

## ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI

Cr. Misc. Application No.326/2012

Date	Order with signature(s) of Judge(s)
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- 1. For order on MA No.8813/2012 (Ex. A)
- 2. For katcha peshi
- 3. For order on MA No.8814/2012 (Stay)

22.4.2014

Syed Ali Ahmed Tariq, for applicants  
Mr. Muhammad Iqbal Awan, Assistant P.G.

1. Granted subject to all just exceptions.

2-3. The applicant is aggrieved by the order passed by learned Sessions Judge, Karachi, East dated 29.11.2012 in Cr. Misc. Application No.1844/2012 under Section 22-A Cr.P.C. filed by the respondent No.3.

The respondent No.3 has attempted to lodge FIR of an offence of a very serious nature under sections 298-B and 298-C Pakistan Penal Code against the accused in Brigade Police Station, Karachi, East. This application was allowed and being aggrieved, the applicant filed this Cr. Misc. Application with the prayer that the impugned order may be set aside and the proceedings, if any, started may be quashed.

The main contention of learned counsel for the applicant is that irrespective of the fact that the case is made out for lodging of the FIR or not, the Court of Justice of Peace, Karachi, East, had no jurisdiction to entertain the Criminal Miscellaneous Application No.1844/2012. He contended that the so-called alleged offence took place, if at all, in District South, Karachi and the complainant resides in District Central, whereas he has attempted to lodge complaint/FIR in District East. He further contended that the observation of the trial Court that the Honourable Supreme Court

has held that the police is bound to register the case within the jurisdiction where the complainant/applicant permanently resides, is misconceived in the given facts of the case. It is an admitted position that the respondent No.3 does not reside permanently within the jurisdiction of Brigade Police Station, District East, nor the so-called alleged offence took place within the jurisdiction of Brigade Police Station. This Court has also called report from the Brigade Police Station, which has taken the same position. In view of the above facts and the contention raised by the counsel for the applicant, it is cleared that the learned Sessions Judge/Justice of Peace had no territorial jurisdiction to entertain the complaint of respondent No.3. The judgment of the Honourable Supreme Court referred to in the impugned order seems to have been incorrectly applied by the learned trial Court. Admittedly the applicant is not the resident of District East and particularly his residence is not within the jurisdiction of Brigade Police Station and, therefore, he has with mala fide intention attempted to get a false case registered against the applicant.

There are instances of misuse of provisions of section 22-A Cr.P.C. and, therefore, it is the duty of the Court that such misuse should be taken care of and such application should not be lightly entertained in a mechanical manner for direction to the police to register a statement of complainant and start prosecuting the alleged accused persons. In forming this view, I find support from the judgment reported as *Imtiaz Ahmad Cheema v. SHO, Police Station Dharki, Ghotki* (**2010 YLR 189**). In this case his Lordship Mr. Justice Amir Hani Muslim (as he then was Judge of this Court) has held as follows: -

*“The provisions of section 22-A, Cr.P.C. have been misused in a number of cases. The wisdom of legislature was not that any person who in discharging of duties takes an action against the accused would be subjected to harassment by invoking provision of section 22-A, Cr.P.C. The Courts in mechanical manner should not allow application under section 22-A & B and should apply its mind as to whether the applicant has approached the Court with clean hands or it is*

*tainted with malice. Unless such practice is discharged, it would have far reaching effect on the police officials who in discharge of duties take actions against them. The law has to be interpreted in a manner that its protection extends to every one. I am therefore, of the opinion that order of the Sessions Judge was passed in mechanical manner and the applicant approaching the Sessions Judge. As per the record reflects that it was tainted with malice.”*

It is even more necessary when the alleged offence is of a serious nature, which may create a law and order situation in the area. The applicants have referred to and mentioned several reported cases in the memo of application illustrating efforts of false implication of members of their Ahmedy community in similar offences, which ultimately ended in acquittal. The very fact that the respondent No.3, the so-called complainant has not taken the trouble of lodging the similar complaint within the jurisdiction of police station where, according to the circumstances, the case should have been registered, shows his mala fides and attempt to misuse of provisions of section 22-A Cr.P.C.

I have heard learned counsel for the State. The learned Assistant P.G. conceded that the learned Sessions Judge, Karachi, East had no territorial jurisdiction to entertain complaint under section 22-A Cr.P.C. since the offence, if any, did not fall within the territorial jurisdiction of District East, Karachi. He, however, supported the impugned order, but has not been able to satisfy the Court that in absence of jurisdiction, how the Court can take cognizance of a matter not falling within its territorial limits.

In view of above facts and circumstances, this criminal miscellaneous application is allowed. Impugned order dated 29.11.2012 is set aside and proceedings, if any, started against the applicants on the basis of the impugned order, stand quashed and all pending applications are disposed of as having become infructuous.

JUDGE