



17.07.2013 at 9 pm the applicant had received mobile phone call of his brother Sirajul Hassan, whereby his brother disclosed that he was on the way to visit his relative Mst. Shazia, when he reached near Village Restaurant Hotel, one police mobile boarded by 7/8 police personnel under the command of SHO Mir Imdad Ali Talpur of PS Waleed, Larkana collided with his car resultantly car was damaged; thereafter such mobile call was disconnected. Applicant immediately approached to the concerned police station but his report was not lodged, thereafter applicant complained to CPLC but no heed was given, consequently he filed application under section 22 A, CrPC, for lodging FIR before Ex-Official Justice of Peace/District & Sessions Judge, Karachi South, same was entrusted to 1<sup>st</sup> Additional Sessions Judge, Karachi South. During proceeding on such application, concerned SHO produced FIR No.454/2013, with endorsement that same is lodged in compliance of court order thus application was disposed of. Thereafter again the applicant approached same forum by filing Criminal Miscellaneous Application No.1067/2013, with plea that that his report was not recorded as verbatim and concerned SHO deliberately did not incorporate the complete narration of incident and names of assailants, whereas first application reveals the name of one culprit SHO Mir Imdad Ali Talpur; such application was dismissed by impugned order.

3. Learned counsel for the applicant, *inter alia* contended that impugned order is against the settled principles of administration of justice; applicant attached application in Urdu along with application under section 22-A (6) Cr.P.C. but the same was not incorporated by respondent No.2

deliberately in order to oblige the real culprit SHO Imdad Ali Talpur; instant crime is heinous in nature as ransom was demanded from the applicant and Sirajul Hassan was abducted. Learned Ex-Officio Justice of Peace has examined the merits of the case whereas such procedure is not provided under the law and thus has completely departed from such application of procedure. In support of his contention he relied upon PLD 2007 Supreme Court 539 (Muhammad Bashir v. Station House Officer, Okara Cantt. and others), 2001 SCMR 1556 (Wajid Ali Khan Durani and others v. Government of Sindh and others), 2007 Criminal Law Journal 909 (Dr. Inayatullah Khilji and 9 others v. 1<sup>st</sup> Additional District & Sessions Judge (East) at Karachi and others), 2013 MLD 885 (Sindh) (Allah Bakhsh v. Station House Officer and another) and 2013 MLD 845 (Sindh) (Mst. MuradKhatoon v. S.H.O. Police Station Warrah and 2 others).

4. Conversely, learned APG while refuting the submissions of learned counsel for the applicant argued that instant crime was already reported vide FIR 454/2013 on 19.08.2013 therefore second FIR is not permissible for same offence and it is a matter of investigation agency to probe further. Impugned order is in accordance with law as in last paragraph it is contended that contents of such application were incorporated in such FIR; applicant is a liberty to file direct complaint if he is aggrieved, hence instant application is devoid of merits.

5. Heard counsel, perused record. After careful consideration of contentions raised by respective counsel and meticulous examination of the available record it is surfaced that applicant has challenged the maintainability of impugned order on the ground that his contention mentioned in earlier application were not incorporated in above referred FIR hence respondent No.2 is duty bound to record second FIR. To resolve this aspect it will be conducive to refer the application moved by applicant before respondent No.2 which is at page 173, Same reflects that applicant asserted that his brother Sirajul Hassan disclosed that while he was on the way, when reached Village Hotel, one police mobile chased him and subsequently hit his car thereafter mobile of his brother was disconnected. Similarly he moved application on next date i.e 18.07.2013, before CPLC almost containing the same facts. , except number of vehicle which followed the car of his brother. It is settled proposition of law that concerned Station House Officer is duty bound to incorporate any information received by any source in the book provided under section 154 Cr.P.C. if such information constitutes a cognizable offence, but here question involved is different one, candidly, FIR No.544/2013 was registered with regard to same incident and applicant only claims that his all contentions were not recorded. In the given situation suffices to say that FIR is not substantive part of evidence it is just information, which brings the law in motion, in case, any material part of incident is missing same can be disclosed by the witnesses or complainant during investigation and it is the purely domain of the investigating officer to investigate the matter impartially and bring the truth on

record as comprehensive procedure is envisaged in Cr.P.C. With regard to the case of Mst. Murad Khatoon (supra) issue was that one FIR of murder case was lodged by one ASI on behalf of the State thus being aggrieved complainant grandmother of deceased approached the concerned Court and prayed for lodging first information report according to her narration, being one of the legal heir, such request was allowed, but in the instant case applicant version was recorded , according to the narration, provided in his first application and 2<sup>nd</sup> application to CPLC. Hence the case law is not applicable to the facts of the instant case; however it is settled principle of law that each criminal case is to be decided on its own peculiar facts and circumstances.

6. So far as to the plea that learned judge has examined the merits of the case, it is germane to mention that ex officio peace of justice can examine the memo of application and admitted documents appended with it while deciding application under section 22 A CrPC. However such examination must be in tentative nature and with the sole object to see whether narration of the facts reveals the ingredients of cognizable offence. Here, it would be conducive to refer the relevant para of impugned order that follows:

“I have taken Judicial Notice of the earlier application No.1027/2013. An application submitted by applicant on 17.07.2013 was annexed therewith. The contents of said application were incorporated in FIR No.454/2013 by SHO Police Station Darakshan. This Court being ex-officio Justice of Peace has to see as to whether any cognizable offence as per allegations contained in application in writing or verbally made to SHO, constitutes cognizable offence for registration of FIR. Admittedly on the application submitted by applicant FIR No.454/2013 has been registered and it is for the investigating officer to probe and

collect evidence against the proposed accused. With prejudiced to applicant it is case of applicant that Anus Hussain had invested Rs.3500,000/- with Sirajul Haq for business deal but unfortunately one Perwaiz to whom such amount was given for purchase of Van fled away with the said amount. Anus Hussain admittedly demanded his investment amount from Sirajul Hassan and adopted return of his amount through police which act did not fall within the definition of Kidnapping and demand of ransom as alleged. Admittedly 12 post dated cheques has been issued in favour of Anus Hussain by the applicant or his brother therefore, no cognizable case U/S 363/382 PPC is made out. I, therefore, dismiss application. The case law cited by learned counsel for applicant are on different footings and not relevant to the facts of application in hands.”

Bare perusal of above it is manifest that learned ex-officio of justice has discussed minutely the dispute between the parties and has opined regarding commission of offence, such approach is unwarranted under the law, hence this practice cannot be encouraged in any manner, however any finding in these proceedings will not debar the investigating agency, to conduct thorough probe and recommend the case independently, whatever is collected during investigation.

7. Keeping in view the above circumstances, it is matter of record that F.I.R regarding same alleged crime is pending, hence applicant is at liberty to pursue his case, if he is aggrieved, the course provided under section 200 CrPC, permits him to file direct complaint, thus prayer for 2<sup>nd</sup> F.I.R, is devoid of merits, hence instant revision application is dismissed with above observation.

**J U D G E**

Imran/PA