

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

**Criminal Miscellaneous Application No.S427 of 2020.**

Hamid Ali ----- Applicant  
Vs.  
1<sup>st</sup> Additional Sessions Judge/ Ex-officio Justice  
of Peace Tharparkar & Mithi & others----- Respondents  
Date of hearing & decision: 07.09.2020

Mr. Muhammad Hashim Laghari advocate for applicant.

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**ORDER**

**ADNAN-UL-KARIM MEMON, J.** - Through this Criminal Miscellaneous Application the applicant seeks annulment of order dated 05th September, 2020 Passed by learned Additional District & Sessions Judge-I / Ex-Officio Justice of Peace Tharparkar @ Mithi, whereby direction was given to Senior Superintendent of police (SSP) to record statement of complainant / respondent No.4 and if cognizable offence is made incorporate the same in 154 Cr.P.C book at P.S. Nagarparkar. An excerpt of the order is reproduced as under:-

“Since the concerned SHO, P.S. Nagarparkar is himself a proposed accused in this matter, therefore, S.S.P. District Tharparkar at Mithi, is directed to take the statement of applicant on record himself or through some other responsible and honest police officer and then apply his independent, honest & fair mind, and if cognizable offence is made out, then get incorporated his statement in 154 Cr.P.C book at P.S. Nagarparkar and incase non-cognizable offence is made out, then get effected such entry in book U/S 155 Cr.P.C and its copy be placed before the concerned Magistrate for getting his appropriate orders .S.S.P. District Tharparkar at Mithi, may also initiate criminal proceeding U/S 182 P.P.C. against the applicant, if compliant is proved false after investigation. In addition, providing protection to the applicant by the police from harassment, is concerned; it is undeniable duty and obligation of the police and therefore, respectfully following the reported case of *Mehran Hussain Versus Senior Superintendent of Police, Hyderabad and 5 others (2019 P.Cr.L.J. 281)*, S.S.P. District Tharparkar at Mithi, is further directed to provide legal protection to the applicant and his family from any illegal harassment of police. However, this direction/ instruction shall not be exploited rather S.S.P. District Tharparkar at Mithi, shall act strictly in accordance with his functions and duties which first insists to provide protection and then an action against ‘anybody’, if he takes the law into his hands. The word ‘anybody’ shall include the applicant party too. Reliance is placed on the reported case of *Mehran Hussain versus Senior*

*Superintendent of Police, Hyderabad and 5 others (2019 P.Cr.L.J. 281)."*

2. It may be stated that in view of urgency shown by learned counsel for the Petitioner, this matter is taken up today. At the outset, we asked learned Counsel to satisfy this Court with regard to maintainability of instant Criminal Miscellaneous Application under section 561-A Cr.P.C.

3. Mr. Muhammad Hashim Laghari learned counsel for the applicant has briefed this court on the factual aspect of the case and argued that the Ex-Officio Justice of Peace has dismissed his application under Section 22-A & B Cr.P.C. arbitrarily and summarily without appreciating the fact that the same was filed in a malicious and mala fide manner by the respondent No.4 namely Shahbaz Khan and with ulterior motive to save the skin of some of his family members nominated in number of criminal cases; that the applicant has been recovered by learned Judicial Magistrate, Diplo from the residential quarter of police official of Police Station Diplo and not from the lockup of police station, as such he has nothing to do with the alleged incident; that the applicant is a public servant has not acted contrary to law; that Ex Officio Justice of Peace seized of the matter, called the report from concerned police, but did not rely on the same and while brushing aside the police report did not advance any cogent reason; that the complaint preferred on behalf of respondent No.4 is false and concocted; that in fact, it was actuated as a counter blast to the cases registered against the close relatives of respondent No.4, which factum should not have been ignored by learned Justice of Peace. If the complainant is encouraged to prosecute the Police on the one hand, and the Justice of Peace without applying his mind passes a mechanical order on the other hand by not even considering the Police Report, would encourage the trend already in vogue to manage to get an order against the Police Officers; that such course of action would eventually erode the system to the verge of collapse. He lastly prayed for quashment of order dated 5.9.2020 passed by learned Justice of Peace. Be that as it may, I am only confined to the factum as to whether this Court has jurisdiction under Section 561-A Cr.P.C to dilate upon the issue of the applicant. In support of his contention he relied upon the case of Nisar Ahmed Bhatti v. Additional Sessions Judge and others (2016 YLR 146),

4. I have heard the arguments of learned counsel for the applicant, perused the record and the case law cited at bar.

5. The questions, which agitate the controversy at hand, could be reduced to whether the direction issued by learned Ex-Officio Justice of Peace can be interfered under Section 561-A Cr.P.C and whether the findings of learned Ex-Officio Justice of Peace is clear in its terms that if from the statement of complainant a cognizable offence is made out, then the same be incorporated in 154 Cr.P.C book at P.S. Nagarparkar.

6. On the aforesaid proposition, I have noticed that there are certain allegations against the applicant who is police official and this court at this stage cannot nip the crime in bud. In my view, at the initial stage throwing out the complaint of respondent No.4, without giving him an opportunity to prove the allegations by recording statement before S.S.P. District Tharparkar at Mithi, would be improper in exercise of powers under Section 561-A Cr.P.C and would amount to serious departure from normal course; Besides any deviation from normal path is always charged with risk of being led off track. The applicant seeking extra ordinary relief under Section 561-A Cr.P.C could not demonstrate sufficient grounds to attract quashment of order dated 5.9.2020, in the given circumstances. I may also observe that if S.S.P. District Tharparkar at Mithi is restrained from investigating the matter in the beginning, his statutory obligation and duty, it will tantamount to distract from normal course. Apart from above, this Court cannot interfere in the inquiry of a cognizable offence if any and if prima facie an offence has been committed, concerned authority is bound to act strictly in accordance with law. The applicant is admittedly facing serious allegations and in such circumstances, I would not like to exercise my discretion in his favour and thwart the whole process of inquiry against him and quash the order dated 5.9.2020 on any of the technical ground, which will amount to interfering in the right of authority to probe into allegations against the applicant. The applicant has not been able to show; in view of above facts and circumstances, as to how the allegations mentioned in the complaint of the respondent No.4 are outcome of malice or ulterior motives and / or against the principles of natural justice.

7. For what has been stated above, at this juncture, I am not persuaded to quash the order dated 5<sup>th</sup> September, 2020 Passed by learned Additional District & Sessions Judge-I / Ex-Officio Justice of Peace Tharparkar @ Mithi and it is for the applicant to present his all defence before S.S.P. Tharparkar at Mithi, who is directed to act strictly in accordance with law, and submit report within one week through Additional Registrar of this Court for perusal in chamber.

8. The case law cited by learned counsel for the applicant is distinguishable from the facts of the case in hand.

9. This Criminal Miscellaneous Application being misconceived and without any merit is hereby dismissed in limine along with listed application(s) with no order as to costs.

**JUDGE**

Karar\_hussain/PS\*