

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Miscellaneous Application No.S-274 of 2025

Applicant: Sher Bahadur Khan Khattak, in person.

Respondents 1&2: Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.

Proposed Accused 1&2: None present for (i)Retd. Brig. Muhammad Arshad (ii)Retd. Major Nawazish Akbar & 2 others.

Date of hearing: 04.06.2025.

Date of decision: 04.06.2025.

ORDER

MUHAMMAD HASAN (AKBER), J.- Through the instant Criminal Miscellaneous Application under section 561-A Cr.P.C., the applicant has impugned the order dated 13.03.2025 passed by learned Additional Sessions Judge-IX Karachi South/ Ex-officio Justice of Peace, whereby application under section 22-A and B Criminal Procedure Code (Cr.P.C) for registration of First Information Report (FIR) under section 154 Cr.P.C. was rejected.

2. The Applicant argued in person and contended that the impugned order was wrongly passed without considering the allegations against the private respondents. Learned D.P.G. supported the impugned Order.

4. Heard the Applicant-in-person and the learned Additional Prosecutor General and perused the record. There is no cavil with the proposition that the provisions of section 154, Cr.P.C. are quite explicit, and the officer in-charge of the relevant police station is under a statutory obligation to register F.I.R. whenever information disclosing commission of a cognizable offence is provided to him¹. It is also settled that the said officers are not obliged to afford opportunity of hearing to the accused party, before registration of a criminal case or before issuing a direction in that regard.²

1. 'Syed Qamber Ali Shah V. Province of Sindh and others' 2024 SCMR 1123
2. 'Saeed Ahmad and others V. Naseer Ahmad and others' PLD 2000 Lahore 208 (DB);
'Muhammad Aslam v. Additional Sessions Judge and others' 2004 PCr.LJ 1214

5. The guidelines provided by a Three-Member Bench of the Lahore High Court³ are, that the provisions of section 22-A(6), Cr.P.C. do not make it obligatory for an ex-officio Justice of the Peace to necessarily or mechanically issue a direction regarding registration of a criminal case, whenever a complaint is filed before him in that regard. The use of the word "may" in section 22-A(6), Cr.P.C. clearly shows that the jurisdiction of an ex-officio Justice of the Peace in that regard is discretionary in nature, and understandably so, because unfortunately, the machinery of criminal law with its coercive process is increasingly being misused by motivated persons for achieving self-serving objectives. Thus, there is a pressing need on the part of the ex-officio Justices of the Peace to exercise caution and restraint before issuing a direction regarding registration of a criminal case. It is for this reason that in some cases, comments are also called from the officer in charge of the relevant Police Station in order to help pierce the veil, which may have been created due to economizing with the truth by the complainant. In an appropriate case, depending upon the circumstances thereof, an ex-officio Justice of the Peace may therefore, rightly refuse to issue a direction regarding registration of a criminal case and may dismiss the complaint under section 22-A(6), Cr.P.C., reminding the complaining person of his alternate statutory remedies under sections 156(3) and 190, Cr.P.C.

6. The Honourable Supreme Court has also observed, that while dealing with applications under section 22-A & B Cr.P.C., it has been held as the duty of the Court to take care of the possible misuse of the process and such applications should not be lightly entertained and decided in a mechanical manner for issuing direction to the police to lodge an FIR, conduct investigation in the matter and prosecute the accused. It was held that serious notice should be taken of frivolous, false or vexatious complaints, and where applicable, cases should be registered under sections 182 and 211 of the Pakistan Penal Code, 1860.⁴

7. In another case, prayer for registration of F.I.R was refused on the ground *inter alia* that other remedy of criminal complaint was available with the complainant⁵ whereas *mala fide* motives and ulterior intentions of the complainant were also probed by the Supreme Court in a complaint under section 22-A & B and based whereon, registration of F.I.R was refused.⁶

3. 'Khizer Hayat V. Inspector-General of Police (Punjab), Lahore' PLD 2005 Lahore 470

4. 'Munawar Alam Khan V. Qurban Ali Malano' 2024 SCMR 985

5. 'Jamshed Ahmad v. Muhammad Akram Khan' 1975 SCMR 149

6. 'Rai Ashraf and others V. Muhammad Saleem Bhatti and others' PLD 2010 SC 691

8. While taking notice of the trend of frivolous complaints and misuse of section 22-A & B Cr.P.C., a Three-Member Bench of the Supreme Court ⁷ at paragraph 9 (ii) of its Judgment also recommended action against lodging of false, frivolous and vexatious complaints in the following terms:

“(ii) Serious notice should be taken of frivolous, false or vexatious complaints and where applicable cases should be registered under sections 182 and 211 of the Pakistan Penal Code, 1860.”

9. The present application in hand is under section 561-A Cr.P.C., scope whereof is to prevent the abuse of the process and to foster the ends of justice. For seeking discretionary relief, a person who seeks equity and justice from this Court has to firstly disclose all the relevant facts and the ground realities before this Court; and secondly the conduct of the person seeking justice from this Court has also to be looked into, as the applicant must come before this Court with clean hands and without suppressing material facts from the Court.

10. The allegation in the present case was that on 04.02.2025, Colonel Retired Farooq Ashraf called the applicant in his office at Ocean Mall Karachi and told him that the proposed accused No.1 (Retired Brigadier Muhammad Arshad) said to him that the applicant did wrong as he got convicted the proposed accused No.2 (Retired Major Nawazish Akbar) from ATC Court, and further asked that the civil Suit No.1849 of 2019 filed by the applicant against the proposed accused persons be withdrawn and that he should not pursue appeal of the proposed accused No.2 otherwise he would face dire consequences. It was further narrated that when the applicant got down from Ocean Mall, two persons came to him and extended threats to life and dire consequences to him, hence FIR be lodged against the proposed accused persons. The learned Ex-Official Justice of Peace, after considering all relevant factors and the police report, passed the order dated 13.03.2025. The record reflects that there is old enmity between the parties, regarding which some criminal case has also been initiated, where in the proposed accused No.2 has also been convicted by the Anti-Terrorism Court and appeal thereof is pending before the High Court. Record also reflects that a Civil Suit No.1849 of 2019 is also filed by the applicant against the proposed accused person. The learned Justice of Peace also took into consideration that the person who allegedly conveyed the reported threats to the applicant was not nominated as a proposed accused, which creates serious doubts about the allegations levelled

7. *‘Haider Ali V. State’ 2015 SCMR 1724*

by the applicant and his motives. It was also considered that admittedly the applicant did not come into direct interaction with the proposed accused No.1 and 2 on the alleged date of incident. The alleged message was not extended by the proposed accused persons to the complainant, nor any witnesses of the alleged incident were available. While rejecting the application, protection was ordered to be provided to the applicant. From perusal of the above, it appears that the learned Justice of Peace has considered all relevant factors including the earlier enmity between the parties, the earlier criminal case, pendency of criminal appeal and pendency of the civil suit between the parties and after considering all relevant factors, declined the prayer to register FIR since no cognizable offense was made out. The ex-officio Justice of Peace did not act in a mechanical manner but exercised jurisdiction and took into consideration all material aspects of the matter, including the relationship between the parties, the conduct of the complainant and also the possible motives, and has rightly dismissed the application under sections 22-A&B Cr.P.C. The principles laid down in *Saeed Ahmad*,² *Munawar Alam Khan*,⁴ and *Rai Ashraf* ⁶ *ibid* appears to have been correctly applied by the learned Justice of Peace while deciding the application. No plausible material is available to call for interference in the order impugned, nor any illegality has been pointed out in the said Order. For the foregoing reasons, the Application being devoid of merits, is dismissed.

J U D G E

Announced by me
Sd/- *Arshad Hussain Khan J.*
19.06.2025