

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. S – 2566 of 2012

Date

Order with signature of Judge

For Katcha Peshi :

Date of hearing : 28.09.2012.

Mr. Mushtaque Ahmed Shahani, Advocate for the petitioner.

Mr. Ayaz Hussain M. Solangi, Advocate for proposed accused 1 to 3.

Mr. Liaquat Ali Shar, Additional Advocate General.

Nadeem Akhtar, J.: This Constitutional Petition has been filed by the petitioner against the Province of Sindh, Station House Officer Police Station Ranipur, and nine proposed accused including four police officers of Police Station Ranipur and five private parties. The petitioner has prayed that respondent No.1 / Station House Officer Police Station Ranipur be directed to register his F.I.R. against the proposed accused, and that the proposed accused be directed to return back to the petitioner the articles stolen by them from him.

2. It is the case of the petitioner that the proposed accused No.1 got registered an F.I.R. against petitioner's uncle, namely, Mohbat, and cousins (sons of Mohbat) at Police Station Ranipur, and after registration of the said F.I.R., petitioner's uncle and cousins applied for bail which was granted to them by the 1st Additional Sessions Judge, Khairpur. The petitioner has alleged that on 30.08.2012 at about 04:00 PM, the proposed accused forcibly entered into his house and enquired about his uncle and cousins. When the petitioner informed them that his uncle and cousins are not in his house, the proposed accused No. 6 to 9 / police officers of Police Station Ranipur after beating him at the instigation of proposed accused No. 1 to 5 / private parties, forcibly took away his cattle, cash and other valuable articles. The petitioner has further alleged that the proposed accused also took away with them Ali Nawaz, who is also the uncle of the petitioner. According to the petitioner, he rushed to the concerned Police Station on the same day at 05:00 PM for lodging an F.I.R. in respect of the above incident, but the Duty Officer refused to register his F.I.R.

3. The proposed accused 1 to 3 / private parties have filed detailed objections to oppose this petition, wherein they have stated that the petitioner, who was their *Hari*, had illegally occupied their valuable land ; that in order to safeguard their valuable vested rights in their said land, they initiated civil litigation against the petitioner ; that they succeeded in the said litigation which went up to the level of the Hon'ble Supreme Court ; that in their execution proceedings, writ of possession has been ordered to be issued against the petitioner ; and that in order to obstruct the execution of their decree, the petitioner has concocted and filed this false case against them. Along with their objections, the proposed accused have filed copies of the relevant orders passed in their favour.

4. During the course of hearing, learned counsel for the petitioner conceded that, after refusal by the concerned police station / functionaries to record his statement and to register his complaint / F.I.R., the petitioner did not approach the Justice of Peace for redressal of his grievance. Mr. Shahani, learned counsel for the petitioner, submitted that difficulty / situation of parties should be examined in every case in the facts and circumstances of that particular case. According to him, in this case the petitioner was / is in such a difficult situation that he is entitled to invoke the Constitutional jurisdiction of this Court instead of approaching the Justice of Peace. In support of his submissions, he cited and relied upon the following cases :

I. **PLD 2005 Supreme Court 297** :

Mst. Anwar Begum V/S Station House Officer, Police Station Kalri West, Karachi and 12 others.

This authority is distinguishable from the instant case, as an F.I.R. had already been registered and a second F.I.R. was ordered to be registered by this Court in Constitutional jurisdiction in view of the special circumstances of the case, which Order was upheld by the Hon'ble Supreme Court. In the instant case, admittedly the concerned Station House Officer has refused to register petitioner's F.I.R.

II. **2011 CLC 1498** :

Rukhsana Jabeen V/S Additional District Judge and others.

In the above cited case, appeal filed by a tenant against the order of his eviction was allowed and ejection application filed by the landlord was dismissed. The order of the appellate court was

challenged in Constitutional jurisdiction before the Lahore High Court. The petition was allowed and the impugned order was set aside. This case is also distinguishable from the instant case as, firstly, to assail the order of the appellate court Constitutional petition was the only remedy for the landlord in the cited case, and secondly, Constitutional petition was allowed mainly because of the reason that ejectment application was dismissed by the appellate court without deciding important legal questions involved therein.

- III. **2010 MLD 128** :
Muhammad Asif V/S Umar Farooq Khan, Inspector Police and 5 others.

In the above mentioned case, the petitioner first filed a Criminal Miscellaneous Application before the Lahore High Court, and when important and vital information came on record therein through police functionaries, he sought an adjournment for filing Constitutional petition and then filed the same. It may be noted that before initiating the above proceedings, the petitioner in the said case filed an application before the Justice of Peace, Lahore, which was subsequently withdrawn by him. The cited Single Bench case, which is not binding on this Court in any event, is also not relevant to the facts of the instant case.

- IV. **2009 CLC 862** :
Riaz Mehmood Sheikh V/S Shamsheer Alam Khan and another.

In the cited case, it was an admitted position that rent had been paid to the landlord, but defence of the tenant was struck off and ejectment application was allowed. In such background, Constitutional jurisdiction of Lahore High Court was invoked. It was held that the impugned order was wholly without jurisdiction. The above case was on a completely different footing and it cannot be applied in the instant case.

- V. **2008 P.Cr.L.J. 986** :
Ghulam Mustafa V/S S.H.O. City Police Station, Athmuqam and 9 others.

In the above mentioned case, two F.I.Rs. were registered against the petitioner by private respondents, and when the petitioner was released on bail, he was tortured, his house was attacked and his grandson was killed by the private respondents. The petitioner filed an application before some senior police officer for lodging F.I.R.

against private respondents, which application was forwarded to the concerned Deputy Inspector General Police who sent the same to the concerned Station House Officer. Instead of registering petitioner's F.I.R., the Station House Officer arrested him and his sons in a false case. When all his efforts failed, the petitioner filed a Constitutional petition before the A.J.& K. High Court. Serious illegalities were observed by the learned High Court, such as, the Station House Officer investigated the case without registering petitioner's F.I.R., and at the instance of police, statement of the mother of the deceased was recorded before S.D.M. after court hours at 06:00 PM. The facts of the aforementioned case are completely different and Constitutional jurisdiction was exercised in the extra ordinary circumstances of the case in order to avoid miscarriage of justice as the impugned actions were without jurisdiction.

In my humble opinion, the above referred cases relied upon by the learned counsel for the petitioner are not relevant for the purpose of this petition and the same cannot be applied herein.

5. On the contrary, Mr. Liaquat Ali Shar, the learned A.A.G., has opposed this petition by submitting that the admitted existence of civil dispute between the parties is sufficient for dismissal of this petition. He has further contended that the petition is malafide as the same has been filed by the petitioner only in order to pressurize the proposed accused / private parties who have won cases against the petitioner up to the level of the Hon'ble Supreme Court. The learned A.A.G. has prayed for dismissal of this application.

6. The law on this point is now well settled that in case of a cognizable offence the complainant has to approach the Officer Incharge of such police station under whose jurisdiction such offence is said to have been committed. In such an event, the Officer Incharge of the concerned police station has no authority to refuse to record complainant's statement and / or to refuse to register an F.I.R. on his complaint. If the said concerned Officer Incharge fails or refuses to record complainant's statement and / or to register his F.I.R., then the complainant has to approach the Justice of Peace under Section 22-A Cr.P.C. On such complaint / application, if the Justice of Peace forms his independent opinion from the facts narrated to him by the complainant that a cognizable offence has been made out, the Justice of Peace is bound to issue a direction to the concerned Station

House Officer for recording of F.I.R. This view expressed by me is fortified by a number of authorities of the Hon'ble Supreme Court and reported cases of High Courts, but I would like to refer only to the following :

A. In the case of Muhammad Bashir V/S Station House Officer, Okara Cantt. and others, reported as **PLD 2007 Supreme Court 539**, the Hon'ble Supreme Court was pleased to hold *inter alia* that the Officer Incharge of a police station or anyone else has no authority to refuse to record an F.I.R. ; and that under section 22-A(6) Cr.P.C., the Justice of Peace was to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence, and if it did, then to direct the concerned S.H.O. to record an F.I.R. without going into the veracity of the information in question. It was further held in this case by the Hon'ble Supreme Court that powers of an Ex-officio Justice of Peace under Section 22-A(6) Cr.P.C. could not be equated with the Constitutional jurisdiction of High Courts.

B. In the case of Mst. Bhaitan V/S the State and 3 others, reported as **PLD 2005 Karachi 621**, it was held *inter alia* by this Court that Ex-officio Justice of Peace has to form his own independent opinion about the offence being cognizable or non-cognizable from the facts narrated to him by the complainant orally or in writing, and if he finds that cognizable offence appears to have been committed, and according to the material produced before him F.I.R. has not been registered, then he is required to pass immediate orders on the application or complaint of non-registration of F.I.R. by adopting summary procedure. It was also held in this case that the Officer Incharge of police station is bound to register F.I.R. under Section 154 Cr.P.C, and he has no power to refuse to register the same if from the information a cognizable offence is made out, whether such information is false or correct.

C. Similarly, in the case of Salah-ud-Din Khan, S.H.O. and 2 others V/S Noor Jehan and another, reported as **PLD 2008 Peshawar 53**, the Peshawar High Court had taken the same view by holding *inter alia* that it is mandatory for the police to record F.I.R. under section 154 Cr.P.C if a cognizable offence was alleged ; that Superior Courts had time and again reiterated the requirement of strict compliance of Section 154 Cr.P.C ; and that refusal of registration of FIR when commission of a cognizable

offence was reported to the police would be a sheer neglect on the part of concerned police officer in performance of his duty which must expose him to departmental disciplinary action. It was also held in the above cited case that the Ex-officio Justice of Peace has been given supervisory administrative jurisdiction over police officers / officials relating to registration of F.I.R., and in a case where Ex-officio Justice of Peace finds that the incident of cognizable offence was reported to police, but no F.I.R. was registered, he was required by law to issue a direction for registration of case.

7. In addition to the legal position discussed above, the objections raised by proposed accused 1 to 3 cannot be ignored. It has come on record that proposed accused 1 to 3 initiated civil litigation against the petitioner wherein they have succeeded up to the level of the Hon'ble Supreme Court by establishing their title, and execution proceedings initiated by them against the petitioner are at the final stage. The petitioner has not denied or disputed the contents of the said objections. Thus, discretionary relief in Constitutional jurisdiction, which even otherwise cannot be invoked in this particular case for the reasons discussed herein, cannot be granted to the petitioner.

8. It is an admitted position that the petitioner approached the Duty Officer of the concerned Police Station for lodging F.I.R., but no action was taken on his complaint. It is also an admitted position that the petitioner did not file any application / complaint before the Justice of Peace against non-registration of his complaint / F.I.R. The petitioner failed to avail the alternate remedy, which was not only an efficacious and adequate remedy, but was the only remedy available to him under the law. This petition is not maintainable in view of the above discussion and also as the relief sought by the petitioner cannot be granted under the Constitutional jurisdiction of this Court, especially with regard to powers of an Ex-officio Justice of Peace under Section 22-A(6) Cr.P.C. as the same cannot be equated with the Constitutional jurisdiction of this Court as held by the Hon'ble Supreme Court in PLD 2007 Supreme Court 539 Supra. The prayer for recovery of stolen cattle and articles is also not maintainable under the Constitutional jurisdiction of this Court. The petitioner, if he is so advised, may approach the Justice of Peace regarding his complaint, and may initiate proceedings in accordance with

law for recovery of his stolen cattle and articles. The petition is, therefore, dismissed.

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