

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Present:

Mr. Justice Salahuddin Panhwar
Mr. Justice Fahim Ahmed Siddiqui

C.P.No.D- 2063 of 2016

Date of hearing: 09.08.2017.

Mr. Sartar Iqbal Panhwar, Advocate for petitioner.
Mr. Allah Bachayo Soomro, Additional A.G.

ORDER

SALAHUDDIN PANHWAR, J: Through instant petition, the petitioner has challenged the order dated 14.05.2016 whereby an application U/s 22-A,B Cr.PC was dismissed.

2. At the outset, counsel for the petitioner contends that he filed application u/s 22-A & B Cr.P.C. with the prayer that:-

“To direct the respondents No.1 and 2 to provide legal protection to the applicant and his family members from the hands of the respondents No.3 to 5.”

3. Whereas learned Judge without applying his judicial mind presumed such 22-A & B Cr.P.C. for lodgment of the FIR although that has never been the grievance of the petitioner, hence he declined the legal right of the petitioner.

4. The situation explained by learned counsel for petitioner compels us to refer the order, impugned, which is reproduced hereunder:-

“Heard learned counsel for the applicant and perused the record as well as report submitted by the S.H.O Police Station

Section 22-A (6) (i) Cr.P.C, provides that an Ex-officio Justice of the Peace may issue appropriate directions to the authorities concerning a complainant regarding non-registration of criminal case. The words “may” and “appropriate” clearly indicates that justice of peace has to apply his judicial mind to the facts of the case and then pass appropriate orders, if need be. The Honorable Supreme Court in Muhammad Bashir Vs SHJO PS Okara cantt and Others (PLD 2007 SC

539), while interpreting aforesaid provision, has held that an ex-officio justice of peace has to examine whether information disclosed by the applicant did or did not constitute a cognizable offence and if it did, he has to direct (direct) the concerned SHO to record F.I.R.

In *Muhammad Mushtaque Vs Additional Sessions Judge Lahore and Others* (2008 YLR 2301), the Honorable Lahore High Court relying on the judgment of Honorable Supreme Court quoted above, has held that, "A combined examination of section 154, 22-A(6), Cr.P.C. and the case law laid down by the Apex Court and the Full Bench of this Court, referred to above, would show that an Ex-officio Justice of the Peace before whom an application under section 22-A(6) has been laid seeking a direction to the SHO concerned for registration of the case is not expected and required to allow the request of the complaining person mechanically, blindly and without application of legal mind. The Apex Court held in an express term that it was the duty of Ex-officio Justice of the Peace to examine whether the information did or did not constitute a cognizable offence. In other words the Ex-officio Justice of the Peace is competent to examine the complaint obviously with full application of legal mind and is not supposed to accept and believe the same as gospel truth. In case Ex-officio Justice of the Peace after examination of the complaint with full application of legal mind comes to the conclusion that the allegation set up by the complaining person appears to be ridiculous, or self contradictory or vague or barred by law or offensive to the public policy and accepted standards of morality, he may be legally justified to turn down the request for registration of a case."

Precisely stated, per applicant, proposed accused forcibly tried to dispossess Mst. Nagina from her parental house. Aunt of applicant moved an application to police officials in which she disclosed the incident of 31.3.2016 but in her instant application she did not disclose about said incident but disclosed about another incident of same nature dated 14.4.2016. Furthermore Mst. Nagina already lodged F.I.R. no 71/20147 regarding abduction of her brother against same proposed accused. Police Report also reflects that dispute between the parties is of civil nature.

Primarily, it appears to be a civil nature dispute, which has been blown out of proportion unnecessarily. Both the parties are at loggerheads against Additional Prosecutor General each other over dispute of property, which can only be determined by the competent Civil Court. Matter is of civil nature and criminal jurisdiction has been invoked with mala fide intention, as such, applicant has not come to court with clean hands.

All the facts and circumstances stated in the application do not disclose a cognizable offence and lead to conclude that in fact there is a civil nature dispute between the parties and in order to pressurize the other side, the applicant wants to lodge the F.I.R., which, in my view, cannot be acceded to. Unfortunately, trend has been developing in our society to abuse the provision of law to settle personal score, vengeance and vendetta, which strictly needs to be curtailed. In this regard, I am fortified in my view in the citations reported in 2009 YLR 1533, 2013 YLR 624, 2013 P.Cr.L.J 813. The instant application, being meritless and without substance, stands dismissed accordingly. The applicant may prefer to file direct complaint, if so advised."

5. We have examined the criminal miscellaneous application filed by petitioner before the Ex-Officio, Justice of Peace whereby a request to provide protection was sought but the Ex-Officio Justice of Peace passed the above referred order wherein after deliberating *much* on scope and object of the provision of section 22-A Cr.PC dismissed the application with *categorical* direction to petitioner to file '**Direct Complaint**'. We do not find any way out whereby we could justify a direction for lodgment of a '**direct complaint**' against a request for protection. Candidly, it appears that the learned Ex-Officio, Justice of Peace has not even bothered to examine the contents of application and prayer but seems to have signed the order without any application of *judicial mind* although he (Ex-Officio Justice of Peace) acknowledged that such *jurisdiction* must be exercised with application of '**judicial mind**'. Thus, *prima facie* it appears that the learned Judge not only passed the dismissal order but also signed it without hearing the petitioner; examining the contents of application and verifying whether thing, presented before it, is in fact relates to what it is claiming to or otherwise. Such attitude can neither be approved nor *even* is expected from a judicial officer whose *every* order otherwise addresses either to a right or an *obligation* therefore, before speaking about application of *judicial* mind the presence of *mind*, at least must appear from every single order whether it be a *judicial* or *quasi-judicial* and every order must be an out of deliberation and application of **mind judiciously**.

6. However, leaving *regret* to mourn, we would add that a direction for lodgment of FIR may well be a *discretion* but when some one comes with a complaint of *insecurity* and requests for an instruction to police to

provide protection same should not be declined rather it always be hammered thereby instructing to police to provide protection which *otherwise* is undeniable duty and obligation of the police. A negligence / failure on part of the police authority, if resulting into a complaint of *insecurity*, may well be entertained by Ex-Officio Justice of Peace within meaning of Section 22-A(6)(iii) Cr.PC which reads as:

“neglect, failure or excess committed by a police authority, in relation to its functions and duties.”

Since, the petitioner has been continuing with his grievance of *insecurity* and insists for protection for which the respondent nos.1 and 2, being police officials, are *otherwise* bound, therefore, we find it in all fairness to set-aside the impugned order and direct the respondent nos.1 and 2 to provide necessary protection and to initiate necessary action as per law. However, this direction / instruction shall not be exploited rather the respondent nos.1 and 2 shall act strictly in accordance with their functions and duties which *first* insists to provide protection and then an action against any body if he takes the law into his hands. The word *any body* shall include the petitioner *too*.

7. Accordingly, instant petition is allowed. Let the copy of this order be sent to learned Ex-Officio Justice of Peace with note of caution that in future he must be careful and also be circulated to all learned Sessions/Additional Sessions who are authorized to exercise power u/s 22-A & B Cr.P.C.

JUDGE

JUDGE

