

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Misc. Application No.54/2014

ORDER

Date of hearing	08.04.2014. .
Applicant	Mst. Maria through Mr. Fiaz H. Shah, Advocate
Respondent	The Station House Officer, Gizri Police Station, Karachi, South through Mr. Abdullah Rajput, Assistant Prosecutor General, Sindh

NAZAR AKBAR, J. The applicant has impugned the order dated 28.2.2014 passed by the learned Sessions Judge, Karachi (South) in Cr. Misc. Application No.249 of 2014, whereby her prayer for issuance of a direction to the concerned Station House Officer for registering FIR against the accused nominated by her, has been dismissed.

2. The case of the applicant is that the brother of applicant namely Salman Ahmed son of Shafiq Ahmed was seriously injured in gunshot fired by Dr. Abdul Shakoor in presence of the applicant and Mst. Feroza Hina daughter of Shafiq Ahmed and other brother of applicant namely Sohail S/o Shafiq Ahmed. The victim Salman Ahmed is still confined at hospital for medical treatment and has been permanently paralyzed. According to the applicant, the SHO of concerned police station in collusion with the main accused had lodged FIR No.207/2013 alleged on the complaint of Mst. Ferozan, sister of injured, but the said FIR is not reflecting the true facts and real incident reported by Mst. Ferozan in her statement to the police. Her statement was not properly incorporated in the FIR. Therefore, after having come to know about manipulation in the FIR, the applicant moved an application under Section 22-A Cr.P.0

for registration of separate FIR, in respect of the incident against the accused nominated by her. The learned Sessions Judge called comments from the concerned Station House Officer, who submitted his comments, wherein it was stated that FIR No.207/2013 was lodged on the complaint of Mst. Ferozan Hina on 12.2.2013 and nominated accused was arrested by police during the course of investigation who has succeeded to get the concession of bail from the competent Court of law and second FIR cannot be lodged for the same incident as alleged by the complainant. On the basis of this report and after hearing of proposed accused through his counsel, the learned Sessions Judge, Karachi, South dismissed the application filed by the applicant.

3. Learned counsel for the applicant contended that the learned trial Court did not appreciate and / or taken into consideration that neither the statement of any family member was ever recorded by the police officials nor that of the complainant. He submitted that applicant made specific allegations against the accused which were prima facie sufficient to make out a cognizable offence against him, and after refusal by the concerned Station House Officer to register applicant's FIR, incorporating her statement, filing of application before the Ex-Officio Justice of Peace was the only remedy available to the applicant. Learned Sessions Judge / EX-Officio Justice of Peace has not taken into consideration the falsehood of the respondent that police has recorded the statement of the victim, who cannot speak due to his neck injury. He further contended that the applicant and the complainant of first FIR are totally illiterate ladies and even cannot speak Urdu and are unaware about the proceedings.

4. On the other hand, learned Assistant Prosecutor General for the State has supported the order of Ex-Officio Justice of Peace dismissing the application on the ground that according to him second FIR cannot be registered, however, when confronted with the two judgments reported in 2013 P.Cr.L.J 117 and 2013 P.Cr.L.J 660, learned APG had no answer.

5. I have examined the contents of Cr. Misc. Application under section 22-A Cr.P.O and found that the FIR was lodged on 05.6.2013 at 1:00 p.m., however, as alleged by the applicant, the contents of the FIR were not reflecting the true facts and, therefore, they approached the learned Ex-Officio Justice of Peace. Before approaching the Court they have requested for re-investigation on 14.2.2014 clarifying that the contents of the FIR are not as reported by Mst. Ferozan Hina. Mst. Ferozan Hina has also filed her affidavit alongwith criminal complaint. The learned Sessions Judge/Ex-Officio Justice of Peace sought comments from the SHO, who informed that accused Dr. Abdul Shakoor is released on bail. Collusion of police with the accused is one of the main contentions of the applicant in her criminal complaint under section 22-A Cr.P.C. before the Sessions Judge, South at Karachi, and the impugned order to some extent confirms the collusion of police with accused Dr. Abdul Shakoor. This conclusion of mine is based on the impugned order which shows that the proposed accused had voluntarily appeared and contested through his counsel, though neither he was on notice nor he had a right of audience. In fact the accused is not supposed to know that any such application under section 22-A is pending before the Sessions Court against him. It was only the SHO of Gizri Police Station, who

was on notice of this application and through him the accused Dr. Abdul Shakoor came to know and voluntarily appeared in Court to contest the application under section 22-A. I do not find from the relevant provision of law that the Ex-Officio Justice of Peace on receiving the complaint regarding non-registration of a criminal case or neglect, failure or excess committed by a police authority in relation to its functions and duties is required to hear the proposed accused, against whom complaint is to be or not to be lodged by the police after recording of statement of complainant. The relevant portion of section 22-A Cr.P.C. is reproduced below: -

**"22-A. Power of Justice of Peace.**

*(6) An ex officio Justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding:*

*non-registration of a criminal case;*

*(ii) transfer of investigation from one police officer to another;*

*(iii) neglect, failure or excess committed by a police authority in relation to its functions and duties."*

6. The impugned order suggests that a full length hearing was given to accused Dr. Abdul Shakoor through his counsel, who appeared voluntarily. The learned Sessions Judge/Ex-Officio Justice of Peace in entertaining the accused through his counsel has grossly acted against the law. The accused are not entitled to contest the contents of an FIR before it is registered against them. The accused will have right to approach the Court only after the lodging of the FIR. The accused may take any defence at the trial, but not before that. The learned Sessions Judge also failed to follow the law laid down by this Court reported as Ghulam Fareed v. Station House Officer (**2013 P.Cr.L.J. 117**) and the law laid

down by Lahore High Court in the case of Samina Begum v. State **(2013 P.Cr.L.J. 660)**. Both the cases were cited before the Court. In both the cases complete guidelines have been provided to the Ex-Officio Justice of Peace for handling the cases under section 22-A Cr.P.C. In the case from the jurisdiction of Lahore High Court, while relying on the judgment reported in **2001 SCMR 1556** and **PLD 2005 SC 297**, the learned Lahore High Court gave a clear cut directions for registration of a separate FIR on the ground that the petitioners have been able to successfully show their grievance that the police in connivance with the accused person has distorted the real facts. The relevant portion of the judgment is reproduced hereunder: -

*"6. The case-law relied upon by the learned counsel for the petitioner manifest that in case where F.I.R does not reflect true facts, separate F.I.R can be lodged. In the instant case, the grievance of the petitioner is that the police in connivance with the accused persons distorted the real facts. During the investigation, the police made the case as one of suicide instead of culpable homicide which was witnessed by the petitioner and her children who were present at the time of occurrence in the house of her daughter. The application filed in this respect by the petitioner sufficiently makes out a case for registration of separate FIR as the police had declared that the death of Arooj Begum had occurred due to her suicide. The learned Additional Sessions Judge/Ex-Officio Justice of Peace, Kharian did not notice these facts while declining the request of the petitioner for the registration of F.I.R."*

7. In the case from the jurisdiction of Sindh High Court, my learned brother Nadeem Akhtar, J., in a very elaborate judgment after examining several case laws has held as under: -

*"13. The result of the above discussion is that, when an oral written complaint is made before the Justice of Peace in respect of an offence, he is bound under section 22-A(6), Cr.P.C. to examine whether the information disclosed by the applicant did or did not constitute a cognizable*

*offence, and if it did according to his own independent opinion as per the facts narrated by the complainant, then he is bound to immediately direct the concerned Station House Officer to register F.I.R without going into the veracity of the information in question and irrespective of any private or civil dispute between the parties. The Justice of Peace is bound to give such direction where the concerned Station House Officer, despite applicant's approach, has refused to lodge an F.I.R in respect of the same cognizable offence which has been alleged before him by the complainant. The Ex-Officio Justice of Peace has no judicial powers or functions to perform under section 22-A, Cr.P.C., but all his powers and functions are administrative and ministerial in nature. In my humble opinion, this is the main reason that he cannot go into the veracity of the information disclosed before him by the complainant, or to see whether any private or civil dispute is pending between the parties. Upon a direction issued by the Justice of Peace as stated above; the concerned Station House Officer shall be bound to register FIR, under section 154, Cr.P.C., whether the information received by him is false or correct and whether any private or civil dispute between the parties is pending or not, and he shall have no power to refuse to register the same if the offence appears to be cognizable from the information received by him. The concerned Station House Officer shall be failing in his duty if an F.I.R is not registered by him where a cognizable offence is made out. In her application before the Justice of Peace."*

8. In the instant case, not only the comments were called from the SHO concerned, but the SHO has voluntarily brought even the accused and his counsel has been given full length hearing by the learned Sessions Judge/Ex-Officio Justice of Peace. The learned Sessions Judge/Ex-Officio Justice of Peace in the impugned order has referred to the citations mentioned above, but he has not made even a passing remarks that why these citations were relied upon by the petitioners and how the same are not relevant. In support of his own conclusion, the learned Sessions Judge/Ex-Officio Justice of Peace has not relied upon any authority and has ignored the two judgments of High Court, which are binding upon her in terms of

Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

9. In view of the above discussion, the impugned order dated 28.2.2014 is set aside and this application is allowed as prayed. The respondent/ Station House Officer, Gizri Police Station, Karachi, to record the statement of the applicant. She may also file her written complaint in writing before the respondent! SHO and shall proceed with in accordance with the law.

**JUDGE**