

**IN THE HIGH COURT OF SINDH, AT KARACHI.**

**C.P No. S-770 of 2017**

Petitioners : Faiz Muhammad and Muhammad Moosa through their Advocate Hafeezullah Khan Niazi.

Respondent : Inspector General of Police Sindh & (06) others through respondents No. 1 to 4 Ms. Yasmin Sultana, State Counsel.

Respondent No.5 : Ahmed in person.

Date of hearing : 12.07.2017.

**ORDER**

**ADNAN-UL-KARIM MEMON,J.**– The petitioners have impugned the order dated 01.04.2017, whereby application moved by the Petitioners under section 22-A & B-Cr.P.C. for registration of FIR against proposed accused is dismissed by learned Ex-Officio Justice of Peace/ District & Sessions Judge, Thatta.

2. Brief facts of the case as per application of petitioners are that petitioners are brothers and owners of agricultural land approximately 56 acres, in which they are farming, in the said land they have fishing Pond comprising of 17 acres. Petitioners claimed that on 07.03.2017, proposed accused came there with deadly weapons and snatched fishes valued at Rs. 2,00,000/- as well as crops valued at Rs. 1,50,000/- and extended threats of dire consequences of life. They further added that the petitioners approached to the higher authorities of police for taking action against the proposed accused persons but nothing could be done on their behalf.

3. Petitioners being aggrieved by and dissatisfied with inaction on the part of official respondent No.4, approached the learned Sessions Judge/Justice of Peace, Thatta by filing Cr. Mis. Application No.97/2017 under section 22 A&B, Cr.PC for direction to the concerned SHO to record statement of the petitioners u/s 154 Cr.PC. The learned Sessions Judge Thatta, vide impugned order 01.04.2017 dismissed the application of the petitioners.

4. Mr. Hafeezullah Khan Niazi, learned counsel for the petitioners has argued that Station House Officer, Police Station Mirpur Sakro was duty bound to register a case of cognizable offence against proposed accused Ahmed, Ayaz and Sajjad, who

snatched fishes and crops and also threatened the petitioners of dire consequences. He next asserted that from the fact of the application of the petitioners submitted before the learned Sessions Judge/Justice of Peace a cognizable offence was made out so the Learned Justice of Peace erroneously dismissed of the application of the petitioners on the wrong premise that the parties are at disputed terms over land property and petitioner Faiz has already filed litigation against them. He further added that the order of learned Justice of Peace is illegal, and without legal justification to refuse to entertain the application of the petitioners but the same was dismissed on the ground that the petitioners had dispute over landed property, this is hardly a ground for the learned court to refuse relief to the petitioners, which was even otherwise a good case for direction to the concerned SHO to record the statement of the petitioners. He lastly contended that the petitioners have made out a case of cognizable offence and the SHO concerned cannot refuse to register FIR who is duty bound under section 154 Cr.P.C to reduce it in writing the application of the petitioners.

5. Ms. Yasmin Sultana, learned State Counsel for the State has opposed the grant of application on the ground that the same is misconceived and not maintainable. She argued that petitioners have alternate remedy available under the law that is, Private Complaint to be filed before the competent court of law. However, she states that the official respondents will act strictly in accordance with law.

6. I have heard the learned counsel for the petitioners, respondent No. 5 in person and learned State Counsel and perused the material available on record.

7. Perusal of record reflects that petitioners moved an Application under section 22-A&B, Cr. P. C. before learned Justice of Peace who declined the relief to petitioners vide order dated 01.04.2017 on the ground that petitioners and proposed accused are at disputed terms over landed property and there is litigation between them.

8. It is well settled principle of law that before asking for relief under article 199 of the Constitution the petitioners have to show prima facie case to attract the extraordinary jurisdiction of this Court, admittedly there is landed property dispute between the petitioners and the proposed accused, therefore the petitioners have remedy under the law for redressal of their grievance and the extraordinary jurisdiction of this court under article 199 of constitution cannot be invoked to resolve civil dispute between the parties. Reverting to the question of snatching of fishes and crops from the petitioners, they have a remedy to file a private complaint as provided under the law, therefore this court has no jurisdiction to decide disputed question of facts in Constitutional petition.

9. Record reflects that, learned counsel for the petitioners did not press his prayer clause-1 and he only maintained his petition for remaining prayer clauses, his statement was recorded vide order dated 24.4.2017. During the course of arguments, Respondent No. 5, who is present in person has produced certified copy of order dated 25.11.2016, passed by this Court, in C.P. No. 6099 of 2016 and submits that the same petition was disposed of by this Court on the statement/affidavits of official respondents that the petitioners will get their share of water from Water Course-7/R of Takani minor without any hindrance. Be that as it may, I am not persuaded to travel into the disputed question of facts involved in this matter.

10. I am of the view that learned Ex-Officio Justice of Peace before exercising jurisdiction under section 22-A(6)(i)(iii), Cr. P. C. has to be satisfied with the information provided by the petitioners to assume jurisdiction. The record shows that petitioners have failed to place on record convincing material to substantiate their claim for issuance of direction for registration of F.I.R. The above proposition is supported by the decision of five member bench of Honorable Supreme Court rendered in the case of *YOUNAS ABASS and others v. ADDITIONAL SESSIONS JUDGE, CHAKWAL and others (PLD 2016 SC 581)*.

11. In view of the above discussion I am of the opinion that petitioners have failed to make out a case for indulgence of this Court. Therefore, the instant petition is dismissed. However, the petitioners may, if they wish, to avail the remedy of filing a private complaint against the alleged accused. The above observations are tentative in nature which shall not prejudice the case of either party at any stage.

12. For going are the reasons of short order dated 12.07.2017, whereby the instant petition was dismissed.

**J U D G E**

Faheem/PA