

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

Cr. Misc. A. No. S- 652 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE
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22.10.2021

For orders on office objections  
For hearing of main case  
For hearing of MA 10758/21

Mr. Faisal Ali Raza Bhatti, Advocate for applicant  
Mr. Muhammad Hashim Leghari, Advocate for respondents  
Ms. Sana Memon, A.P.G.

**ADNAN-UL-KARIM MEMON, J.-** Through instant Cr. Misc. Application, applicant Zulfiqar Ali has called in question the order dated 23.9.2021 passed by learned Ex-Officio Justice of Peace / Additional Sessions Judge-I, Dadu.

2. Brief facts of the case are the applicant moved an application before learned Ex-Officio Justice of Peace / Additional Sessions Judge-I, Dadu for providing legal protection from respondent No.3. The said application was allowed by directing the concerned SHO to provide not only the legal protection to the applicant but also all the public inhabit his jurisdiction.

3. Learned counsel for the applicant argued that the order learned Ex-Officio Justice of Peace is bad in law as he refused to issue direction for providing legal protection to the applicant / accused. He further submitted that the impugned Order is in violation and contravention of Sections 17 and 45 of the Sindh Food Authority Act, 2016 wherein the learned 1<sup>st</sup> Additional Sessions Judge, Dadu has issued direction to SSP Dadu to appoint a police officer as an inquiry officer to conduct an inquiry about allegations against the applicant of selling chemical containing milk which is apparently out of the jurisdiction of the police. That learned Ex-Officio Justice of Peace even failed to consider the report of SHO who clearly stated that the applicant wanted to purchase landed property and the private respondent has restrained him from purchasing the same, hence a dispute over landed property is going on. He lastly prayed to allow the instant application.

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. 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, more particularly the application of Food Laws and other ancillary issues as agitated by the learned counsel for the Applicant, learned counsel 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.

7. Learned counsel for the applicant asserted 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. He also emphasized 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.

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 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,

10. 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