

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Misc. Application No.S- 81 of 2025

Applicant : Hussain Bux Kori through Mr. Sundar Khan Chachar, Advocate.

Proposed accused : Muhammad Aijaz through Mr. Sardar Ali Nawaz, Advocate.

The State & Official Respondent(s) : Through Mr. Muhammad Raza Katohar, Deputy Prosecutor General.

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Date of Hearing : 31-08-2026

Date of Order : 07-09-2026

ORDER

TASNEEM SULTANA, J.- Through the instant Criminal Miscellaneous Application under Section 561-A, Cr.P.C., the applicant has assailed the order dated 03.02.2025 passed by the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Ubauro, in Criminal Miscellaneous Application No.158 of 2025, whereby his application under Sections 22-A(6)(i) and 22-B, Cr.P.C., for registration of FIR was dismissed, with an observation that he may avail the remedy of a direct complaint.

2. Briefly stated, the applicant alleged before the learned Ex-Officio Justice of Peace that on 01.01.2025, he, along with his nephew Mir Hassan and other family members, was present at the house of Abdul Qadeer at village Dilwaro, Taluka Ubauro, when proposed accused Inspector Muhammad Aijaz Larr, SHO P.S. Machhika, accompanied by five unidentified police officials and three private persons, entered the house, took Mir Hassan into custody and carried him towards Punjab. It was further alleged that Mir Hassan was thereafter seen in the lock-up of P.S. Machhika, where an amount was demanded for his release, coupled with a threat that otherwise he would be killed in a police encounter. According to the applicant, on 02.01.2025 at about 06:22 a.m., Muhammad Azim received a telephone call from the mobile number of Mir Hassan, during which Mir Hassan expressed apprehension that the police intended to kill him in a false encounter. Mir Hassan thereafter died in an encounter within the jurisdiction of P.S. Machhika, District Rahim Yar Khan, regarding which Crime No.01 of 2025 was registered at the said police station. The

applicant maintained that, after receiving the dead body and performing the funeral rites, he approached P.S. Wasti Jiwan Shah for registration of his version, but no FIR was registered.

3. Learned counsel for the applicant contended that the learned Ex-Officio Justice of Peace failed to appreciate the nature of the allegations made in the application and declined the relief on considerations which, according to him, could only be examined during investigation. He submitted that the applicant's version was supported before the DSP Complaint Redressal Centre by Abdul Qadeer and Mst. Noor Bano; that the criminal antecedents attributed to Mir Hassan could not defeat the applicant's right to have his version dealt with in accordance with law; and that the applicant could not have been relegated to the remedy of a direct complaint when the allegations disclosed cognizable offences. Learned counsel relied upon the case of Syed Qamber Ali Shah v. Province of Sindh and others (2024 SCMR 1123).

4. Learned counsel for proposed accused No.1 and learned Deputy Prosecutor General supported the impugned order and contended that Mir Hassan was involved in a number of criminal cases; that Crime No.01 of 2025 already stood registered at P.S. Machhika regarding the encounter in which he died; that the application before the learned Ex-Officio Justice of Peace was filed after a delay; and that the proceedings had been initiated only to exert pressure upon the police. It was further contended that another FIR in respect of the same occurrence could not be registered in view of the law laid down in the case of Mst. Sughran Bibi v. The State (PLD 2018 SC 595).

5. Heard learned counsel for the parties and learned Deputy Prosecutor General. Record has been perused.

6. The record reflects that the applicant, in his application under Sections 22-A(6)(i) and 22-B, Cr.P.C., alleged that Mir Hassan was taken away from the house of Abdul Qadeer at village Dilwaro, Taluka Ubauro, on 01.01.2025 by proposed accused Inspector Muhammad Aijaz Larr along with other police officials and private persons and was thereafter allegedly kept at P.S. Machhika before his death in the encounter of 02.01.2025. The learned Ex-Officio Justice of Peace declined the relief mainly on the

grounds that the application had been filed after a delay of fifteen days; that no material had been produced in support of the applicant's assertion that he had approached the SHO, P.S. Wasti Jiwan Shah; that there was nothing to show that he had approached the SSP, Ghotki; that Crime No.01 of 2025 already stood registered at P.S. Machhika regarding the encounter; that the applicant was not residing within the limits of P.S. Wasti Jiwan Shah; that Mir Hassan was involved in more than fifteen criminal cases; and that the applicant's version was not supported by the report of the DSP Complaint Redressal Centre. The learned Ex-Officio Justice of Peace further observed that the application appeared to have been filed merely to pressurize the police.

7. The powers exercised by an Ex-Officio Justice of Peace under Section 22-A(6), Cr.P.C., are quasi-judicial in nature and are to be exercised with due application of mind. In *Younas Abbas and others v. Additional Sessions Judge, Chakwal and others* (PLD 2016 SC 581), the Hon'ble Supreme Court held that the functions performed under Section 22-A (6), Cr.P.C., are complementary to those of the police.

8. The scope of such consideration was further explained by the Hon'ble Supreme Court in the case of *Syed Qamber Ali Shah v. Province of Sindh and others* (2024 SCMR 1123), wherein it was held that it is not the function of the Ex-Officio Justice of Peace to punctiliously or assiduously scrutinize the case or render findings on merits; rather, he has to see whether, from the facts narrated in the application, a cognizable case is made out. It was further held that the Ex-Officio Justice of Peace cannot assume the role of an investigating agency or prosecutor.

9. In the present case, the record reflects that a number of criminal cases had previously been registered against Mir Hassan, copies of several of which have also been placed before this Court. His criminal antecedents, however, do not answer the specific allegations made by the applicant regarding the events of 01.01.2025. Whether Mir Hassan was taken away from the house of Abdul Qadeer, whether he was thereafter kept at P.S. Machhika, whether any demand for money was made for his release, and the circumstances preceding his subsequent death were disputed matters which could not have been resolved merely by referring to his previous involvement in criminal cases. The antecedents of Mir Hassan, therefore,

could not by themselves furnish a sufficient basis for discarding the allegations made by the applicant at that stage.

10. The inquiry report relied upon in the impugned order also requires notice. It reflects that the applicant Hussain Bux, Abdul Qadeer and Mst. Noor Bano appeared before the inquiry officer and supported the version contained in the application, whereas the proposed accused persons had not joined the proceedings at that stage. Despite this, the report proceeded to characterize the applicant's version as concocted and unfounded. Such an opinion could not substitute for the independent consideration required under Section 22-A(6), Cr.P.C., particularly when the allegations made before the learned Ex-Officio Justice of Peace were required to be examined within the parameters laid down in Syed Qamber Ali Shah (supra). The learned Ex-Officio Justice of Peace also relegated the applicant to the remedy of a direct complaint, whereas the Hon'ble Supreme Court in the said case held that such a remedy cannot ordinarily be treated as a substitute for the mechanism provided under Section 154, Cr.P.C.

11. A further question arises from the existence of Crime No.01 of 2025 of P.S. Machhika. In the case of Mst. Sughran Bibi (supra), the Hon'ble Supreme Court held that different versions of the same incident are to be recorded and investigated in the same case and that no separate FIR is to be registered for a new version of the same incident. In the present case, however, the applicant has specifically alleged that Mir Hassan was taken away from the house of Abdul Qadeer at village Dilwaro, Taluka Ubauro, on 01.01.2025 and was thereafter kept in police custody, whereas the encounter forming the subject matter of Crime No.01 of 2025 allegedly occurred on the following day. The applicant's allegations are, therefore, not confined to the manner in which the encounter of 02.01.2025 took place. The effect of the allegations preceding the encounter, particularly in the context of the already registered Crime No.01 of 2025, was not examined by the learned Ex-Officio Justice of Peace in the light of the law laid down in Mst. Sughran Bibi (supra) and requires fresh consideration.

12. In view of the above facts and circumstances, interference with the impugned order is warranted in exercise of the inherent jurisdiction of this Court under Section 561-A, Cr.P.C., to secure the ends of justice. The impugned order dated 03.02.2025 is accordingly set aside and the matter is

remanded to the learned Ex-Officio Justice of Peace, Ubauro, to decide the application afresh, after hearing the parties, in accordance with law and keeping in view the legal principles discussed above. Accordingly, the instant Criminal Miscellaneous Application stands allowed in the above terms.

J U D G E

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