

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Misc. Appln. No.S- 688 of 2019

Date	Order with Signature of Hon'ble Judge
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**For hearing of main case**

(Process issued)

**06.12.2019**

Mr. Shahid Hussain Jogi Advocate for the applicant  
Mr. Allah Dino Kubar Advocate for proposed accused  
Mr. Shafi Muhammad Mahar, DPG for the State

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**Aftab Ahmed Gorar, J:-** The applicant by way of instant Criminal Miscellaneous Application under Section 561-A, Cr.P.C, has impugned the order dated 08.10.2019 passed by learned Ex-Officio Justice of Peace / Additional Sessions Judge Mirwah on application under Section 22-A and 22-B Cr.P.C, whereby he has dismissed the application of applicant.

2. The facts in brief necessary for disposal of instant Criminal Miscellaneous Application are that the applicant filed a criminal miscellaneous application u/s 22-A and B Cr.P.C seeking direction against SHO P.S Faiz Ganj to record his FIR against the private respondents, that he is owner of land bearing S.Nos.165 and others situated in Deh Budho Mulo, Taluka Faiz Ganj, whereas, private respondents were keeping evil eye upon the said land and were issuing threats, whereas the house of the applicant has been

constructed in the said land. It is alleged that on 02.07.2019 at 1000 hours, the applicant saw that 15 armed persons on a tractor trolley came there in order to occupy the said land, hence the applicant along with Sikander Ali, Mst. Jaman Khatoon, Mst. Sughran Khatoon, Mst. Ropa Khatoon and others also went there, they saw and identified the proposed accused, out of them proposed accused Mazhar abused them and all the proposed accused caused maltreatment to the applicant and his witnesses, they raised cries which attracted the other villagers, whereas police on call also arrived there and arrested two of the proposed accused namely Mazhar and Afzal and issued such letter to injured and then the applicant party went to hospital for treatment, obtained medical certificates and on approach the SHO refused to record his statement, hence the applicant filed the application before the Sessions Judge / Ex-Officio Justice of Peace seeking directions, but the same was dismissed vide impugned order dated 08.10.2019, giving rise to the present application.

3. It is contended by learned counsel for the applicant that the proposed accused have committed a cognizable offence, therefore, they are liable to be prosecuted in accordance with law; that in the incident the persons from the applicant side have sustained injuries and such medical certificates have been issued by the doctor; that

the version of the applicant is supported by the medical certificates; that the learned Ex-Officio Justice of Peace has not considered the actual facts and material produced by the applicant but only has given weight to the stance taken by the private respondents that there is dispute over landed property. In such circumstances, learned Ex-Officio Justice of Peace/ Additional Sessions Judge Mirwah ought to have directed the SHO P.S Faiz Ganj for registration of FIR against the private respondents for assaulting and causing injuries to the persons from applicant side. He lastly prayed that the impugned order may be set-aside and the SHO Police Station Mirwah may be directed to record the statement of the applicant u/s 154 Cr.P.C.

4. Learned counsel for the private respondents by supporting the impugned order sought for dismissal of the instant criminal miscellaneous application by contending that there is dispute between the applicant and private respondents over the landed property, whereas, the applicant intends to drag the applicant in false criminal litigations and he has roped almost 15 members of one and same family, most of them are old and aged persons upto 70 years; no such incident has taken place.

5. Learned DPG for the State did not support the impugned order and contended that the version as set-out in the memo of application is supported by the medical certificates, as the injuries sustained by

the injured Sikander Ali and Gul Nawaz are serious in nature, therefore, the private respondents are liable to be booked u/s 154 Cr.P.C.

6. I have considered the above arguments and perused the record. Admittedly, the applicant and the private respondents are disputing each other over the landed property. In these circumstances, the learned Additional Sessions Judge / Ex-Officio Justice of Peace has rightly passed the impugned order. The relevant portion of the impugned order is reproduced as under;

*“In fact this Court is not expected to act as the Post Office, meant to stamp such application and forward it to the S.H.O concerned to register the FIR, in fact the purpose of enacting Ss. 22-A & 22-B, Cr.P.C was not to grant a license to the people to cause harassment to the innocent persons, or to those who while in line of their duty take action against them by invoking the provisions under Ss. 22-A & 22-B Cr.P.C, besides that there is land mark judgments of Honourable Supreme Courts in which parameters has been settled, in this regard the guidance of PLD 2007 SC 539 and PLD 2016 SC 581 are very much helpful, so also, I am convinced by the precedents settled in (2015 P Cr.L J 846 Karachi High Court case) Nazir Ahmed case.*

*Besides that present parties are habitual in filing such type of frivolous litigation, as there dispute between the parties on the land adversely claimed by the parties and both the parties are claiming that they are in possession, at the most*

*matter is relating to the illegal dispossession and when the petitioner personally heard, he could not name all the respondent before this Court nor could give role to them that what they had done, he disclosed that incident was happened in night at 2200 hours but from memo of petition it is disclosing time at 1000 hours, in such circumstances apparently present application is nothing but an effort to lodge frivolous case against his rival party, who are almost all the male members of one and same family, brothers and father aged about more than 70 years old.”*

7. In view of the above, the learned counsel for the applicant has failed to point-out any illegality or irregularity in the impugned order, accordingly, the instant Criminal Miscellaneous Application is dismissed. However, the applicant is at liberty to avail the alternate remedy by filing direct complaint, if so advised.

Judge

ARBROHI