

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.700 of 2024

The Applicant : Rustam Ali, Through:
Mr. Ali Gohar Masroof,
Advocate

The Respondent No.3 : Shammi Mumtaz Mughal,
Through: Mr. Moulvi Iqbal
Haider, Advocate

Respondents Nos.1 & 2 : The State Through: Mr.
Muhammad Mohsin. A.P.G.

Date of hearing : 02.02.2026

Date of Order : 18.02.2026

ORDER

Jan Ali Junejo, J:-- Through this Criminal Miscellaneous Application under Section 561-A Cr.P.C., the Applicant has called in question the legality and propriety of the order dated 27.06.2024 (hereinafter referred to as the "*Impugned Order*") passed by the learned Vth Additional Sessions Judge/ Ex-Officio Justice of Peace, Malir, Karachi, in Criminal Petition No.1769/2024, whereby the SHO, P.S. Sachal, was directed to record the statement of Respondent No.3 under Section 154 Cr.P.C. and to proceed in accordance with law if any cognizable offence was made out, besides providing legal protection.

2. The relevant facts, in brief, are that Respondent No.3 filed an application under Sections 22-A & 22-B Cr.P.C. before the learned Justice of Peace, seeking directions for registration of FIR against the present Applicant on the allegations of assault, maltreatment and commission of cognizable offences. It is the case of the Applicant

that prior to filing the said application, Respondent No.3 had already filed a similar petition concerning the same subject matter before the learned VIth Additional Sessions Judge, Karachi West / Ex-Officio Justice of Peace, bearing Criminal Miscellaneous Application No.1416/2024, which was dismissed vide order dated 18.05.2024, after detailed consideration and upon finding that no cognizable offence was made out. Despite dismissal of the earlier petition, Respondent No.3 again approached another Justice of Peace at Malir by filing Criminal Petition No.1769/2024, which culminated in the impugned order dated 27.06.2024. The Applicant contends that the impugned order suffers from illegality, material irregularity and non-application of judicial mind, and amounts to abuse of the process of law.

3. Learned counsel for the Applicant contended that the second petition filed under Sections 22-A & 22-B, Cr.P.C. was not maintainable after dismissal of the earlier petition on the same set of allegations, and *he argues* that the learned Justice of Peace failed to appreciate that successive petitions founded on identical or substantially similar facts are legally barred. *He further contends* that the police inquiry report unequivocally concluded that no cognizable offence was made out against the Applicant. *He submits* that the Applicant himself sustained injuries in the alleged incident, duly corroborated by the MLC, CCTV footage, 15-call record and other documentary material. *He maintains* that the impugned order was passed mechanically, without due consideration of the earlier dismissal order or the material already available on record.

4. Conversely, learned counsel for Respondent No.3 supported the impugned order and *he argues* that the incident dated 13.04.2024 was a distinct occurrence, duly corroborated by medical evidence, and therefore, the learned Justice of Peace rightly exercised jurisdiction. *He further contends* that the Applicant's plea of bar on successive petitions was misconceived in the facts and circumstances of the case.

5. Learned A.P.G. for the State appeared and *he adopts* the arguments advanced by learned counsel for Respondent No.3, *he submits* that the impugned order does not call for interference by this Court.

6. I have considered the arguments advanced by the learned counsel for the Applicant, the learned counsel for Respondent No.3, as well as the learned A.P.G. for the State, and have also examined the material available on record. The jurisdiction of this Court under Section 561-A, Cr.P.C., is exceptional in nature and its scope is narrowly circumscribed. It is an inherent power to be exercised sparingly, cautiously, and only in situations where such intervention is necessary to prevent an abuse of the process of the Court or to secure the ends of justice. It neither partakes the character of appellate nor revisional jurisdiction, as it does not authorize this Court to reappraise evidence, substitute findings, or cure every irregularity in the proceedings. Interference is justified only where the proceedings are *ex facie* without jurisdiction, tainted by patent illegality, or result in manifest miscarriage of justice. Importantly,

Section 561-A cannot be invoked as an alternative to statutory remedies expressly provided under the Code, particularly the revisional jurisdiction contemplated under Sections 435 to 439, Cr.P.C. When the law has created a specific mechanism for correction of errors or illegalities, that course must be pursued, and inherent powers cannot be employed to bypass or supplant such procedure. To do so would not only defeat legislative intent but also impermissibly expand the ambit of Section 561-A beyond its lawful contours. Reliance is placed on the case of *Ali Gohar and others v. Pervaiz Ahmed and others (PLD 2020 SC 427)*, wherein the Honourable Supreme Court of Pakistan was pleased to observe that: “The remedy under Section 561-A, Cr.P.C. is not an alternate and or substitute for an express remedy as provided under the law in terms of Sections 435 to 439, Cr.P.C. and or Sections 249-A or 265-K, Cr.P.C., as the case may be”.

7. The Justice of Peace is empowered to issue appropriate discretionary directions to the police; to ensure that an FIR is registered where the information prima facie discloses the commission of a cognizable offence; and to direct the police to act strictly “in accordance with law”, without mandating registration in every case. The Hon’ble Supreme Court of Pakistan in *Younus Abbas v. Additional Sessions Judge (PLD 2016 SC 581)* has held that the Justice of Peace must satisfy himself regarding the availability of sufficient material before directing registration of a criminal case and that such jurisdiction is not to be exercised mechanically. It has been observed that Section 22-A, Cr.P.C. has been frequently

misused, leading to unwarranted legal actions in numerous cases. The legislative intent behind this provision was never to allow its indiscriminate invocation for harassing individuals who, in the course of their duties, take lawful actions against accused persons. Courts must exercise caution and avoid mechanically entertaining applications under Sections 22-A & 22-B, Cr.P.C., without first assessing whether the applicant has approached the Court with clean hands or if the application is motivated by malice. Failure to do so could have serious consequences, particularly for law enforcement officers performing their official duties, as it may discourage them from taking necessary legal actions. The law must be interpreted in a fair and balanced manner, ensuring that its protection is extended to all individuals without being used as a tool for harassment or coercion. Reliance may be placed on the principle established by this Court in *Imtiaz Ahmed Cheema, S.H.O. v. S.H.O., Police Station Daharki, Ghotki & Others* (2010 YLR 189), wherein it was emphasized that courts must exercise due diligence before directing the registration of an FIR. Reference may also be made to the case of *Jamil Ahmad Butt and another v. The State through Prosecutor-General, Sindh and others* (2014 P.Cr.L.J. 1093), wherein this Court emphatically held that: *"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"*.

8. It is an admitted position on record that Respondent No.3 had earlier filed Criminal Miscellaneous Application No.1416/2024 before the learned VIth Additional Sessions Judge, Karachi West, which was dismissed vide order dated 18.05.2024 after detailed consideration. In the said order, the learned Ex-Officio Justice of Peace observed, inter alia, that no cognizable offence was made out and that the allegations were not substantiated so as to justify registration of an FIR. The record further reflects that the subsequent petition was founded on substantially similar allegations arising out of the same matrimonial dispute, including assertions regarding an allegedly false *Nikahnama* and consequential events. Importantly, the earlier Order dated 18.05.2024 was not a mere dismissal on the ground of territorial jurisdiction; rather, the learned Ex-Officio Justice of Peace also examined the merits of the allegations disclosed by Respondent No.3 herself. In the present case, the alleged incident dated 13.04.2024 had already been considered in the earlier proceedings and formed part of the same chain of events emanating from the parties' matrimonial discord. The learned Ex-Officio Justice of Peace, Malir, did not record any specific or distinguishing finding to demonstrate how the subsequent petition differed in material particulars from the earlier one. Consequently, the second petition, premised on the occurrence of the same alleged offence, was not maintainable in law.

9. The powers of Justice of Peace under Sections 22-A & 22-B Cr.P.C. are administrative / supervisory in nature. The Justice of Peace is required to examine whether information discloses

commission of a cognizable offence warranting registration of FIR under Section 154 Cr.P.C. However, where: A detailed police inquiry negates commission of cognizable offence; The matter predominantly arises out of civil or matrimonial dispute; The applicant has already availed the remedy before another competent forum and failed; the learned Ex-Officio Justice of Peace must exercise caution and avoid mechanically directing registration of FIR. In the present case, the impugned order reflects that though the learned Ex-Officio Justice of Peace noted the earlier dismissal, yet no cogent reasoning was provided as to how the present petition was distinct and maintainable. The order lacks independent judicial assessment of the police inquiry report and documentary material produced by the Applicant. Such mechanical exercise of jurisdiction results in harassment and misuse of criminal process.

10. Where the criminal process is set into motion through repeated applications and selective recourse to different forums with the object of securing a favourable order, and where continuation of such proceedings would result in harassment, this Court is duty-bound to intervene. The facts of the present case demonstrate that the dispute between the parties is essentially matrimonial in nature, already sub judice before the competent Family Court in a suit for jactitation of marriage. The criminal machinery cannot be permitted to be invoked as a means of exerting undue pressure in such disputes. Accordingly, interference by this Court is warranted.

11. For the foregoing reasons, this Court is satisfied that: the subsequent petition under Sections 22-A & 22-B, Cr.P.C., filed by

Respondent No.3 was not maintainable in view of the earlier dismissal of a petition based on substantially similar facts; the impugned order dated 27.06.2024 suffers from legal infirmity and non-application of judicial mind; and continuation of proceedings pursuant thereto would amount to an abuse of the process of law.

12. Accordingly, this Criminal Miscellaneous Application is allowed in the following terms:

1. *The impugned order dated 27.06.2024, passed by the learned Vth Additional Sessions Judge / Ex-Officio Justice of Peace, Malir, Karachi, in Criminal Petition No.1769/2024, is hereby set aside.*
2. *The petition filed by Respondent No.3 under Sections 22-A & 22-B, Cr.P.C., before the learned Additional Sessions Judge / Ex-Officio Justice of Peace, Malir, Karachi, is declared not maintainable in law.*
3. *Consequently, the directions issued to the SHO, P.S. Sachal pursuant to the impugned order stand recalled and quashed.*

JUDGE