

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

## Criminal Miscellaneous Application No. S- 341 of 2022

[Ghulam Sarwar versus learned Additional Sessions Judge/Justice of Peace Sehwan & others]

Mr. Aijaz Hussain Jatoi, Advocate for applicant.  
Mr. Shahid Iqbal Rana, Advocate for respondents No.8 & 9.  
Mr. Imran Ahmed Abbasi, Assistant Prosecutor General, Sindh.  
Mr. Fareeduddin D.C Jamshoro respondent No.7 present

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Date of hearing & Order: 28.11.2022

## **ORDER**

**ADNAN-UL-KARIM MEMON J.-** This Criminal Miscellaneous Application is directed against the order dated 13.4.2022 passed by learned Additional Sessions Judge, Sehwan in Cr. Misc. Appl. No. 258 of 2022, whereby an application under Section 22-A (6) (i) Cr.P.C filed by applicant for registration of FIR against the officials concerned due to their negligence in providing medical facility to Mst. Naimat who along with her fetus lost breath, was rejected on the premise that applicant did not come with clean hands.

2. Learned counsel for the applicant has submitted that lady Mst. Naimat was brought by her family members to MCH Center Jhangara Taluka Sehwan district Jamshoro for delivery of child but due to closing of MCHC Hospital by respondents 4 to 9 she along with her fetus lost breath on 30.12.2021. Per learned counsel due to above negligence the family of deceased has suffered a lot. Petitioner approached to learned Justice of Peace Jamshoro; however, his application was rejected for registration of FIR.

3. Today Deputy Commissioner Jamshoro has appeared and submitted his report with the narration that he inquired about the incident and found no such incident took place and prayed for dismissal of this application.

4. Learned A.P.G. has supported the stance of Deputy Commissioner.

5. I have heard the learned counsel for the parties as well as Deputy Commissioner Jamshoro who is present in person and perused the record with their assistance.

6. The important issue which arises for consideration in the matter is whether “a police officer is bound to register First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1898 (in short ‘Cr. P.C.’) or the police officer has the power to conduct a “preliminary inquiry” in order to test the veracity of such information before registering the same?

7. I have carefully analyzed various judgments delivered by this Court in the last several years. I clearly discern divergent judicial opinions of this Court on the main issue whether under Section 154 Cr.P.C, a police officer is bound to register FIR when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary inquiry before registering the FIR.

8. In the present case allegations relating to negligence on the part of local administration who failed to provide basic medical facility to the local people of the area thereby caused death of mother and child.

9. The FIR is a pertinent document in criminal law and its main object from the point of view of informant is to set the criminal law in motion and from the point of view of the investigating authorities to obtain information about the alleged criminal activity so as to be able to take suitable steps to trace and to bring to book the guilty.

10. At the stage of registration of a crime or a case on the basis of information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an inquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 Cr.P.C. to investigate, subject to the proviso to Section 157. Cr.P.C. In case, an officer in charge of police station refuses to exercise the jurisdiction vested in him to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of information in writing and by post to Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of

the Code. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

11. In view of the aforesaid discussion, the following legal position has emerged:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

12. Prima facie in the following category of cases in which preliminary inquiry could be ordered by the competent authority:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

13. In the case in hand the alleged offence as pointed out by the learned counsel for the applicant is required to be seen by the S.S.P concerned in

terms of the ratio of judgment rendered in the case of Younas Abbas & others vs. Additional Sessions Judge Chakwal and others (PLD 2016 SC 581), as it is fundamental right of the complainant that his grievance against the suspect / accused should be registered and if found triable it should be tried in the Court of law.

14. It is noted that Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 has to be read with Article 4 of the Constitution whereby all the individuals (without any distinction) have to be dealt with in accordance with law and it is the inalienable right of every citizen.

15. In view of the above, I am of the tentative view that this matter required to be taken care of by SSP concerned who is required to record statement of complainant and if a preliminary inquiry discloses the commission of a cognizable offence on account of grave negligence, then the FIR must be registered against the delinquent and in case SSP reaches to another view he shall submit report to this court mentioning its reasons for such view.

16. This application is disposed of in the above terms.

JUDGE

Muhammad Danish