

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No. 122 of 2022

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

1. For order on Misc. Application No. 2311/2022 (Urgency Application).
2. For order on Misc. Application No. 2312/2022 (Exemption Application).
3. For hearing of main case.
4. For order on Misc. Application No. 2313/2022 (Stay Application).

22.02.2022

Mr. Muteeullah Gondal, Advocate for applicant.

1. Urgency application is granted.

2-4. Through instant Criminal Misc. Application, the petitioner has impugned order dated 16.02.2022, passed by the learned 4th Additional Sessions Judge & Ex-Office Justice of Peace, Karachi-West (respondent No.2).

The brief facts of the case are that respondent No. 6 filed Criminal Misc. Application No. 185 of 2022, [*Re: Mst. Bisma Kainat vs. the S.S.P. (Complaint Cell) District West and others*] under section 22-A (6) (i), Cr.P.C. before respondent No. 2 seeking directions to respondent No. 2/ S.H.O. P.S. Surjani Town, Karachi to take strict legal action and register the F.I.R. against the proposed accused persons, namely, Syed Amir Hussain Shah Kazmi and Ghareeb Shah (son and husband of the petitioner respectively) and their companions as per the contents of the applicant's (respondent No. 6) application, for cognizance of offence committed by them, who allegedly caused harassment to the respondent No. 6 and her daughter and threatened to kill her and involve her in false cases. The said application was heard and allowed by the respondent No. 2 directing the respondent No. 6/applicant to appear before the S.H.O. Surjani Town P.S. Karachi who shall record her statement under section 154 Cr.P.C. as per her verbatim and if any cognizable offence stands made out, the F.I.R. shall be registered by him as per law and in case of making out a non-cognizable offence, he shall submit the

report to the concerned judicial magistrate under section 155 Cr.P.C. The said S.H.O. was further directed to provide legal protection to the applicant (respondent No. 6) and her family members from the said proposed accused persons in accordance with law, if required. It is against that order, the instant Cr. Misc. Application has been preferred by the petitioner, under section 561-A, Cr. P.C.

Learned counsel for the petitioner mainly contends that the impugned order is not sustainable in law; that learned Justice of Peace passed the impugned order without going through the real facts, merit and demerits of the case; that the marriage of petitioners' son, namely, Syed Aamir Hussain Shah Kazmi and respondent No. 6 was solemnized on 12.06.2018 and out of wedlock two children, namely, Syed Umar Hassan Shah and Syed Umair Hussain Shah were born; however, due to matrimonial dispute on 28.12.2021 the respondent No. 6 left the house of petitioner alongwith one minor Umair Hussain Shah and later on got custody of another son Syed Umar Shah under section 491 Cr.P.C. from the Court of learned Sessions Judge, Karachi-Central vide order dated 19.01.2022, whereafter the petitioner's son filed G&W Application No. 349 of 2022 in the Court of learned IVth Civil/Family Judge, Karachi-West against respondent No. 6 seeking custody of minor children; however, the spouse settled their dispute by executing a mutual divorce deed dated 27.02.2022, whereby the respondent No. 6 willingly handed over custody of both minors to the petitioner's son; however, the respondents No. 5 & 6 violated the terms and condition of said deed and forcibly attempted to kidnap the minors and demanded Rs.500,000.00 in lieu of their custody, which was refused and resultantly they beaten the son of the petitioner but despite that respondent No. 6 filed false application against the husband and son of the petitioner; that the learned Justice of Peace 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 petitioner. 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. So far the applicant is concerned, she is even not the aggrieved person as she is not the proposed accused in the Criminal Misc. Application filed by the respondent No. 6 before the Ex-Office 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 applications.

Athar Zai

JUDGE