

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

Cr. Misc. A. No. S- 93 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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22.10.2021

For orders on office objections
For hearing of main case

Mr. Nadir Hussain Jamali, Advocate along with applicant
Mr. Ahsan Gul Dahri, Advocate for respondents
Ms. Sana Memon, A.P.G.

ADNAN-UL-KARIM MEMON, J.- Through instant Criminal Miscellaneous Application, applicant Rahmeed Raja has called in question the order dated 5.1.2021 passed by learned Ex-Officio Justice of Peace / 4th Additional Sessions Judge, Shaheed Benazirabad on the premise that there is no specific prohibition under the provisions of Cr.P.C. which precludes registration of FIR concerning the cognizable offense, refusal whereof by Police, such practice has been deprecated by the Honorable Supreme Court in its various pronouncements; however, this important legal aspect has not been duly taken into consideration by the learned Ex-Officio Justice of Peace in its impugned order discussed supra. Thus the impugned order is illegal and in violation of section 154 Cr.P.C.

2. The case of the applicant is that his brother namely Ghulam Sarwar was killed by the proposed accused Muhammad Yousif Jatoi and his accomplice by inflicting iron rod injuries. Subsequently, his brother succumbed to the injuries. The applicant approached the concerned police, who bluntly refused to register the FIR, hence the applicant approached learned Ex-Officio Justice of Peace for registration of FIR. The learned Ex-Officio Justice of Peace conducted inquiry by calling reports from SSP Shaheed Benazirabad and SHO PS Qazi Ahmed and finally dismissed his application based on the inquiry report, hence the instant Cr. Misc. Application.

3. Learned counsel for the applicant argued that the official respondents who are in league with private respondents have submitted concocted inquiry report that the brother of the applicant received injuries due to a

road accident on his motorcycle and the learned Ex-Officio Justice of Peace committed illegality by dismissing his application relying upon the said concocted inquiry report; that police officer is bound to register the FIR of the incident under criminal law if prima facie there appears that a cognizable offense is made out and justice of the peace can also issue direction for registration of FIR under Section 22-A(6)(1) Cr.P.C. In support of his case, he relied upon the case reported in 2020 MLD 1028, PLD 2016 SC 484, 2016 MLD 1, 2020 MLD 1028, 2016 YLR 1065, PLD 2015 Lahore 413, 2019 YLR 1104, 2019 MLD 1766, PLD 2019 Balochistan 27, PLD 2021 Lahore 527, PLD 2015 Lahore 413, 2019 MLD 1192, 2018 YLR 1599, 2018 YLR Note 275, 2016 P.Cr.L.J Note 112, 2015 YLR 1949, 2015 MLD 386, 2015 P.Cr.L.J. 1419, 2015 P.Cr.L.J 846, 2021 P.Cr.L.J. 1079, PLD 2015 Pesh. 76, 2018 YLR Note 81, 2016 YLR 1441, 2019 YLR 98, 2015 P.Cr.L.J. 790.

4. Heard learned counsel for the Applicant on the maintainability of the instant criminal Miscellaneous Application and perused the material available on record.

5. The questions, which agitate the controversy at hand, could be reduced to whether the order passed by learned Ex-Officio Justice of Peace refusing to give direction to police to register a case could interfere under Section 561-A Cr. P.C; and, whether the findings of learned Ex-Officio Justice of Peace is clear in its terms that no cognizable offense was made out as per police report thus could not be incorporated in 154 Cr. P.C book; and, whether registration of F.I.R is the only solution or the applicant has another remedy of filing the Direct Complaint as provided under section 200 Cr. P.C?

6. Prima facie, the dispute between the parties is of criminal side as could be seen from the record that has been taken care of by the learned Ex-Officio Justice of Peace / 4th Additional Sessions Judge, Shaheed Benazirabad vide order dated 5.1.2021.

7. In the circumstances when we confronted the learned counsel for the applicant that the procedure of direct complaint is much available to the applicant under Section 200, Cr. P.C to meet such eventualities. Learned counsel for the Applicant replied that accusation against the proposed accused disclosed commission of a cognizable offense and as such a statutory duty was cast upon the Station House Officer to register a formal First Information Report to investigate the same and his failure was amenable to interference; that in the present case there are extraordinary

circumstances in which registration of FIR is the only proper course; and, adopting the alternate course provided in Section 200 Cr. P.C, that could not be equally efficacious for the applicant. He also emphasized that law required that a police officer should first register a case and then form an opinion whether the facts stated in the FIR were true or not.

8. Prima facie, this assertion of the applicant is not tenable under the law. As the Honorable Supreme Court in the case of *Younas Abbas and others v. Additional Sessions Judge Chakwal and others* (PLD 2016 Supreme Court 581), *Mst. Sughran Bibi v. The State* PLD 2018 SC 595 and *Abdul Rehman Malik Vs. Synthia D. Ritchie, Americans National, and other* 2020 SCMR 2037 has already dilated upon the subject wherein the vires of interference by the Justice of Peace with the functionality of police/investigation had been questioned without success.

9. In response to the query as discussed in preceding paragraph, the learned counsel for the applicants has categorically stated that he wanted the accused persons in their version of the incident to be arrested which was/is not possible through the medium of a private complaint. Such understanding of the law on the part of the applicant, which understanding is also shared by a large section of the legal community in our country, has been found to be erroneous and fallacious. By the provisions of section 202(1), Cr.P.C. a Court in a private complaint can direct an inquiry or investigation to be made by any Justice of the Peace or by a Police Officer or by such other person as it thinks fit. If in a given case the Court in a private complaint deems it appropriate can direct an investigation to be carried out in respect of the allegations made then the powers available during an investigation, enumerated in Part V, Chapter XIV of the Code of Criminal Procedure, 1898 read with section 4(1) (I) of the same Code, including the powers to arrest an accused person. Such powers of the Investigating Officer or the investigating person recognize no distinction between an investigation in a State case and an investigation in a complaint case.

10. To go ahead with the aforesaid proposition, the object of investigation under section 202 of the Code is to enable the Court to scrutinize the allegations to protect a person complained against from being summoned to face frivolous accusations. Section 202 of the Code is an enabling provision to empower the Court to hold an effective inquiry into the truthfulness or otherwise of the allegations leveled in the complaint to form an opinion whether there exist sufficient grounds to proceed further or not. Therefore,

inquiry/investigation under section 202 of the Code is not a futile exercise and is to be taken into consideration by the Court while deciding whether the process is to be issued or not.

11. Nothing has been pointed out that the impugned order shall prejudice the case of the applicant if he approaches and files a direct complaint against the purposed action of police and private party.

12. In the above backdrop, I have not been able to find any jurisdictional error or flaw in the impugned order calling for interference in remission of the issue to the Justice of Peace for a decision afresh within the framework of law declared by this Court accordingly, this criminal Miscellaneous Application is not maintainable.

13. Before dilating further on the aforesaid proposition, it does not, in any way, take away or affect the powers of Justice of Peace to order for registration of criminal case as provided under Section 22-A & B, Cr.P.C. Therefore it would be appropriate for Ex-Officio Justice of Peace before issuance of such direction for registration of the criminal case to satisfy him from the available record regarding registration of the criminal case thus; he has rightly declined the request of the applicant for registration of the criminal case under the peculiar circumstances of the case.

14. In view of the above, this criminal Miscellaneous Application stands dismissed in the above terms along with the pending application(s) with no order as to costs. However, the Applicant may avail his remedy before the competent Court of law for the aforesaid purpose.

JUDGE