Section 154 Cr.P.C. had been recorded nor an FIR lodged or registered by the Police Authorities.<sup>1</sup>

2. The background of the dispute between the parties essentially concerns matters relating to the ownership, sale, purchase and possession of two plots bearing No.FC-16 (120 sq. yds) and R-11A (60 sq. yds.) (hereinafter referred to as the “two Plots”) situated in Gulshan-e-Kareem Housing Society (Pvt.) Ltd. (“GeK Housing Society”). Sarfaraz Ali (Respondent No.4) who filed the Application under Section 22-A and 22-B Cr.P.C. before the Ex-Officio Justice of Peace Malir, alleges that he purchased the aforesaid two Plots from GeK Housing Society through a broker, Khalid Phulpoto (Respondent No.6). He claims that he had made cash payment towards purchase of the two Plots, with the “will of the project owner”, i.e. the Applicant of this lis, Nazar Muhammad Jokhio, to the Manager of GeK Housing Society, namely, Asad Channa (Respondent No.5).<sup>2</sup>

3. It appears that a dispute arose concerning the construction on the above two Plots when one Danish (Respondent No.7), claiming to be the project manager, allegedly restrained Sarfaraz Ali (Respondent No.4) and his brother, Sajjad, from raising construction without the approval of Respondent Nos.5 and 6. It is alleged that one Irshad (Respondent No.8) claimed ownership of Plot No. R-11-A, and started construction on the said Plot, when Sarfaraz Ali complained by telephone to the Police Helpline 15, but the Police Authorities took no further action in the matter even though the Respondent No.4 followed up the matter with a written complaint to the SP Complaint Center, Malir.<sup>3</sup> Hence, the Respondent No.4 filed an Application under Section 22-A & 22-B against the Applicant and Respondent Nos.5 to 8.<sup>4</sup>

4. Learned Counsel for the Applicant (“Nazar Mohammad Jokhio”) has argued that the Ex-Officio Justice of Peace Malir, without considering the facts of the matter and not appreciating that no information was presented by Respondent No.4 (“Sarfaraz Ali”) justifying lodging an FIR, directed the SHO to lodge the same against the Applicant and Respondent Nos.5 to 8. He claimed

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<sup>1</sup> As per Comments filed by the SHO dated 13.08.2024, no information is available regarding steps taken by the Police Authorities as per the direction of the Ex-Officio Justice of Peace vide the impugned Order.

<sup>2</sup> Paragraph 4 of the Objections filed by Respondent No.4 (Sarfaraz Ali).

<sup>3</sup> Pages 51-55 of the Application.

<sup>4</sup> Paragraphs 5 to 8 of the Objections filed by Respondent No.4 (Sarfaraz Ali)

that the Applicant had no direct link with the GeK Housing Society and he did not execute any sale agreement with Respondent No.4 (“Sarfaraz Ali”). Counsel argued that one Hasan Johko had sold certain Survey Numbers from the Project to Danish Naseer Imrani and others. Therefore, no case for automatically lodging FIR is/was made out.<sup>5</sup>

5. Heard Counsel and perused documents available on file. The record suggests that, *prima facie*, a civil dispute exists between the parties. No information about the conduct of the Police Authorities viz. non-registration of FIR has been discussed by the Ex-Officio Justice of Peace in the impugned Order. It is/was essentially the domain of the police authorities who have to evaluate information and/or complaint submitted to them and determine whether the information reveals commission of an offence or not, and, if it does, whether the offence is cognizable or non-cognizable and whether the information being provided is false. The impugned Order could have mentioned the Report filed on the part of the Police Authorities as to the action/inaction they took or any Comments filed by them before the Ex-Officio Justice of Peace, which were seen or considered by the Ex-Officio Justice of Peace, as to whether such above process by the Police Authorities was followed viz. Respondent No.4’s Complaint. However, it appears that no report was called from the Police, as none is mentioned in the impugned Order, and yet the impugned Order, without any discussion on the above points, directs the registration of an FIR.

6. Notwithstanding the above, it is/was equally relevant from the perspective of the Ex-Officio Justice of Peace to follow a similar process as the Police Authorities when giving directions to them to register an FIR mandatorily. Clearly, as mentioned above, a thought process is triggered before an FIR is lodged, and this process must be followed each time information is presented. The process cannot be skipped. The Ex-Officio Justice of Peace, being an arbiter between Police Authorities and the public when reviewing a police complaint under Section 22(6)(i) Cr.P.C. regarding non-registration of a criminal case still needs to articulate in the order the same thought process which the Police Authorities consider before registration of an FIR. Thus, when the Ex-Officio Justice of Peace concluded that the Police Authorities had erred in non-registration of an FIR, and directed them to do so vide the impugned Order, then

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<sup>5</sup> Paragraphs 1, 2 and 3 of the Application available on pages 4-5 of the Application.

he too is/was under a duty to evaluate the complaint available on the docket of the Court and determine whether the information reveals commission of an offence or not and if it does, whether the offence is cognizable and whether the information being provided is false, and thereafter proceed to pass Order under Section 22-A Cr.P.C. directing the Police Authorities to register an FIR. But the Ex-Officio Justice of Peace impugned Order does not verbalize this process.

7. The articulation of the above process which would have assisted this Court too, to determine whether at this initial stage of information, the conclusion reached by the Ex-Officio Justice of Peace to issue directions to lodge the FIR was correct, fair or just, cannot be found in the impugned Order. In the case at hand, the impugned Order also does not expressly cite the precise penal provision that made the offence cognizable, which was in the mind of the Ex-Officio Justice of Peace. The impugned Order, after summarising the one-sided Complaint filed by Respondent No.4 without articulating the process by which this conclusion was arrived at, directs the Police Authorities to register an FIR.

8. Given the above facts, circumstances and law concerning the pre-requisites for lodging an FIR, the direction given to the Police Authorities to register an FIR cannot be sustained. Accordingly, the interim Order passed by this Court on 22.07.2024 temporarily suspending the impugned Order passed by the Ex-Officio Justice of Peace, Malir dated 19.07.2024 is hereby confirmed and the said impugned Order dated 19.07.2024, is set aside with directions to the Police Authorities to record the Statement of Respondent No.4 and thereafter, to take appropriate action, as required under the law. It is clarified that this order shall not be interpreted to mean that this Court has passed directions for a mandatory registration of an FIR, which in the first instance is the job of police authorities who will entertain the Respondent No.4.

This Misc. Application is allowed in the above terms.

J U D G E

Announced by me on 20.05.2025.