

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No. 206 of 2022

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

1. For order on Misc. Application No. 4062/2022 (Urgency Application).
2. For order on office objection and reply of advocate at flag "A".
3. For order on Misc. Application No. 4063/2022 (Exemption Application).
4. For hearing of main case.

01.04.2022

Mr. Akhtar A. Channar, advocate for applicants.

1. Urgency application is granted.

2-4. The respondent No.5 herein filed Cr. Misc. Application No. 658/2022, under section 22-A, Cr.P.C. (*Re: Anwer Hussain vs. D.I.G. South & others*) before the learned Sessions Judge/Ex-Officio Justice of Peace, Karachi-South seeking directions to respondents to record his statement under section 154, Cr.P.C. and register the F.I.R. for the offence under section 302, 504, 506/34, P.P.C. against the proposed accused/ applicants and two unknown persons, who allegedly used abusive language, extended threats of dire consequences, beat his father mercilessly, who later died. It was the case of the respondent No.5 that the S.H.O. P.S. Napier (*respondent No.4*) refused to lodge the F.I.R. The said Cr. Misc. Application was heard and allowed by the learned VIII-Additional Sessions Judge, Karachi-South vide order, dated 28.03.2022, with following observations:-

“From perusal the contents of this Cr. Misc. Application as well as report submitted by the concerned SHO, it appears that though the concerned enquiry officer found that the alleged offence mentioned in this criminal miscellaneous application has been occurred but has not recorded the proper statement of him & seems that he deliberately supporting the proposed accused alleging the incident as civil nature dispute, whereas it is required to record the statement of applicant as per allegations mentioned in this criminal miscellaneous application for committing the offence to which the father of applicant/petitioner was died, as it is well established principle of law that any person appears at police station, then the Incharge of police station is bound to record the statement of person and register the FIR against the proposed accused, if any cognizable offence made out against the accused. In case, no cognizable offence made out then such entry be kept in the register under section 155 Cr.P.C. Therefore, applicant is at liberty to appear before SHO/Duty Officer of Police Station Napier, to record his statement, thereafter the said police official will firm his own independent opinion in respect of crime and its

falling on either clauses. During investigation, if it comes on screen that present applicant without true substance registered a false crime against the proposed accused, then proceedings be initiated against the applicant U/s 182 PPC with due intimation to this office. Although, police is required to investigate all allegation of commission of cognizable offence, yet proposed accused cannot be arrested unless some tangible material became available, which can cause a reasonable suspicious of their having committed the offence, as laid down by the Honourable Supreme Court in case of Govt. of Sindh V/s Raeesa Farooq (1994 SCMR 1293). Hence the instant petition is disposed of in above terms.

It is against said order, the instant Cr. Misc. Application has been preferred by the applicants, under section 561-A, Cr. P.C.

Learned counsel for the applicants contends that the impugned order is not sustainable in law; that the learned Justice of Peace passed the impugned order without going through the real facts and merit and demerits of the case; that the applicants are innocent and have falsely been involved in this case with mala fide intention and ulterior motives; that there is no independent witness of the alleged occurrence; 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; therefore, the same is liable to be set aside.

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 his report.

I am not impressed with the arguments of learned counsel for the applicants. 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 listed application.

JUDGE