

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

C.P. No. D – 3140 of 2016

---

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

---

**Present: Aqueel Ahmed Abbasi & Yousuf Ali Sayeed, JJ**

Petitioner: Ubedullah, through, Mr. Syed Tarique Ahmed, Advocate.

Respondents: Province of Sindh & Others, through Mr. Allah Bachayo Soomro, Addl. A.G.

Date of hearing 13.06.2017

Date of Judgment

**JUDGMENT**

**YOUSUF ALI SAYEED, J.** In terms of the instant Petition under Article 199 of the Constitution, the Petitioner has inter alia sought issuance of directions to the D.S.P. Bulri Shah Karim (the Respondent No.3) to verbatim register an FIR as per the version of the Petitioner against certain named police officers posted at P.S. Bulri Shah Karim as well as eight to ten unknown police personnel, in relation to an incident said to have taken place on 19.10.2016 and, further, that the police be directed the Respondents not to implicate the Petitioner, his relatives and witnesses of the incident in any false case.

2. As per the Petitioner, on 19.10.2016, he along with his relatives were tending to their paddy crop, when they were suddenly accosted by the proposed accused, who fired directly upon the Petitioner and his associates with the intention to commit murder. It is said that the proposed accused then enquired as to the whereabouts of one Siddique Soomro, and upon their denial of any association with the said person the proposed accused divested the Petitioner and his associates of several sacks of their paddy crop.

3. The Petitioner had previously filed Criminal Miscellaneous Application No.235 of 2016 under S.22-A, Cr. P.C. before the learned Additional District & Sessions Judge Tando Muhammad Khan in his capacity as Ex-Officio Justice of Peace. Such proceedings were disposed of vide Order dated 01.11.2016, whereby the registration of an FIR was declined on the basis that the matter was not deemed to be a fit case for issuance of directions in that regard.
4. Whilst assailing the aforementioned Order, learned counsel for the Petitioner simply maintained that same was contrary to law, as the learned Justice of Peace was obliged to direct the concerned SHO to lodge an FIR against the proposed accused as per the facts narrated by the Petitioner in as much as such alleged facts disclosed the commission of a cognizable offence.
5. From the Order of the Justice of Peace, it is apparent that pursuant to the Application he had called for reports from the SSP Tando Muhammad Khan and the DSP Bulri Shah Karim, as per which it was shown that the allegations levelled by the Petitioner were incorrect and that, in fact, on the very day of the incident mentioned by the Petitioner (i.e. 19.10.2016), an FIR had been registered on behalf of the State in Crime No. 130 of 2016 at PS Bulri Shah Kareem under S.324, 353, 401 and 398 PPC in relation to an encounter between the police and a proclaimed offender and absconder by the name of Muhammad Siddique, alias Dablo Soomro, and his accomplices. This encounter was said to have taken place that very day, at 1600 hours. Furthermore, the Petitioner and his associates were said to have criminal affiliations that linked them to the gang involved, and it was shown that he and persons named by him as witnesses to the incident had themselves been implicated in prior criminal cases, and it was thus indicated that the Application had been lodged for ulterior motive as a counterblast to the aforementioned FIR. Hence, the learned Justice of the Peace did not see fit not to direct the registration of an FIR and left it open to the

Petitioner to avail his remedy by way of a direct complaint under S.200 Cr. P.C.

6. Whilst weighing the matter, the Justice of the Peace gave due consideration to these aspects that had been brought to the fore, as well as the fact that the Petitioner had not disclosed the fact that various criminal cases had previously been registered against him. Furthermore, the learned Justice of Peace also duly considered the fact that apart from the statements of the very persons whose credibility had been brought into question, there was no evidence available to substantiate the Petitioner's version regarding the taking away of the paddy crop as the photographs submitted in that regard merely showed the presence of a police vehicle which of itself did not serve to establish anything one way or the other. Additionally, we have ourselves observed that whilst it has been alleged that the police personnel fired at the Petitioner and his associates with deadly intent there is no specific mention of the particular person or persons from amidst their ranks who engaged in such firing or of any injuries being sustained as a consequence. Furthermore, whilst it has also been stated that the police hit the Petitioner with the butt of their weapons, no medical report establishing that any injuries were sustained appears to have been placed before the Justice of Peace or has even been placed on record in these proceedings.

7. The learned Justice of Peace regarded the matter as being one where it was appropriate to proceed with a degree of caution and placed reliance on a single-bench Judgment of this Court reported as *Imtiaz Ahmed Cheema v. S.H.O. Police Station Daharki, Ghotki 2 others* 2010 YLR 189 wherein it was observed as follows:

“The provisions of section 22-A, Cr.P.C. have been misused in a number of cases. The wisdom of legislature was not that any person who in discharging of duties takes an action against the accused would be subjected to harassment by invoking provision of section 22-A, Cr.P.C. The

Courts in mechanical manner should not allow application under sections 22-A & B and should apply its mind as to whether the applicant has approached the Court with clean hands or it is tainted with malice. Unless such practice is discharged, it would have far reaching effect on the police officials who in discharge of duties take actions against them. The law has to be interpreted in a manner that its protection extends to every one. I am therefore, of the opinion that order of the Sessions Judge was passed in mechanical manner and the applicant approaching the Sessions Judge. As per the record reflects that it was tainted with malice.”

8. On consideration of the matter under the given circumstances, we find no fault in the approach of the learned Justice of the Peace warranting interference by this Court, as it is apparent from the Order dated 01.11.2016 that the substance of the allegations was considered and weighed in juxtaposition with the material available. In our opinion, a Justice of Peace, acting in exercise of S.22-A, is not to proceed and act mechanically simply on the basis of the version of events narrated by a party applying for registration, but instead, in order to safeguard against misuse or abuse of such process, must apply his mind and satisfy himself that, prima facie, there is some material available on the record to support such version. We are fortified by the aforementioned judgment referred to in the Order dated 01.11.2016 as well as the additional note appended to the main judgment of the Honourable Supreme Court in the case reported as Younas Abbas & others v. Additional Sessions Judge, Chakwal PLD 2016 SC 581, where it was observed as follows:

“The past experience of around 14 years (since the insertion of these provisions into the Code of Criminal Procedure) would unmistakably reveal that these provisions especially Section 22-A of the Code of Criminal Procedure, though beneficial and advantageous to the public at large, yet in myriad cases, it has been misused and abused.

Once a false criminal case is registered against an individual, it becomes exceedingly difficult for him/her to get rid of it. The time and money which

is spent on acquiring a clean chit by way of cancellation of the case or acquittal is not hard to fathom. There is no denying the fact that at times false and frivolous cases are got registered just to humiliate and harass the opposite party. In such a milieu, powers given to an ex-officio Justice of the Peace under subsection (6) of Section 22-A, Code of Criminal Procedure, to issue appropriate directions on a complaint filed by an aggrieved person for registration of a criminal case (Clause-i) and for transfer of investigation from one police officer to another (Clause-ii) though efficacious and expeditious besides being at the doorstep, but at the same time, these provisions should not be unbridled or open-ended. These provisions must be defined, structured and its contour delineated to obviate misuse by influential and unscrupulous elements.

Therefore:-

(i) The ex-officio Justice of the Peace, before issuance of a direction on a complaint for the non-registration of a criminal case under subsection (6)(i) of section 22-A, Code of Criminal Procedure must satisfy himself that sufficient material is available on the record, such as application to the concerned SHO for registration of the criminal case and on his refusal or reluctance, complaint to the higher police officers i.e. DPO, RPO etc., to show that the aggrieved person, before invoking the powers of ex-officio Justice of the Peace, had recourse to the high ups in the police hierarchy.

(ii)..."

9. Moreover, as rightly determined by the learned Justice of Peace, the Petitioner remains at liberty to pursue the proper remedy of filing a direct complaint under S.200 Cr. P.C. provided there is some incriminating material against the proposed accused.
  
10. In view of what has been discussed herein above, we are of the view that the Order dated 01.11.2016 made by the learned Justice of Peace does not admit to any interference. These are the reasons for our short Order dictated in open Court on 13.06.2017 whereby the Petition was dismissed.

JUDGE

JUDGE

Hyderabad  
Dated \_\_\_\_\_