

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.878 of 2024

The Applicant : Shammi Mumtaz Mughal,
Through: Mr. Moulvi Iqbal
Haider, Advocate

The Respondent No.3 : Rustam Ali, Through: Mr. Ali
Gohar Masroof, 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 the instant Criminal Miscellaneous Application filed under Section 561-A Cr.P.C., the applicant has called in question the legality and propriety of the Order dated 18.05.2024 (hereinafter referred to as the "*Impugned Order*") passed by the learned VIth Additional District & Sessions Judge, Karachi West, in Criminal Miscellaneous Application No. 1416/2024, whereby her application under Sections 22-A & 22-B Cr.P.C. seeking direction for registration of FIR was dismissed.

2. Briefly stated, the case of the applicant is that: She initially entered into Nikah with one Muhammad Yousuf on 23.06.2019, which was allegedly dissolved through Talaq on 25.08.2019. According to her, prior to dissolution of the earlier marriage, Respondent No.3 induced her to contract marriage with him and allegedly solemnized Nikah on 26.07.2019 through a so-called Qazi on an unregistered Nikahnama. She asserts that Respondent No.3 subsequently avoided registration of the Nikah, concealed his prior

marriage, and denied the marital relationship. She further alleges harassment and maltreatment when she approached his residence and contends that cognizable offences under the Pakistan Penal Code are made out. On the basis of such allegations, she approached the learned Ex-Officio Justice of Peace under Sections 22-A & 22-B Cr.P.C. for registration of FIR. The learned Court, after hearing the parties and examining the material on record, dismissed the application vide order dated 18.05.2024, holding inter alia that: The controversy revolves around genuineness and validity of *Nikahnama*; Serious jurisdictional inconsistencies exist; No prima facie cognizable offence was made out; and The applicant was at liberty to approach the competent forum for appropriate relief. Being aggrieved, the present petition has been filed under Section 561-A Cr.P.C.

3. Learned counsel for the Applicant argued that the learned Court below failed to apply proper judicial mind to the allegations which, according to the Applicant, constitute cognizable offences under the Pakistan Penal Code. He contends that the disputed *Nikahnama*, bearing alleged signatures of the parties, required forensic verification and could not be disregarded without proper inquiry. He further argues that the police were mandatorily bound under Section 154, Cr.P.C. to register an FIR upon disclosure of a cognizable offence and that their failure to do so warranted interference by this Court. He therefore prays that the Impugned Order be set aside and the present Miscellaneous Application be allowed.

4. Conversely, learned counsel for Respondent No.3 supported the Impugned Order and submitted that the dispute is fundamentally matrimonial and civil in nature. He argues that the alleged *Nikahnama* is admittedly unregistered, lacking essential particulars, and is prima facie defective. He further contends that the Applicant herself claims to have entered into a second marriage prior to the dissolution of her earlier marriage, which raises serious contradictions. He adds that multiple proceedings concerning the same subject are already pending before various forums, rendering the matter sub judice. He therefore submits that no case exists for exercise of inherent jurisdiction and prays that the Miscellaneous Application be dismissed.

5. Learned A.P.G. adopted the stance of Respondent No.3 and supported the Impugned Order. He contends that the material placed on record does not prima facie disclose commission of any cognizable offence warranting registration of FIR. He argues that the core controversy relates to validity, authenticity, and registration of a *Nikahnama* and determination of marital status, issues requiring evidence and falling within the exclusive jurisdiction of the competent Family Court or Civil Court. He therefore prays for dismissal of the present Miscellaneous Application.

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. After careful examination of the record, the following aspects emerge: i. The applicant relies on a *Nikkah Nama*, wherein she asserts that she contracted marriage with one Muhammad Yousuf on 23 June 2019, allegedly dissolved through a divorce deed dated 25 August 2019. However, the *Nikkah Nama* is neither registered nor bears the signature of the *Nikkah Khawan*. Despite this, she claims that her first marriage was dissolved on 25.08.2019, yet she purportedly entered into a second *nikkah* with the present proposed accused, Rustam Ali, on 26 July 2019, prior to dissolution of the earlier marriage. ii. The *Nikkah Nama* filed with the application also lacks the signature of the *Nikkah Khawan* and contains no endorsement from the concerned Union Council. The document annexed fails to mention the names and CNIC numbers of the proposed accused or the alleged witnesses. She now contends that the said *nikkah* was false and that no such marriage was ever executed between her and the applicant. The learned Ex-Officio

Justice of Peace has already examined and addressed all these aspects in the Impugned Order. iii. The core controversy relates to the authenticity, validity, and registration of the *Nikkah Nama*, and the determination of marital status, questions requiring evidence and adjudication by a competent Family Court or Civil Court. Such matters cannot be conclusively resolved in proceedings under Section 22-A Cr.P.C. iv. The material presently available, including the unregistered *Nikkah Nama* lacking essential particulars and statutory endorsements, does not prima facie disclose the commission of any specific cognizable offence warranting a mandatory direction for registration of FIR. v. It is admitted that multiple criminal petitions and miscellaneous applications concerning the same dispute are pending before various forums, indicating that the matter is sub judice and involves complex factual issues. vi. Adequate remedies are available to the applicant before appropriate forums for declaration of marital status, enforcement of related rights, or for seeking criminal action upon establishing requisite foundational facts. vii. The learned VIth Additional District & Sessions Judge has assigned cogent and lawful reasons while dismissing the application and has correctly observed that the applicant is at liberty to avail the competent jurisdiction. No illegality, material irregularity, misreading or non-reading of evidence, or jurisdictional defect has been demonstrated to justify interference by this Court in exercise of its inherent powers.

9. In view of the above discussion, this Court is of the considered opinion that: The impugned order dated 18.05.2024 is well-reasoned and in accordance with law; The dispute raised by the applicant primarily involves questions of matrimonial status and genuineness of documents, which require adjudication before competent forums; No case for exercise of inherent jurisdiction under Section 561-A Cr.P.C. is made out.

10. For the reasons delineated here-in-above, the instant Criminal Miscellaneous Application No. 878 of 2024 being bereft of merits is hereby dismissed. The applicant, however, shall be at liberty to avail appropriate remedy before the competent Court/forum in accordance with law. Pending application(s), if any, stand disposed of accordingly.

JUDGE