

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Misc: Appln: No.S-295 of 2023.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. *For orders on O/objection at flag-.A*
2. *For hearing of main case.*
3. *For orders on M.A. No.2627/23*

15.05.2025

Mr. Shabir Ali Bozdar, Advocate for applicant.
 Mr. Ghulam Mujtaba Sahito, Advocate for respondent No.2.
 Mr. Mansoor Ahmed Shaikh, DPG Sindh for State.

ORDER

Ali Haider 'Ada',J;- Through this application, the applicant has assails the impugned order dated 28.04.2023, passed by the learned II-Additional Sessions Judge/Ex-Officio Justice of Peace, Naushehro Feroze, in Criminal Miscellaneous Application No. 1269/2023, whereby the application filed by Respondent No.2 under Sections 22-A & B Cr.P.C. was allowed, with directions to the SHO, Police Station Halani, to record the statement of the applicant verbatim upon his approach and incorporate the same in the book under Section 154 Cr.P.C., if a cognizable offence is made out.

2. Briefly, the facts of the case are that Respondent No.2 filed an application before the learned Justice of Peace, stating that on 03.04.2023, the applicant, along with others, robbed cash and other valuable articles from the possession of respondent No.2.

3. Learned counsel for the applicant/proposed accused contends that Respondent No.2 is a habitual complainant. He submits that Mst. Fazila Khatoon, the sister-in-law of Respondent No.2, contracted marriage with Applicant No.1, for which she executed a sworn affidavit and the Nikah was duly performed. Aggrieved by this, Respondent No.2 lodged FIR No.243/2022 under Sections 392 and 365-B PPC alleging abduction of Mst. Fazila Khatoon. However, the said FIR was disposed of under 'Cancel Class' by the competent court. Furthermore, another FIR bearing Crime No.251/2022 was registered by

Respondent No.2 against the present applicants under Sections 452, 395, and 506(2) PPC. This, too, was disposed of by the learned Magistrate under 'C' Class. Now, this is the third round of litigation, wherein a managed application has been filed and allowed on the allegation of robbery, an issue already adjudicated in previous proceedings. The learned Justice of Peace, without properly appreciating the material available in favour of the present applicant, issued directions which do not fall within the true spirit and scope of jurisdiction under Sections 22-A & B Cr.P.C. He, prays for setting aside the impugned order and allowing the instant miscellaneous application. In support of his contentions, he places reliance on the following cases: *Muhammad Ali v. Additional I.G, Faisalabad and others* (PLD 2014 Supreme Court 753) *Imtiaz Ahmed Cheema, SHO v. SHO Police Station Daharki, Ghotki & 2 others* (2010 YLR 189) *Muhammad Waris v. Station House Officer and another* (2014 MLD 1033)

4. On the other hand, learned counsel for Respondent No.2 contends that, although previous litigations were initiated, the applicants have once again committed a fresh offence, prompting the filing of the present application. He submits that the application was rightly allowed by the learned Justice of Peace, and Respondent No.2 has every right to have his version recorded in order to seek justice. In support of his contentions, he places reliance on the following cases: *Syed Qamber Ali Shah v. Province of Sindh and others* (2024 SCMR 1123) *Mst. Kounjan v. SHO Police Station Lakhi Ghulam Shah and 2 others* (2016 P.Cr.LJ Note 112) *Hamid and another v. Syed Sikandar Shah and 3 others* (2016 P.Cr.LJ 172).

5. Conversely, the learned Deputy Prosecutor General appearing on behalf of the State supports the impugned order. He submits that the version of Respondent No.2 ought to be recorded in order to ascertain the truth or falsehood of the allegations, enabling a thorough investigation and giving due consideration to the defence.

6. Heard arguments of learned Counsel for applicant, learned counsel for respondent No.2 as well as learned Deputy Prosecutor General and perused the material available on record.

7. A person cannot be permitted to file applications before the Court without cogent and substantiated grounds, thereby misusing the process of law by unnecessarily involving the law enforcement machinery. If, upon inquiry or investigation, it is revealed that the application was frivolous in nature, such conduct not only burdens the judicial and police systems but also affects the rights and liberties of the accused individuals.

8. The scope of Section 154 Cr.P.C. mandates that where a person directly approaches the police with information regarding the commission of a cognizable offence, the police officials are under a legal obligation to act in accordance with the prescribed procedure. However, in cases where the aggrieved person chooses to approach the Court under Sections 22-A and B Cr.P.C. for directions regarding the registration of an FIR, the Court assumes an additional responsibility. In such circumstances, the court is duty-bound to examine the available material with due care and caution before issuing any directions. The decision to order registration of an FIR should be the result of a judicial application of mind and must not be made in a mechanical or routine manner. The purpose of judicial scrutiny is to ensure that the remedy under Section 22-A and 22-B Cr.P.C. is not misused to harass individuals or to settle personal scores under the guise of seeking justice. In this regard reliance is placed upon the case of *Munawar Alam Khan v. Qurban Ali Malano and others (2024 SCMR 985)*, in which the Honourable Supreme Court has held that;

“Having heard the petitioner and scanned the material available on the record, we observe that there are many precedents regarding misuse of provisions of Section 22-A and 22-B, Cr.P.C, and it is the prime duty of the Court that such misuse be taken care of and application filed should not be lightly entertained and decided in a mechanical manner for issuing directions to the police to lodge and FIR, conduct investigation in the matter and prosecute the accused. It is a settled principle of law that each and every case is to be decided on its own peculiar facts and circumstances and interference in this regard can be drawn from the case reported as Rai Ashraf and others v. Muhammad Saleem Bhatti and others (PLD 2010 SC 691), Trustees of the Port of Karaxchi v. Muhammad Saleem (1994 SCMR 2213) and the State v. Mushtaq Ahmed) PLD 1973 SC 418).

9. In view of the foregoing reasons, the instant Criminal Miscellaneous Application is hereby allowed. Consequently, the impugned order dated 28.04.2023 passed by the learned II-Additional Sessions Judge/Ex-Officio

Justice of Peace, Naushehro Feroze, is set aside. The application filed by Respondent No.2 under Sections 22-A and 22-B Cr.P.C. stands dismissed.

10. Accordingly, the instant Criminal Miscellaneous Application stands disposed of in the above terms.

J U D G E

Ihsan/PS