

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

Cr. Misc. A. No. S- 689 of 2021

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

Mian Taj Muhammad Keerio, Advocate for applicants
Mr. Ayaz Ali Gopang, Advocate for complainant
Ms. Safa Hisbani, A.P.G.

Date of Hearing & Decision : 29.10.2021

ORDER

ADNAN-UL-KARIM MEMON, J.- Through instant Criminal Miscellaneous Application, applicants Pir Shoaib Ahmed Qureshi and others have called in question the order dated 13.10.2021 passed by learned Ex-Officio Justice of Peace / Sessions Judge, Shaheed Benazirabad whereby he while allowing the application filed by respondent No.2 directed SHO PS Khadhar to record the statement of the complainant and incorporate in the book under Section 154 Cr.P.C. with further direction to DSP concerned to investigate the case and I.O of the case was directed to report under Section 182 PPC if the information proved to be false.

2. The case of respondent No.2 before learned Ex-Officio Justice of Peace was that the applicants / proposed accused on 28.9.2021 attacked upon her with deadly weapons, made aerial firing; thereafter they again on 1.10.2021 duly armed with lathis and iron rods, criminally trespassed her house and caused injuries to her, and her family members; that during the attack one Tanveer aged about 16 years also received head injury who later on succumbed to injuries and died. Per complainant she has a good prima-facie cognizable case, supported by medical evidence, thus SHO PS Khadhar is duty-bound to record her statement and incorporate it in the book under Section 154 Cr.P.C.

3. Learned counsel for the applicant has submitted that the story as narrated by respondent No.2 in the application before Ex-Officio Justice of Peace was managed one just to defeat the incident referred in Crime No. 66 of 2021 lodged by applicant No. 2/ Sajjan whose son

namely Tanveer was murdered at the hands of the family of private respondent. He further submitted that respondent No.2 when came to know about the murder of Tanveer Ahmed and registration of FIR No. 66 of 2021, containing section 302 PPC, filed the application before learned Ex-Officio Justice of Peace; and, learned Ex-Officio Justice of Peace without following the dicta laid down by the Honorable Supreme Court in the case of Mst Sughran Bibi Vs. the State **PLD 2018 Supreme Court 595**, ordered registration of the criminal case against the applicants on the premise that there are three injured people supported by Medical evidence.

4. After arguing the matter at some length, both the parties agreed for disposal of the instant Criminal Miscellaneous Application with the understanding that FIR No. 66 of 2021, containing section 302 PPC needs to be re-/further investigated by the God-fearing investigating officer to conclude the investigation to its logical conclusion to bring into the book the actual culprits of the incident and submit investigation report before the learned Magistrate concerned for cognizance.

5. At this stage I asked the parties that there is a vast gap or difference between further investigation and re-investigation of criminal case on the premise that further investigation begins under the Cr. P.C when the investigation is complete and the final report is submitted under section 173 Cr.P.C; and, re-investigation is a process of investigation de-novo; and, Cr. P.C is silent to the process of re-investigation and only further investigation is permissible, for the simple reason that the re-investigation wipes out the investigation done earlier and fresh investigation could only be ordered, when the court concludes that the investigation was flawed.

6. To the above query, learned counsel for private respondent has submitted that there is no bar to the reinvestigation of a criminal case and the police authorities are at liberty to file a supplementary challan even after submission of the final report under section 173, Cr.P.C. Prima-facie this is a correct position of the law. On this proposition the Honorable Supreme Court in the case of Raja Khurshid Ahmad Vs. Muhammad Bilal and others (2014 SCMR 474), has held as under:

“It would be seen that as per settled law, there is no bar to the reinvestigation of a criminal case and the police authorities are at liberty to file a supplementary challan even after submission

of the final report under section 173, Cr.P.C. However, this cannot be done after the case has been disposed of by the learned trial Court.”

7. Likewise, in *Bahadur Khan v. Muhammad Azam and 8 others* (2006 SCMR373), while discussing the issue thoroughly, the Honorable Supreme Court held as under:

“It is well-settled proposition of the law as also held consistently in the reported judgments of this Court and those cited by the learned Advocate on-Record, in view of the provision of section 173, Cr.P.C. that no legal bar existed for reinvestigation of a criminal case even after submission of final report under section 173, Cr.P.C. and the police could carry out the fresh investigation and submit its report to the Court but this would not mean that in a case in which earlier, after completion of investigation challan was submitted for trial of the offence for any offence on which an accused/accused persons have been tried and the case finally decided upto the level of the High Court and by this Court, as the case may be, to entertain the subsequent challan submitted as the result of reinvestigation/further investigation of the case by the police on the happening of a subsequent incident and to proceed with the trial of the case in the normal course oblivious of the facts of the case decided earlier by such Court, and; the facts and circumstances including incriminating material necessitated submission of the subsequent challan in the case already having been decided and attained finality.”

8. From the above-referred dicta of the Honorable Supreme Court, no bar certainly exists for reinvestigation of a criminal case even after submission of final report under section 173 Cr.P.C.

9. To the aforesaid proposal, this court has nothing to say more on the subject. However, before touching on the proposal as put forward by the parties, it would be useful to discuss the scope and extent of Section, 154, 200, and 561-A Cr. P.C, therefore it would be more appropriate to look into the controversy at hand, which could be reduced to whether the direction issued by learned Ex-Officio Justice of Peace can 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 if from the statement of the complainant a cognizable offense is made out, then the same be incorporated in 154 Cr. P.C book; and, whether second F.I.R of the same incident could be lodged because of the dicta laid down by Hon’ble Supreme Court in the case of *Mst Sughran Bibi supra* in paragraph-27 (IV) (V) and (VII) of the said judgment or the private respondent has another remedy of filing the Direct Complaint to record her version as provided under section 200 Cr. P.C?

10. Primarily, the insertion of subsection (6) in Section 22-A and Section 25 of Cr.P.C. whereby Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-officio Justices of Peace, has advanced and speeded the dispensation of justice. The object of insertion of subsection (6) was that an aggrieved person could get remedy in time at his doorstep, earlier what he could not get despite approaching this Court. The grievance of a person having no means and resources went unattended and un-redressed altogether. Wealthy, well off and well-connected people exploited this situation. They committed the crime and yet went scot-free. But ever since the day the Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-officio Justices of Peace, no rich and well off person could break the law with impunity or obstruct the person oppressed and assaulted from seeking remedy at his doorstep. If the SHO of a Police Station, owing to the influence and affluence of any, refused to register a case, a resort could be had by moving a simple application to the Ex-officio Justice of Peace for issuance of an appropriate order or direction. Aggrieved person, who could not afford the luxury of engaging a lawyer in the past for filing a writ petition in this Court to get the desired relief, could seek an order or direction from the Ex-officio Justice of Peace without spending much. He could complain against the neglect, failure, or excess committed by the Police Authorities concerning its functions and duties which in the past was no less than living in Rome and fighting with the Pope. On the aforesaid proposition, reliance is safely placed in the case of *Younus Abbas and others v. Additional Sessions Judge, Chakwal and others* (PLD 2016 Supreme Court 581).

11. The larger Bench of the Hon'ble Supreme Court in *Younus Abbas and others* (supra) while discussing powers of the Ex-officio justice of the peace under Section 22-A and 22-B has held as follows:

"The duties, the Justice of Peace performs, are executive, administrative, preventive, and ministerial as is evident from subsections (1), (2), (3), (4), and (5) of Sections 22- A and 22-B of the Cr.P.C. Such duties have not been a subject matter of controversy nor have they ever been caviled at by anybody. Controversy emerged with the insertion of subsection (6) in Section 22-A and Section 25 of the Cr.P.C. when Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-officio Justices of Peace. The functions, the Ex-officio Justice of Peace performs, are not executive, administrative, or ministerial since he does not carry out, manage or deal with things mechanically. His functions as described in Clauses (i), (ii), and (iii) of subsection (6) of Section

22-A, Cr.P.C., are quasi-judicial as he entertains applications, examines the record, hears the parties, passes orders, and issues directions with due application of mind. Every lis before him demands discretion and judgment. Functions so performed cannot be termed as executive, administrative or ministerial on any account. We thus don't agree with the ratio of the judgments rendered in the cases of Khizar Hayat and others v. Inspector General of Police (Punjab), Lahore and others (PLD 2005 Lah. 470) and Muhammad Ali v. Additional I. G. (PLD 2015 SC 753) since it holds that the functions performed by the Ex-officio Justice of Peace are executive, administrative or ministerial."

12. It has been agitated that the provision of Section 22-A & B, Cr. P.C when examined in juxtaposition with Section 154 of Criminal Procedure Code bears material similarity between the two, and thus justice of peace is also empowered to order for registration of a criminal case under Section 154 Cr.P.C.

13. Coming to the present case, it has come on record that the same incident had already been reported to Police Station Khadhar and F.I.R No. 66 of 2021 lodged by applicant No. 2/ Sajjan whose son namely Tanveer has been murdered allegedly at the hands of the family of private respondent. Prima-facie, ordering registration of a fresh criminal case of the same incident is not called for. My view is supported by paragraph-27 (IV) (V) and (VII) of the judgment rendered in the case of Mst Sughran Bibi supra. An excerpt of the paragraph-27 (IV) (V) and (VII) of the judgment is reproduced as under:

"27. As a result of the discussion made above we declare the legal position as follows:

(i) According to section 154, Cr.P.C. an FIR is only the first information to the local police about the commission of a cognizable offence. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard.

(ii) If the information received by the local police about the commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed, and in which background it was committed then that version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.

(iii) Upon registration of an FIR a criminal "case" comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter.

(iv) During the investigation conducted after registration of an FIR the investigating officer may record any number of

versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161, Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case.

(v) During the investigation the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

(vi) Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue.

(vii) Upon conclusion of the investigation the report to be submitted under section 173, Cr.P.C is to be based upon the actual facts discovered during the investigation irrespective of the version of the incident advanced by the first informant or any other version brought to the notice of the investigating officer by any other person."

14. In principle the version of private respondent/complainant was/is required to be recorded under Section 161 Cr.P.C statement and investigation officer is required to proceed further under the law; and, if the investigation officer collects some concrete evidence that constitutes an offense, he is duty-bound to file a report before the concerned Magistrate under section 173 Cr. P.C, for cognizance.

15. However if the parties still insist and raise allegations and counter allegation, in principle, the veracity of these allegations and counter-allegations could only be thrashed out after a thorough probe and that could only be determined if the parties bring their case before the concerned Magistrate under section 200 Cr. P.C.

16. During the hearing of this Application I inquired from the learned counsel for the private respondent as to why she was insisting upon registration of new FIR in respect of her version of the incident, especially when she has the remedy to institute a private

complaint containing her version of the incident and the accused persons in her private complaint can be summoned by the concerned Court to face a trial if she can prove her allegations against them.

17. In response to that query, learned counsel for private respondent has categorically stated that she wanted the accused persons in her 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, is 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) (l) 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.

18. 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.

19. 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, more particularly when the case of

any party squarely fall within the parameters of paragraph-27 (IV) (V) and (VII) of the judgment rendered in the case of Mst Sughran Bibi supra thus ordering registration of a fresh criminal case of the same incident by the learned Ex-Officio Justice of Peace was/is legally invalid and uncalled for as the object and purpose of registration of a criminal case is to probe and find evidence and place all such material before a Court of competent jurisdiction and not to satisfy the complainant/aggrieved person; and, if any such material is provided by the investigating agency, that would help the Court for arriving at just conclusion to determine guilt or innocence of an accused person alleged to be involved in the commission of an offence.

20. Since both the parties agreed for assigning the investigation of Crime No. 66 of 2021 PS Kadhar to any honest and God-fearing investigation officer for carrying out further investigation of the aforesaid crime. In view of the consent of the parties DIGP Hyderabad is directed to assign the investigation of Crime No. 66 of 2021 of PS Kadhar to Inspector Mr. Siraj Ahmed Lashari, to carry out further investigation of the matter and record the statements under Section 161 Cr. P.C of respondent No.2 namely Mst. Hidayatan wife of Hayat Khan and others and proceed further as mandated by the law. During the course of investigation if he collects some concrete evidence which constitutes an offense, he is at liberty to arrest the accused and file a fresh report before the concerned Magistrate for appropriate orders.

21. Resultantly, this application is hereby allowed in the above terms setting aside the impugned order dated 13.10.2021, passed by learned Ex-Officio Justice of Peace / Sessions Judge, Shaheed Benazirabad.

Let a copy of this order be communicated through fax to concerned Magistrate, DIGP Hyderabad and Inspector Mr. Siraj Ahmed Lashari for immediate compliance.

JUDGE