

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Miscellaneous Application No. S-320 of 2018

Applicant: Allah Dino Bhangwar son of Mehar Ali
through Mr. Nasrullah Solangi, advocate.

The State: Through Mr. Khadim Hussain Khooharo, A.P.G.
alongwith Inspector Baharuddin Keerio, SHO, P.S.
Buxapur and WHC Sukhio Khan Cholyani, the proposed
accused.

Date of hearing: 20.12.2018

Date of decision: 20.12.2018

ORDER

Khadim Hussain Tunio, j. Through present Criminal Miscellaneous Application, filed under section 561-A, Cr.P.C, the applicant has assailed order dated 26.11.2018, passed by the learned 1st Additional Sessions Judge/Ex-Officio Justice of Peace Kandhkot, whereby he dismissed the application of the applicant for registration of F.I.R against the proposed accused into the book u/s 154, Cr.P.C, as no cognizable offence was made out.

2. Briefly, facts of the present case that lead to filing of the application are that in the month of *October* 2018, Shahzore Bhangwar and others trespassed into the house of the petitioner to commit theft. At that time, one of the accused was caught hold of and handed over to the police *i.e. proposed Accused No. 1*, who confined the apprehended accused but later on, after *allegedly* receiving bribe, set him free. Thereafter, on 05.11.2018, Respondent No. 1 & 2 along with other police constables raided the house of the applicant, caused damage to the household articles and demanded an amount of Rs.200,000 otherwise threatened to take his life in a *false* police encounter. Then on the sake of Holy Quran, they left while issuing further threats to the applicant.

3. After finding no other way, the applicant filed an application u/s 22-A & B, Cr.P.C in the court of Sessions Judge/Ex-Officio Justice of Peace Kandhkot which was later on transferred to learned 1st Additional Sessions Judge/Ex-Officio Justice of Peace Kandhkot, who, vide order dated 26.11.2018, dismissed the same, hence this application.

4. Learned counsel for the applicant has contended that while passing impugned order, the learned 1st Additional Sessions Judge/Ex-Officio Justice of Peace Kandhkot has not assigned any cogent reasons and has failed to act judicially; that learned Ex-Officio Justice of Peace was required to direct the concerned SHO P.S Buxapur, who is also an accused, to register the case rather than decide the matter on merits. He further submits that the Respondent No. 1 knowingly and deliberately did not register F.I.R of the applicant who narrated him the facts of a cognizable offence as stated above, though the SHO was duty bound to register the F.I.R of the applicant into the book u/s 154 Cr.P.C against the proposed accused because they have committed a cognizable offence; that section 22-A & B, Cr.P.C empowers the 1st Additional Sessions Judge/Ex-Officio Justice of Peace Kandhkot to issue directions to concerned police, on complaint, regarding non-registration of criminal case. He further submits that proposed accused have committed an offence, therefore they are liable to be dealt with in accordance with law. He has therefore prayed that the Respondent No. 1 be directed to register the F.I.R against the proposed accused persons who have committed the cognizable offence.

5. Proposed accused/SHO P.S Buxapur/Respondent No. 1 has filed his comments in which he has denied the allegations of Cr. Misc. Application. He further submits that the applicant party belongs to a criminal family and they have managed bogus and fabricated stories against the local police in order to pressurize them.

6. On the other hand, learned A.P.G for the State has fully supported the impugned order and opposed the present application.

7. I have heard the learned counsel for the applicant, learned A.P.G and have perused the record with their assistance.

8. From the perusal of record, it transpires that the applicant has failed to disclose the proper story of the whole incident. He has also failed to disclose the date, time and the proper place of incident before this court to ascertain his claim in this Misc. Application. It further appears that he has no evidence whatsoever of the alleged incident and considering such facts, the learned 1st Additional Sessions Judge/Ex-Officio Justice of Peace Kandhkot dismissed his application. It appears that the applicant has not

come to this court with clean hands and filed the present application with the sole intention to drag the matter.

9. There are many precedents/instances regarding misuse of provisions of Section 22-A & B, Cr.P.C and it is the basic duty of the Court that such misuse be taken care of and such an application should not be treated lightly and decided in a mechanical manner for issuing directions to police for lodging the F.I.R, conducting investigation and prosecuting the alleged accused. I am fortified in my view in the light of the principle laid down in the case of ***Imtiaz Ahmed Cheema v. SHO P.S Dharki, Ghotki (2010 YLR 189)*** wherein it has been observed that:-

“The provisions of Section 22-A & B 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 provisions of Section 22-A Cr.P.C. The courts in mechanical manner should not allow applications under section 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 practise 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 everyone. 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.”

10. Learned single bench of this Court has taken similar view while placing reliance on aforesaid decision/verdict in the case of ***Jamil Ahmed Butt & another v. The State through Prosecutor General, Sindh and 2 others (2014 P.Cr.L.J 1093)***.

11. The above seems to be the background which necessitated Apex Court in chalking out criterion to entertain such an application. The operative part of the case of ***Younas Abbas (PLD 2016 SC 581)***, being relevant is referred hereunder:-

*“11. ... The functions, the Ex-Officio Justice of Peace performs, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with things **mechanically**. His functions as described in clauses (i) (ii) & (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 lies before him demand discretion and **judgment**.”*

(emphasis supplied)

12. The insertion of section 22-A(6)(iii) was never meant to necessary allow every such application or else the legislature would not have used the word “**may**” in subsection 6, which (*word may*) always speaks of *discretion* by application of mind. This, it is settled law that the Ex-Officio Justice of Peace may refuse to issue direction regarding registration of a case and may *competently* dismiss any application under Section 22-A (6) Cr.P.C, reminding the complaining person of his alternative statutory remedies under section 156(3) Cr.P.C and 190 Cr.P.C as well as the fact that he has a remedy available to him to file a criminal/private complaint under section 200 Cr.P.C. So also, there are cases where complainant party may be in a better position in pressing its allegations by filing criminal complaint rather than forcing the police to register their criminal case and to investigate when the police itself was not convinced of the complainant party’s allegations being correct. In this respect, reliance may be placed upon cases of **Kizar Hayat & others v. Inspector General of Police (Punjab) Lahore & others (PLD 2005 Lahore 470)** and **Habibullah v. Political Assistant Dera Ghazi Khan & others (2005 SCMR 951)**.

13. The Hon’ble Supreme Court has been pleased to observe in case of **Rai Ashraf & others v. Muhammad Saleem Bhatti & others (PLD 2010 SC 691)** that *it is a settled law that each and every case is to be decided on its own peculiar facts and circumstances as law laid down in case of Muhammad Saleem (1994 SCMR 2213) & Mushtaq Ahmed (PLD 1973 418)*. The relevant observation in Mushtaq’s case (*supra*) is as follows:-

“Everything said in a judgment and more particularly in a judgment in a criminal case must be understood with great particularity as having been said with reference to the facts of that particular case.”

14. It has also been held by the Hon’ble Apex Court in the above referred case that:-

*“It is admitted fact that petitioners have alternate remedies to file private complaint before the competent Court, therefore, constitutional petition was not maintainable and the High Court has erred in law to send the copy of the writ petition to the S.H.O. concerned. The direction of the High Court is not in consonance with the law laid down by this Court in **Jamshaid Ahmed's case (1975 SCMR 149)**. It is also a settled law that the learned High Court had no jurisdiction whatsoever to decide the disputed questions of fact in constitutional jurisdiction. In the case in hand,*

respondent No.1 has more than one alternate remedies as alleged by him in the application that he had secured restraining order against the petitioners from the civil Court, therefore, Additional Sessions Judge/Ex-Official Justice of the Peace observed that respondent No.1 had to avail appropriate remedy for violation of status quo before the civil Court under the provisions of C.P.C. vide Order XXXIX, Rules 3 and 4, C.P.C. It is also admitted fact that there is a dispute qua the property in question between the parties as alleged by the petitioners and observed by the Courts below. It is a settled law that constitutional jurisdiction is discretionary in character which is to be exercised after proper application of mind with cogent reasons and same should not be exercised arbitrarily. The learned High Court had erred in law to exercise discretion in favour of the respondent No.1 without realizing that the respondent No.1 had filed application before the Additional Sessions Judge/Ex-Officio Justice of the Peace to restrain the public functionaries not to take action against him in accordance with the LDA Act 1975, Rules and Regulations framed thereunder, therefore, respondent No.1 had filed petition with mala fide intention and this aspect was not considered by the learned High Court in its true perspective.”

15. It is the duty of the Justice of Peace that while scanning averments of application for registration of F.I.R, he must apply his judicial mind being a Senior Judicial Officer and adjudge the entire set of allegations cautiously. Justice of Peace is not bound to issue direction to police in each and every case to record the statement of complainant if apparently no cognizable offence is made out or complaint is tainted with malice and based on ulterior motives, he can call for a report from SHO concerned to examine the authenticity of the allegations levelled against the defending party. Justice of Peace should also keep in his mind the aspect that any direction issued unnecessarily or in routine manner may cause humiliation, harassment and mental agony to the proposed accused and it would take years to conclude the trial of the case arisen out of any FIR.

16. For what has been discussed above, it appears that the applicant has failed to make out any case for taking cognizance of offence and no illegality has been committed by the Justice of Peace while passing the impugned order. Resultantly, instant Criminal Miscellaneous Application was dismissed vide short order dated 20.12.2018.

JUDGE