

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

Cr. Misc. A. No. S- 718 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE
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22.11.2021

Mr. Farhan Ahmed Bozdar, Advocate for applicant

Mr. Fayaz Hussain Sabki, A.P.G.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.-** Through instant Criminal Miscellaneous Application, applicant Ali Shah has called in question the order dated 5.10.2021 passed by learned Additional Sessions Judge, Khipro 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 Additional Sessions Judge, Khipro in its impugned order discussed supra. Thus the impugned order is illegal and in violation of section 154 Cr.P.C.

2. Brief facts of the case are that applicant inherited Bungalow constructed over Plot Nos. 6, 7, 12 & 13 situated in Syed Colony, Thana Road, Khipro district Sanghar from his fore-fathers and was in possession of the house; on 27.09.2021 @ 5.00 AM proposed accused No.1 to 4 with Eagle Squad came in 10 police mobiles while proposed accused No.5 to 8, 10, 11 and 3 along with unknown persons came in white cultus and pearl glow white Lexus car and on the instigation of proposed accused No. 9 Noor Bibi came at the bungalow and committed shameful activities which cannot be reduced in writing, extended threats of dire consequences and on show of force dispossessed the applicant party, locked the main gate of bungalow and asked the applicant party that if they reported the matter to anyone they will be booked in series of false cases or will be killed in mock encounter. The applicant produced the video showing the high handedness of the proposed accused persons. He approached police station for registration of case but they refused; hence he filed application under Section 22-A & B Cr. P.C. before learned Additional Sessions Judge, Khipro,

who after calling report from SHO PS Khipro perused the same and declined the application of applicant, hence the instant application.

3. Learned counsel for the applicant argued that the official respondents who are in league with proposed accused have submitted concocted inquiry report; that learned Additional District Judge, Khipro committed illegality by dismissing his application relying upon the 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.

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 Additional Sessions Judge, Khipro refusing to give direction to police to register a case could interfere under Section 561-A Cr. P.C; 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 Additional Sessions Judge, Khipro vide order dated 5.10.2021.

7. In the circumstances when I 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 casted upon the Station House Officer to register FIR to investigate it 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 requires 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, learned counsel for applicant has categorically stated that he wanted the accused persons in his version of 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 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 the 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 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 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 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 criminal case to satisfy him from the available record regarding registration of criminal case thus; he has rightly declined the request of applicant for registration of 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 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