

**IN THE HIGH COURT OF SINDH CIRCUIT COURT,
LARKANA.**

Crl. Misc. Appln. No. S- 193 of 2021.

Applicant: Manzoor Hussain, through Mr. Khadim Hussain Khoso,
Advocate.

The State: Through, Mr. Muhammad Noonari, DPG.

Crl. Misc. Appln. No. S- 194 of 2021.

Applicant: Shahbaz Ali Saleero, through Mr. Khadim Hussain Khoso,
Advocate.

The State: Through, Mr. Muhammad Noonari, DPG.

Date of hearing: 02.08.2021.

Date of order: 06.08.2021.

ORDER

Adnan-ul-Karim Memon, J:- Through these Criminal Miscellaneous Applications the applicants seek annulment of the orders dated 24.6.2021 and 28.06.2021 passed by learned Additional Sessions Judge-I, ShahdadKot, whereby applications filed by the applicants in terms of Section 22-A (6) Cr. P.C, seeking registration of a criminal case/ F.I.R, against the proposed accused were dismissed separately. For convenience sake, an excerpt of the orders dated 24.6.2021 28.6.2021 are reproduced:-

Order dated 24.6.2021

“In light of material available, it appears that there is no prima facie case is made out in the instant petition. It appears that no cogent evidence/requisite documentary proof within four corners of law has been annexed with the instant petition. In view of the foregoing discussion, I am of the considered opinion that this is not a fit case to order registration of a criminal case, therefore, the petition stands dismissed”.

Order dated 28.6.2021

"In light of material available, it appears that there is no prima facie case is made out in the instant petition. It appears that no cogent evidence/requisite documentary proof within four corners of law has been annexed with the instant petition. In view of the foregoing discussion, I am of the considered opinion that this is not a fit case to order registration of a criminal case, therefore, the petition stands dismissed. However, the applicant is at liberty to file the direct complaint, if so advised".

2. It may be stated that in view of urgency shown by learned counsel for the applicant, these matters were taken up together and heard for disposal.

3. At the outset, I asked learned Counsel to satisfy this Court about the maintainability of instant Criminal Miscellaneous Applications under Section

561-A Cr. P.C, in terms of the findings of the learned Additional Sessions Judge-1, Shahdaktot as discussed supra.

4. In reply to the query, Mr. Khadim Hussain Khoso learned counsel for the applicants has briefed this court on the factual aspect of the case and argued that the Ex-Officio Justice of Peace has dismissed their applications under Section 22-A & B Cr.P.C., arbitrarily and summarily without appreciating the fact and law on the subject; that a cognizable offense was committed by the proposed accused as disclosed in their applications; that the decisions of the learned Justice of Peace are based on the police report, which was not called for under the law. Per learned counsel under section 22-A (6) Cr. P.C the learned Justice of Peace is authorized to issue direction to police, regarding registration of the criminal case if the cognizable offense is committed, however; he failed and neglected to issue such directions to the concerned police station; and, dismissed their applications abruptly, by relying upon the case of Muhammad Arif v. the State (2009 YLR 1533) and other related cases. Per learned counsel, the aforesaid cases are quite distinguishable from the facts of the present case. He emphasized that incharge of the concerned police station is duty-bound to incorporate the version of the applicant under section 154 Cr. P.C and he is not empowered to refuse to incorporate the stance of the applicants in 54 Cr. P.C book, for registering a cognizable offense. He prayed for setting aside the impugned orders passed by the learned Additional Sessions Judge-1, Shahdad Kot, by directing the concerned SHO, to register the case against the proposed accused in the line with the statement of the applicants.

5. I have heard the arguments of learned counsel for the applicants, perused the material available on record.

6. The questions, which agitate the controversy at hand, could be reduced to whether the order passed by learned Ex-Officio Justice of Peace refusing to give direction to police to register a case could interfere under Section 561-A Cr. P.C; and, whether the findings of learned Ex-Officio Justice of Peace is clear in its terms that no cognizable offense was made out as per police report thus could not be incorporated in 154 Cr. P.C book; and, whether registration of F.I.R is the only solution or the applicants have another remedy of filing the Direct Complaint as provided under section 200 Cr. P.C?

7. Primarily, the insertion of subsection (6) in Section 22-A and Section 25 of Cr.P.C. whereby Sessions Judges and on nomination by them the Additional

Sessions Judges became the Ex-officio Justices of Peace, has advanced and speeded the dispensation of justice. The object of insertion of subsection (6) was that an aggrieved person could get remedy in time at his doorstep, earlier what he could not get despite approaching this Court. The grievance of a person having no means and resources went unattended and un-redressed altogether. Wealthy, well off and well-connected people exploited this situation. They committed the crime and yet went scot-free. But ever since the day the Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-officio Justices of Peace, no rich and well off person could break the law with impunity or obstruct the person oppressed and assaulted from seeking remedy at his doorstep. If the SHO of a Police Station, owing to the influence and affluence of any, refused to register a case, a resort could be had by moving a simple application to the Ex-officio Justice of Peace for issuance of an appropriate order or direction. Aggrieved person, who could not afford the luxury of engaging a lawyer in the past for filing a writ petition in this Court to get the desired relief, could seek an order or direction from the Ex-officio Justice of Peace without spending much. He could complain against the neglect, failure, or excess committed by the Police Authorities concerning its functions and duties which in the past was no less than living in Rome and fighting with the Pope. On the aforesaid proposition, reliance is safely placed in the case of *Younus Abbas and others v. Additional Sessions Judge, Chakwal and others* (PLD 2016 Supreme Court 581).

8. The larger Bench of the Hon'ble Supreme Court in *Younus Abbas and others* (supra) while discussing powers of the Ex-officio justice of the peace under Section 22-A and 22-B has held as follows:

"The duties, the Justice of Peace performs, are executive, administrative, preventive, and ministerial as is evident from subsections (1), (2), (3), (4), and (5) of Sections 22-A and 22-B of the Cr.P.C. Such duties have not been a subject matter of controversy nor have they ever been caviled at by anybody. Controversy emerged with the insertion of subsection (6) in Section 22-A and Section 25 of the Cr.P.C. when Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-officio Justices of Peace. The functions, the Ex-officio Justice of Peace performs, are not executive, administrative, or ministerial since he does not carry out, manage or deal with things mechanically. His functions as described in Clauses (i), (ii), and (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 lis before him demands discretion and judgment. Functions so performed cannot be termed as an executive, administrative or ministerial on any account. We thus don't agree with the ratio of the judgments rendered in the cases of *Khizar Hayat and others v. Inspector General of Police (Punjab), Lahore and others* (PLD 2005 Lah. 470) and *Muhammad Ali v. Additional I. G.* (PLD 2015 SC 753) since it holds that the functions performed by the Ex-officio Justice of Peace are executive, administrative or ministerial."

9. It has been agitated that the provision of Section 22-A & B, Cr. P.C when examined in juxtaposition with Section 154 of Criminal Procedure Code bears material similarity between the two, and thus justice of peace is also empowered to order for registration of a criminal case under Section 154 Cr.P.C.

10. In Crl. Misc. Appln. No. S- 193 of 2021, the police officials present in court that the applicant's daughter-in-law Mst. Salma wife of Munir Ahmed Shaikh, alleged detainee left the house of her husband voluntarily due to certain domestic issues and appeared at police station Kamber city for legal protection. Subsequently, she was produced before the learned Civil Judge and JM-II, Kamber and upon her statement, she was allowed to go with her brother Khabbar with her consent. In view of the statement of SHO, Police Station Sijawal, coupled with the statement of Mst. Salma who voluntarily appeared before the learned Magistrate and with her consent she was allowed to accompany her brother Khabbar, thus prima facie no cognizable offense could be made out so far as the alleged detention of Mst. Salama is concerned. However, the allegations leveled by the applicant in his complaint before the learned Justice of Peace is concerned the same has been validly met by directions to the applicant to file a direct complaint on the subject issue if, he feels so aggrieved.

11. In Crl. Misc. Appln. No. S- 194 of 2021, during the arguments I have been informed by the police officials present in court that the applicant intends to lodge a counter FIR in connection with the crime No.35/2021 for the offense under sections 506/2, 337-F(i), 504, 34 PPC of Police Station Mahimakol which is registered against him. In support of his version, he placed reliance upon the statement dated 2.8.2021 and submitted that the alleged detainee has been arrested and remanded in police custody in the aforesaid crime under the private complaint. In view of the statement of SDPO, Miro Khan, District Kamber Shahdadkot, coupled with the statement dated 2.8.2021 to the fact that the brother of applicant Riaz Hussain Seelro has been arrested in crime No.35 of 2021 lodged by complainant Aftab Ahmed Patujo and the matter is under investigation thus prima facie no cognizable offense could be made out so far as the alleged detention of Riaz Hussain Selro is concerned. However, the allegations leveled by the applicant in his complaint before the learned Justice of Peace is concerned the same has been validly met.

12. In principle, the veracity of allegations and counter-allegations can only be thrashed out after a thorough probe and that can only be determined if the applicant brings his case before the concerned Magistrate under section 200 Cr. P.C, for the simple reason that the complaint was against police officials and private individuals. During the hearing of these Applications I inquired from the learned counsel for the applicants as to why he was insisting upon registration of FIR in respect of his version of the incident especially when they have the remedy to institute a private complaint containing their version of the incident and the accused persons in their respective private complaint can be summoned by the concerned Court to face a trial if they can prove their allegations against them.

13. In response to that query, the learned counsel for the applicants has categorically stated that they wanted the accused persons in their version of the 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 the 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 a 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) (1) of the same Code, including the powers to arrest an accused person. Such powers of the Investigating Officer or the investigating person recognize no distinction between an investigation in a State case and an investigation in a complaint case.

14. 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.

15. 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 the criminal case to satisfy him from the available record regarding registration of the criminal case thus; he has rightly declined the request of the applicant for registration of the criminal case under the peculiar circumstances of the case.

16. The object and purpose of registration of a criminal case is to probe and find evidence and place all such material before a Court of competent jurisdiction and not to satisfy the complainant/aggrieved person and if any such material is provided by the investigating agency, that would help the Court for arriving at just conclusion.

17. Nothing has been pointed out that the impugned orders shall prejudice the case of the applicants if they approach and file a direct complaint against the alleged excess of police and private party.

18. For what has been stated above, at this juncture, I am not persuaded to quash the orders dated 24.6.2021 and 28.06.2021 passed by learned Additional Sessions Judge-I, Shahdad Kot/ Ex-Officio Justice of Peace which are hereby maintained.

19. In view of above, the captioned Criminal Miscellaneous Applications are without any merit, the same stand dismissed. However the Applicants are at liberty to approach the concerned Magistrate and file a Direct Complaint for redressal of their grievances if so advised, and the same is required to be decided in accordance with law if filed.

JUDGE