ORDER SHEET

IN THE HIGH COURT OF SINDH KARACHI

Criminal Misc. Application No.736 of 2021
&
C.P.No.S-09 of 2022

Date	Order with signature of Judge

APPEARANCE:

Mr. Aamir Mansoob Qureshi advocate for the applicant in Crl. Misc. Application No. 736/2021 and for respondent No. 4 in CP.No.S-09 of 2022.
Mr. Haider Waheed advocate for respondents No. 2 and 3 in Crl. Misc. Application No. 2 & 3 in Crl. Misc. Application No. 736/2021 and for petitioner in CP.No.S-09/2022.
Mr. Gazain Z. Magsi advocate for respondent No.5 in Crl. Misc. Application No. 736 of 2021.
Mr. Aamir Raza Dayo advocate for respondent No.6 in Crl. Misc. Application No. 736/2021.
Ms. Seema Zaidi DPG
Syed Mohsin Shah, AAG

Date of hearing: 14th March 2022.
Date of order:- 17th March 2022

Salahuddin Panhwar, J.- Applicant has assailed the order dated 26.03.2021, whereby application moved by the applicant under Sections 22-A and 22-B, Cr.P.C. for registration of FIR against respondents No. 2 to 6 was dismissed by the learned Ex-Officio Justice of Peace/X-Additional Sessions Judge, Karachi South in Criminal Misc. Application No. 229 of 2021 .

2. Succinct facts of the case as enumerated in the application are that; for the last 15 years the applicant is working as Security Incharge for Creek Marina Project situated in DHA, Phase-VIII, Karachi. On 17.01.2021 at 4:30 p.m. 15/20 unknown persons led by respondents No.4 and 5 Major Rtd. Nadeem and Umair Iqbal entered into Creek Marina office by claiming that they were acting on behalf of respondents No.2 and 3, owners of Siddique Sons Ltd and cause harassment to the applicant as well as other guests who were present in the office to attend Hi-Tea, they demolished the office, succeeded in stopping the construction of Creek Marina Project and thereafter they left the office while extending threats of dire consequences. Incident was immediately reported to the concerned Police Station by

moving written application supported with pictures for registration of the FIR, but no action was taken, hence he approached SSP South, however, no fruitful result could be achieved.

3. The applicant then approached the Ex-Officio Justice of Peace/X-Additional Sessions Judge, Karachi South by filing Criminal Misc. Application No. 229/2021 under sections 22-A and 22-B, Cr.P.C for issuance of direction to the concerned SHO to lodge FIR against the respondents. The learned Ex-Officio Justice of Peace/X-Additional Sessions Judge, Karachi South, after hearing learned counsel for the parties, declined the prayer of the applicant with regard to lodging the FIR, however, concerned authorities were directed to provide legal protection to the applicant and staff members of Creek Marina in accordance with law.

4. The learned counsel for the applicant, inter alia contends that with regard to criminal offence, Station House Officer (SHO) of concerned police station is bound to record the statement of the applicant. He has relied upon case law reported as Younus Abbas Case **PLD 2016 SC 581**. He has further contended that photographs were available with Ex-Officio Peace of Justice but the learned Ex-Officio Justice of Peace erroneously declined prayer of the applicant for lodgment of the FIR on the premise that civil litigation is pending between the parties which is hardly a ground to refuse the relief sought by the applicant, even otherwise; it was a good case for issuance of direction to the concerned SHO for recording the statement of the applicant. He has further contended that the order of learned Ex-Officio Justice of Peace is illegal and without legal justification. He has lastly contended that the applicant has prima facie made out a case of cognizable offence, as such; the SHO concerned cannot refuse to register FIR who is duty bound under section 154, Cr.P.C. to record the statement of the applicant.

5. In contra learned counsel for the respondents also relied upon **PLD 2016 SC 581** on the plea that FIR cannot be used as a tool of harassment, no offence was committed. With regard to subject matter property stay order passed by this Court in Civil Suit was operating, therefore, the respondent along with police approached there and police maintain the situation of affray, hence, alleged offence is a managed story in order to convert civil litigation into criminal litigation. The sponsors of Company Creek Marina Pvt Limited had

embezzled billion of rupees and in this regard, civil /criminal proceedings are initiated against them, they in order to save their skin have made a frivolous application to the learned Ex-Officio Justice of Peace, which was rightly declined through impugned order. He has further contended that in view of case law reported in **1975 SCMR 149** in cases of grave injustice, this Court is competent to disturb the findings of the Ex-Officio of Justice, whereas; Ex-Officio Peace of Justice has passed order while applying his mind in accordance with law.

6. Learned AAG and DPG have also opposed the instant application and contended that applicant has alternate remedy available under the law i.e. the Private Complaint to be filed before the competent court of law. However, they state that the official respondents will act strictly in accordance with law.

7. Heard and perused the record.

8. Admittedly, an officer incharge of the Police Station is under legal and statutory obligation to record the information provided to him by any person related to the commission of a cognizable offence, without going into its veracity that it is true or false. Likewise section 22-A (6) Cr.P.C. empowers Justice of Peace for issuance of appropriate direction to the police authorities concerned, on complaint, for registration of a criminal case. But all these powers would not be exercised in random manner without application of independent mind. The powers under section 154, Cr.P.C and section 22-A(6), Cr.P.C. are vested in the police authorities and Justice of Peace, respectively, for dispensation of justice, but on the same time, the Court would keep in mind that the said powers are never meant to be exercised in aid of injustice. Article 1999 of the Constitution empowers High Court to review or set-aside order passed U/S 22-A Cr.PC but such powers can only be exercised if lower Court has not applied mind or had overlooked some material aspects of the case. When the lower Court has passed a well-reasoned order keeping in view the fact of the case, no interference is required by this Court and approaching this Court should be discouraged. Reliance can be placed on the Case of ***Syed Zafar Ali Shah v. Falak Sher Farooka, Additional District & Sessions Judge, Multan and 4 others (2005 MLD 1593)***. In the case reported as ***Younas Abbas vs. Additional Sessions Judge, Chakwal (PLD 2016 SC 581)***, where

in the note added by Honourable Justice Rtd. Manzoor Ahmed Malik (as his Lordship then was), it was inter-alia observed that:

> ***".....powers under Section 22-A (6) Cr.P.C given to an Ex-Officio Justice of Peace to issue appropriate directions on a complaint filed by an aggrieved person for registration of a criminal case (Clause-i) and for transfer of investigation from one police officer to another (Clause-ii) though efficacious and expeditious besides being at the doorstep, but at the same time, these provisions should not be unbridled or open-ended. These provisions must be defined, structured and its contour delineated to obviate misuse by influential and unscrupulous elements....."***

9. In the case reported as ***Jamal Khan vs. Secretary Home Department (2021 SCMR 468)***, the Honourable Supreme Court, in a matter involving civil dispute, refused to interfere in the findings whereby registration of a criminal case was declined. In the present case, perusal of record reflects that after filing of an Application under sections 22-A and 22-B, Cr.P.C. before learned Ex-Officio Justice of Peace, report was called from concerned SHO. It would be conducive to reproduce the relevant portion of the report as under:

> ***".....as per inquiry it reveals that on 17-01-2021 a complaint was received on madadgar 15 in response Police reached at the spot, complainant major Naveed showed stay order copy of court and reported that other party (plaintiff) is violating the court stay order while other party (plaintiff) representatives were there, as the matter was already in court, complainant party was advised to approach court for violation of stay order and the other party (plaintiff) was also advised to approach court against the stay order if they have any reservations, both parties were further advised to maintain peace, Police went to maintain law & order situation. The SD entry No. was also been made (Copy Enclosed).***
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> ***As per orders passed by Honorable Court on 04-02-2021 the inquiry was conducted the statement of complainant Nawab Ali S/o Hashim Khan was recorded through which it came to notice that 1. Major (R) Nadeem, 2. Omair Iqbal, 3.Adnan along with some unknown came at the site on 17-01-2021 & forcefully interrupted the sales office and stopped construction work and also harassed the office staff through statement of Nawab Ali no cognizable offence has been made so FIR cannot be registered, however; the other party was also tried to contact but due to shortage of time statement was not recorded.***
>
> ***PRAYER***
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> ***It is therefore, prayed before the Honorable Court that in view of the above facts as both parties are business partners and the case is already in the Honorable High Court Suit No.134/2021 which is same as Application No. 229/2021 U/S 22-A Cr.P.C. It is further humbly requested that the application may kindly be filed as the matter is of civil nature and there is business dispute between both parties.***

10. Impugned order reflects that the substance of the allegations was considered and weighed in juxtaposition with the material available. Admittedly, criminal/civil litigations are pending adjudication against sponsors of Marina Creek Pvt. Limited regarding embezzlement. A list of six suits and FIR No.80/2020 under Section 489-F/420 PPC is also available on record. The report submitted by the police categorically depicts that no incident as alleged by the applicant had taken place.

11. Needless to mention here that when the FIR is refused to be registered by the police then other remedies are available for the aggrieved party; firstly, by approaching the Sessions Judge/Ex-Officio Justice of Peace, for exercising of power U/s 22-A (6) Cr.PC; secondly, by approaching the Magistrate for exercising of power under section 156 (3) Cr.PC; and lastly, by filing a direct complaint U/S 200 Cr.PC. Allegedly, the applicant in the first instance approached the concerned SHO for registration of the FIR but he was refused, thereafter the applicant has availed the second remedy of filing application U/S 22-A & 22-B Cr.PC before Ex-Officio Justice of Peace/Sessions Judge, where his application was dismissed. Thereafter the applicant has not availed two other remedies available for him for redressal of his grievance. In such circumstances, invoking of writ jurisdiction in the presence of adequate remedy being available is not desirement of law. Reliance can be placed on the Case of ***Ghulam Ali alias Sadoro and others v. S.H.O., Police Station Veehar, District Larkana and others (2003 YLR 2168)***.

12. Record further reflects that Criminal Misc. Application filed by the applicant was dismissed vide impugned order dated 26.03.2021 however, the instant Criminal Misc. Application has been filed by the applicant on 30.11.2021 after delay of eight months for which no plausible explanation has been furnished by the applicant. In any event, normally this Court does not exercise its inherent jurisdiction unless there is gross miscarriage of justice and interference by this Court seems to be necessary to prevent abuse of process of Court or to secure the ends of justice. Jurisdiction under Section 561-A Cr.P.C is neither alternative nor additional in its nature and is to be rarely invoked only to secure the ends of justice so as to seek redressal of grievance for which no other procedure is available and that the provision should not be used to obstruction or divert the ordinary

course of criminal procedure. This kind of jurisdiction is extra-ordinary in nature and designed to do substantial justice. Reliance is placed upon the case reported as ***Maqbool Rehman vs. The State (2002 SCMR 1076)***.

13. Powers under S. 561-A Cr.PC should ordinarily not be invoked as an alternate or additional jurisdiction to interrupt or divert the normal course of procedure as laid down in the relevant statute and are ought not to be exercised capriciously or arbitrarily but should be exercised *ex debito justitiae* to do real and substantial justice. In order to seek interference under section 561-A Cr.PC three conditions had to be fulfilled;

> ***Firstly, the injustice which came to light was not of a trivial nature;***
>
> ***Secondly, the injustice was of a clear and palpable character and not of doubtful character, and***
>
> ***Thirdly, there did not exist any other provision of law by which aggrieved party could have sought relief.***

From the record, it is apparent that in the present case, the applicant has not fulfilled the third condition that he has an alternate remedy of filing a direct complaint under S.200, Cr.P.C. provided that there is some incriminating material against the Respondents Nos. 2 to 6 available with the applicant. The learned Ex-Officio Justice of Peace has passed a legal order keeping in view all material facts of the case. Where the lower Court has passed a well-reasoned order keeping in view the facts of the case no interference is required. In similar circumstances, in Case of ***Rai Ashraf and others v. Muhammad Saleem Bhatti and others*** ***(PLD 2010 Supreme Court 691)***, it has been held by the Honourable Supreme Court of Pakistan that: *"It is admitted fact that petitioners have alternate remedies to file private complaint before the competent Court, therefore, constitutional petition was not maintainable and the High Court has erred in law to send the copy of the writ petition to the S.H.O. concerned. The direction of the High Court is not in consonance with the law laid down by this Court in Jamshaid Ahmed's case (1975 SCMR 149). It is also a settled law that the learned High Court had no jurisdiction whatsoever to decide the disputed questions of fact in constitutional jurisdiction. In the case in hand, respondent No.1 has more than one alternate remedies as alleged by him in the application that he had secured restraining order against the petitioners from the civil Court, therefore, Additional Sessions*

Judge/Ex-Official Justice of the Peace observed that respondent No.1 had to avail appropriate remedy for violation of status quo before the civil Court under the provisions of C.P.C. vide Order XXXIX, Rules 3 and 4, C.P.C. It is also admitted fact that there is a dispute qua the property in question between the parties as alleged by the petitioners and observed by the Courts below". Hence in such circumstance, I do not see any reason to exercise discretion under section 561- A, Cr.P.C.

14. In view of what has been discussed herein above, I am of the view that instant application is misconceived, therefore, the order dated 26.03.2021 does not require any interference by this Court. Consequently, the instant Criminal Misc. Application is dismissed.

15. With regard to petition, the Petitioner has prayed as under:-

1. To declare the actions of the Respondents No. 2 to 3 in assisting the private Respondents through filing of FIRs in matters where judicial intervention has already been declined as illegal, and to also declare such actions as blatant contempt of court.

2. To initiate proceedings under Section 204 of Constitution of Pakistan and/or the Contempt of Court Ordinance against the Respondents, in respect of acting in contempt of judicial orders in the institution of FIR against the Petitioners on already adjudicated facts.

3. To declare the actions of the Respondents No. 2 to 3 in assisting the private Respondents through filing of FIRs which are based on allegations which, even if taken to be true, cannot constitute an offence, particularly the offence of defamation, as illegal.

4. To grant injunction against the Respondents from registering of any FIR pertaining directly or indirectly to subject matter of the instant Petition, without first obtaining permission from this Honourable Court.

5. To direct the Respondents, in the case of any FIR having been registered against the Petitioners, to file the same before the Honorable Court.

6. To restrain the Respondents from taking any coercive action during the pendency of the instant Petition, against the Petitioners.

7. To grant any further, additional or better reliefs which this Honorable Court may find just and appropriate in the circumstances.

16. The learned counsel for the petitioners contended that respondents intend to lodge FIR against the petitioners even when order passed by the Ex-Officio of Justice of Peace is in existence. It is

pertinent to mention that police officials refused to lodge FIR as no cognizable offence was made out, which issue was adjudicated by the Ex-Officio Peace of Justice in view of Younus Abbas case (supra) and found that no incident as alleged had occurred, hence no case for interference by Ex-Officio Justice of Peace is called for. The provisions of section 22-A, Cr.P.C. have been misused in a number of cases. The wisdom of legislature was not that any person who in discharging of duties takes an action against the accused would be subjected to harassment by invoking provision of section 22-A, Cr.P.C. The Courts in mechanical manner should not allow application under sections 22-A & B and should apply its mind as to whether the applicant has approached the Court with clean hands or it is tainted with malice. Unless such practice is discouraged, it would have far reaching effect on the police officials who in discharge of duties take actions against them. The law has to be interpreted in a manner that its protection extends to everyone. Reliance is placed on the Case of ***Imtiaz Ahmed Cheema, S. H.O. v. S.H.O., Police Station Dharki, Ghotki 2 others (2010 YLR 189)***. Accordingly, with regard to same allegations, the police officials are not competent to lodge FIR; hence, present petition is also disposed of in the above terms.

J U D G E

Sajid