

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No. 117 of 2022

Date	Order with Signature(s) of Judge(s)
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Fresh Case.

1. For order on Misc. Application No. 2270/2022 (Urgency Application).
2. For order on Misc. Application No. 2271/2022 (Exemption Application).
3. For hearing of main case.

23.02.2022

Mr. Syed Farhat Hussain, Advocate for applicants.

1. Urgency application is granted.

2-3. Through instant Criminal Misc. Application, the applicants have impugned order dated 11.02.2022, passed by the learned 2nd Additional Sessions Judge, Karachi-West (respondent No.1).

The brief facts of the case are that respondent No. 2 herein filed Criminal Misc. Application No. 167 of 2022, [*Re: Abid Ali vs. the S.S.P. District West (Complaint Cell), Karachi and S.H.O. P.S. Manghopir, Karachi*] under section 22-A (6) (i), Cr.P.C. before Sessions Judge, Karachi-East seeking directions to the said S.H.O. to provide legal protection to him and lodge F.I.R. against proposed accused persons/applicants for kidnaping of his brother, namely, Noor Hussain, who was allegedly kidnapped by the applicants on 13.01.2022 and to recover him. The said application was heard and allowed by the respondent No.1 directing the said S.H.O. to record the statement of respondent No. 2 / petitioner and thrash out the truth concerning the allegation of both sides. It was further directed that during investigation, if it comes on screen that present applicant/petitioner/respondent No. 2 without true substance registered a false crime against the proposed accused, then F.I.R./proceedings be initiated against the applicant/petitioner/respondent No.2 under section 182 P.P.C. with due intimation to office of the said Court. It is against that order, the instant Cr. Misc. Application has been preferred by the applicant, under section 561-A, Cr. P.C.

Learned counsel for the petitioner mainly contends that the impugned order is not sustainable in law; that the respondent No. 1 passed the impugned order without going through the real facts, merit and demerits of the case; that the respondent No. 2 is a land grabber, who in order to digest valuable property of the applicants has created a false story against them and such proceedings under section 4 of the Illegal Dispossession Act bearing I.D. No. 15 of 2021 are pending against him before learned IInd Additional District Judge, Karachi-West; that the respondent No. 1 has erred while passing the impugned order as the same was passed without proper verification of facts and applying his judicious mind.

There can be no cavil to the proposition that once the allegation with respect to the commission of a cognizable offence is communicated to police, the police is duty bound to register a case. In the case of Sana Ullah versus S.H.O, Police Station, Civil Line Gujrat and 3 others (PLD 2003 Lahore 228) while interpreting Section 154, Cr.P.C, it was held that words used in section 154 of the Cr.P.C “*every information relating to commission of a cognizable offence*” pertains only to the information so supplied and do not pertain to actual commission of the cognizable offence and that information supplied should be about an alleged commission of a cognizable offence irrespective of its truthfulness or otherwise and concerned police official has to satisfy himself only to the extent that the information is in respect of a cognizable offence. It was also held that at the time of first information report, accused persons named in the complaint have no right of hearing. It is, therefore, obvious that if there is an information regarding commission of a cognizable offence, the police officer concerned is under statutory obligation, without hearing the accused person, to enter it in the prescribed register. Failure of the concerned police officer to register a complaint so made or his resorting to delaying tactics, amounts to failure to discharge statutory obligations, which attracts provisions of Section 22-A (6) (i), Cr.P.C.

An aggrieved person is well within his rights to approach Justice of Peace under section 22-A(6) (i), Cr. P.C, with a prayer for registration of the case, and if the Justice of Peace comes to the conclusion that a cognizable offence is apparent from the data available on the record, he can pass an order for registration of the F.I.R.; as such, the Justice of Peace is saddled with the administrative duty to redress the grievances of the complainant aggrieved by refusal of police officer to register their reports.

I am not impressed with the arguments of learned counsel for the applicant. Under section 22-A(6) (i), Cr. P.C, the Justice of Peace is not authorized to assume the role of investigating agency or prosecution. Even minute examination of the case and fact findings upon the application and report of police is not included in the function of the justice of Peace.

It may also be observed that every citizen has got a right to get his complaint registered under section 154, Cr.P.C. with local police when complaint makes out a cognizable offence, a safeguard against false complaint is provided under section 182, P.P.C. whereby a person giving false information to an officer in-charge of a police station can be prosecuted for an offence punishable under sections, 182 or 211, P.P.C., if such information is found to be false.

For the foregoing facts and reasons, there appears no illegality or irregularity in the impugned order requiring any interference of this Court under its inherent powers under Section 561-A, Cr.P.C. Hence, this Crl. Misc. Application is dismissed in limine, along with pending application.