

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

*CriminalMiscellaneous Application. No.S-232 of 2025
(DSP Manzoor Ali and another vs The Senior Superintendent of Police
District Matiari and others)*

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
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1. For orders on office objection.
2. For hearing of main case.
3. For hearing of MA-2890/2025

16.01.2026.

Mr. Ghulamullah Chang, Advocate for applicant No.1.

Mr. Ashfaque Ali Khaskhli, Advocate for applicant No.2.

Mr. Masood Rasool Babar Memon, Advocate for Respondent No.04 alongwith his associate, Mr. Abdul SamadKhaldi, Advocate.

Mr. Irfan Ali Talpur, Deputy Prosecutor General, Sindh for the State.

O R D E R

Ali Haider 'Ada', J- Through this Criminal Miscellaneous Application, the applicants, who are police officers, have challenged the order dated 17.04.2025 passed by the learned Additional Sessions Judge / Ex-Officio Justice of Peace, Hala, in Criminal Miscellaneous Application No.153 of 2025, filed by respondent No.4 (the complainant). Vide the impugned order, the learned Justice of Peace directed the registration of an FIR and further ordered the DIG Hyderabad to transfer the investigation from one zone to another. Being aggrieved by the said directions, the applicants have approached this Court.

2. Briefly stated, the facts of the case are that respondent No.4 filed an application under Sections 22-A & 22-B Cr.P.C. against the applicants, alleging that on 15.02.2025, while he was performing his duties as Incharge, Narcotics Control Wing, Matiari, and conducting snap checking, the applicants being police officers unlawfully restrained him, forcibly brought him to the police station, created hurdles in the

performance of his official duties, and wrongfully confined him at the relevant place. On such allegations, the learned Justice of Peace called for reports from the concerned quarters and, after considering the same, passed the impugned order.

3. Learned counsel for applicant No.1 contends that the matter pertains to an inter-departmental issue between two government departments. He submits that applicant No.1 holds the rank of DSP and, upon receiving complaints regarding alleged excesses committed by respondent No.4 in the discharge of his duties, he merely called him for clarification. It is argued that respondent No.4 was neither unlawfully confined nor restrained in any manner. Learned counsel further submits that, being a police officer, applicant No.1 was competent to call respondent No.4, and that the matter was amicably resolved between the departments without any mala fide intention or ill-will. In support of his arguments, reliance has been placed upon case-law reported as 2022 YLR 514, PLD 2016 Supreme Court 581, 2019 MLD 1066, 2019 P.Cr.LJ 1201, 2020 P.Cr.LJ 119, PLD 2011 Karachi 99, 2013 P.Cr.LJ 813, 2016 P.Cr.LJ Note 112, and 2011 P.Cr.LJ 268.

4. Learned counsel for applicant No.2 submits that the learned Justice of Peace exceeded his jurisdiction as envisaged under Sections 22-A & 22-B Cr.P.C. It is argued that once no FIR had yet been registered, the learned Justice of Peace could not have presumed the existence of an investigation so as to direct the transfer thereof from one zone to another. According to learned counsel, the impugned order reflects an erroneous assumption regarding the performance of official duties by the applicants and travels beyond the scope of Sections 22-A & 22-B Cr.P.C. It is further contended that the prayer in the application before the Justice of Peace was limited in nature, yet the learned Justice of Peace passed a detailed order, virtually assuming the role of an investigating agency and issuing directions not permissible under law. On these grounds, he prays for setting aside the impugned order.

5. Conversely, learned counsel for respondent No.4 supports the impugned order and submits that the applicants committed police excesses by unlawfully detaining and confining respondent No.4 while he was lawfully performing his official duties. It is contended that the applicants had no lawful authority to summon respondent No.4 to the police station, particularly when he himself is a public functionary. He submits that the impugned order is lawful and justified, and that the recording of statements and registration of FIR are necessary for a fair investigation.

6. Learned Deputy Prosecutor General also supports the impugned order, contending that the matter should be allowed to come on record through registration of FIR, after which a proper investigation may be conducted. He submits that the objections raised by the learned counsel for the applicants involve disputed questions of fact which require investigation, and that the investigative process can only commence after registration of FIR under Section 154 Cr.P.C. Accordingly, he prays for dismissal of the instant application.

7. Heard the learned counsel for the parties and perused the material available on record.

8. At the outset, it is pertinent to observe that a Justice of Peace, being an Ex-Officio functionary, is not a "Court" within the contemplation of Section 6 of the Code of Criminal Procedure, 1898. The jurisdiction conferred upon a Justice of Peace under Sections 22-A and 22-B Cr.P.C. is limited in nature and is meant to provide relief to an aggrieved person in cases of police inaction, particularly relating to non-registration of FIR or failure to perform statutory duties. Though the Justice of Peace is empowered to consider such grievances, the exercise of this jurisdiction must be judicious, based on the application of the judicial mind to the material placed before him, and not mechanically or routinely. At the same time, the Justice of Peace is under a legal obligation to remain within the bounds of the authority prescribed by

law and not to assume the role of an investigating agency or a trial Court.

9. In the present case, respondent No.4 has himself projected his status as a public servant and claims to have been performing official duties at the relevant time. It is an admitted position that the applicants, who are police officers, called respondent No.4; however, they have taken the consistent stance that the same was done without any mala fide intention or ill-will and that no unlawful restraint or wrongful confinement was caused. Such assertions necessarily require factual determination through a lawful investigation.

10. Under the settled scheme of Criminal Law, investigation is initiated only after compliance with Rule 24.1 of the Police Rules, 1934, read with Section 154 Cr.P.C., which mandates registration of an FIR upon disclosure of a cognizable offence. Whether the applicants acted with mala fide intention or whether their conduct was within the lawful discharge of their official duties is a matter that can only be adjudicated after the collection of evidence during the investigation.

11. A perusal of the impugned order shows that the learned Justice of Peace directed the concerned SHO to record the statement of respondent No.4. Such a direction squarely falls within the lawful and permissible scope of the jurisdiction of the Justice of Peace, as it merely facilitates the performance of statutory duties by the police in accordance with law. However, the further direction regarding the transfer of the investigation from one zone to another is not sustainable, as no investigation has yet commenced, and such a direction amounts to unwarranted administrative interference in the investigative process.

12. Under Section 22-A Cr.P.C., the Justice of Peace is only to see whether the facts disclose a cognizable offence and, if so, may direct recording of the statement under Section 154 Cr.P.C.; he cannot examine the merits or assume the role of an investigating agency, as held by the

Honourable Supreme Court in Syed Qamber Ali Shah v. Province of Sindh (2024 SCMR 1123), the relevant para is as under:

6. Heard the arguments. Under section 22-A, Cr.P.C, it is not the function of the Justice of Peace to punctilioiusly or assiduously scrutinize the case or to render any findings on merits but he has to ensure whether, from the facts narrated in the application, any cognizable case is made out or not; and if yes, then he can obviously issue directions that the statement of the complainant be recorded under Section 154. Such powers of the Justice of Peace are limited to aid and assist in the administration of the criminal justice system. He has no right to assume the role of an investigating agency or a prosecutor but has been conferred with a role of vigilance to redress the grievance of those complainants who have been refused by the police officials to register their reports. If the Justice of Peace will assume and undertake a full-fledged investigation and enquiry before the registration of FIR, then every person will have to first approach the Justice of Peace for scrutiny of his complaint and only after clearance, his FIR will be registered, which is beyond the comprehension, prudence, and intention of the legislature. Minute examination of a case and conducting a fact-finding exercise is not included in the functions of a Justice of Peace but he is saddled with a sense of duty to redress the grievance of the complainant who is aggrieved by refusal of a Police Officer to register his report. The offences have been categorized by the Cr.P.C. into two classes i.e., cognizable and non-cognizable. Section 154 of the Cr.P.C. lays down a procedure for conveying information to an S.H.O. with respect to the commission of a cognizable offence, while the provisions of Section 155(1) of the Cr.P.C. articulates the procedure vis-à-vis a non-cognizable offence.

13. Accordingly, this Criminal Miscellaneous Application is hereby dismissed. The impugned order, to the extent it directs the concerned SHO to record the statement of respondent No.4 and to proceed in accordance with law, is upheld. Respondent No.3 is directed to ensure compliance by recording the statement of respondent No.4 and thereafter to follow the procedure prescribed under the law.

JUDGE

Shahid