

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc. Application No.S-597 of 2022
[Sikandar Ali versus Learned Additional Sessions Judge-II &Ors]

Date of hearing & Order:
14.10.2022

Mr. Aijaz Hussain Jatoi, advocate for applicant

ORDER

ADNAN-UL-KARIM MEMON, J.- This Criminal Miscellaneous Application has been directed against the order dated 6.7.2022 passed by learned Additional Sessions Judge-II Kotri, whereby the learned Judge dismissed the application filed by applicant under Section 22-A & B Cr. P.C for registration of FIR against proposed accused / respondent No.4. An excerpt of the impugned order is reproduced below:

“ There appears civil dispute among the parties and such matter in the shape of F.C Suit No.54/2021 (Re-Azam Khan and others versus Sikandar Ali and others) was also filed before the court of learned Senior Civil Judge-II, Kotri. Therefore, the Filing of this application by the applicant shows that he wants to convert a civil dispute into criminal and such practice cannot be allowed to use the provision of section 22-A Cr. P.C as a tool to satisfy the personal grudge. Hence I find no merits in the instant application, therefore, the application in hand stands dismissed.”

2. Facts of the matter are that applicant had moved an application bearing No.566 of 2022 before learned Additional Sessions Judge-II Kotri for registration of FIR against respondent No.4 alleging therein that his father late Jam Khan had 67 paise share in undivided agricultural land bearing Survey No.160 total admeasuring 75-00 acres situated at Deh & Tapo Hathal Buth, Taluka T.B Khan but after the death of his father, fotikhata was not mutated in favor of legal heirs; that on 25.05.2022 at about 10:00 am when he went to visit his above agricultural land, proposed accused / respondent No.4 duly armed, surrounded him and beaten, as such he filed above application for registration of FIR, but the same was dismissed, hence this application.

3. Mr. Aijaz Hussain Jatoi learned counsel for applicant argued that the impugned order is perfunctory, opposed to law and the same has been passed in predetermined and mechanical manner and a result of misreading and non-reading of material available on record; that facts narrated by applicant clearly show that

the offence has been committed by the proposed accused, but learned Court below has deprived the applicant of his fundamental right; that duty of learned Ex-Officio Justice of Peace is impartial administrative and according to rules; learned Justice of Peace is only required to direct the concerned SHO to register the case rather than to decide the matter through un-necessary investigation; that impugned order is erroneous. He prayed for setting aside the impugned order and seeks directions against SHO concerned to register FIR against respondent No.4.

4. I have heard learned counsel for applicant on the maintainability of the instant application and perused the record with his assistance.

5. Primarily, principles of democracy and liberty demand regular and efficient check on police powers. One way of keeping check is by documenting every action of theirs. Touching the case of applicant whether his case falls within the ambit of requirement of Section 154 Cr.P.C or otherwise, primarily, the complaint /report must disclose the commission of cognizable offense, and that is sufficient to set the investigating machinery in motion. The intention of legislature, by insertion of sub-section (3) of 154 Cr.P.C is to ensure that no information of commission of a cognizable offense is ignored or is not acted upon. The obligation to register an FIR has inherent advantages.

(a) It is the first step to access to justice for a victim;

(b) It upholds the rule of law in as much as the ordinary person brings forth the commission of a cognizable crime to the knowledge of the State;

(c) It also facilitates swift investigation and sometimes even prevention of crime. In both cases, it only effectuates the regime of law; and

(d) It leads to less manipulation in criminal cases and lessens incidents of antedated FIR or deliberately delayed FIR.

6. The object sought to be achieved by registering the earliest information as an FIR is, inter alia, twofold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information, received about commission of a cognizable offense is recorded so that there cannot be any embellishment etc. later. The FIR is registered in a book called the FIR book or the FIR register. A copy of each FIR is sent to the superior officers and the concerned Judicial Magistrate. The signature of complainant is obtained in the FIR book as and when a complaint

is given at police station. As each FIR has unique annual number, it is possible for supervisory police officers and the courts, wherever it is necessary to exercise strict control and keep track of registration of FIRs. The underpinnings of compulsory registration of the FIR is not only to ensure transparency in the criminal justice-delivery system but also to ensure judicial oversight. Section 157(1) deploys the word forthwith. Any information received under section 154 Cr.P.C, or otherwise, has to be promptly informed, in the form of report to the Magistrate. The commission of a cognizable offense is not only brought to the knowledge of investigating agency but also the subordinate judiciary. Registration of FIR is not the choice of complainant. Once information, either oral or in writing regarding the commission of a cognizable offense is brought to the notice of police officer, he has no option but to register the FIR forthwith. The police officer cannot avoid his duty of registering the offense if a cognizable offense is disclosed. Action must be taken against the erring officer who does not register the FIR if information received by him discloses the commission of a cognizable offense.

7. Even in a civil dispute with an element of criminality, such as in the case of personal injury or trespass, police officers are entitled only to take action against the criminal element of civil dispute, and not interfere with the civil dispute itself. For instance, if the personal injury in a civil dispute attracts the ingredients of trespass, then the complaint received must be registered as it is cognizable offense, and an investigation should only be caused thereafter, enable a police officer to arrest, without an order from Magistrate and without warrant, any person who has either committed or is alleged or is suspected to have committed a cognizable offense. This power is not to be exercised for mere asking. Law requires a police officer, before arresting any person, to be satisfied that such an arrest is necessary for terms of enabling the provision of Cr.P.C. It also requires him to record, while making such an arrest, his reasons therefor in writing.

8. The function of resolving civil disputes is entrusted to the judiciary. Police officers lack jurisdiction to interfere in civil / property disputes between two citizens. Even in criminal cases their role is limited to the registration of complaints and causing investigation. The power to adjudge whether or not an accused is guilty of having committed a criminal offense, and to convict and sentence him therefore, is vested exclusively in the judicial branch of the State. Judicial power cannot be exercised by agencies outside the judicial orbit and,

where there is no legislative foundation for the exercise of judicial power by a forum, it has no legal capacity to entertain requests for adjudication. Judicial power is a facet of sovereign power and can be conferred only by a Statute or by a statutory instrument. It cannot be assumed *Suo Motu*. No authority may exercise adjudicatory powers absent conferment of such powers by Statutory instruments. The coercive power of State may not be employed to adjudicate disputes. While the inordinate delay, in resolution of civil disputes before Civil Courts of competent jurisdiction, is undoubtedly a cause of concern that does not justify Police Officers exercising powers, conferred exclusively by the judicial branch of the State, to adjudicate civil disputes. While the need to strengthen judicial institutions, and to reduce the inordinate delay in the disposal of Civil Suits, cannot be over-emphasized, the highhanded acts of police officers in seeking to resolve civil disputes, that too in the precincts of a police station, must also be sternly dealt with. Just as Courts would not investigate criminal offenses, as these are matters in the exclusive realm of investigating agency, the powers conferred and the duties cast upon Police Officers, under the Cr.P.C., is only to register complaints regarding cognizable offenses and investigate thereinto; and not adjudicate even criminal cases, much less resort to the settlement of civil disputes. Police officers should not usurp, or even seem to usurp, judicial functions of adjudication or summon and force persons to resolve their inter-se civil disputes in a particular manner under the guise of family counseling.

9. In the present case, prima-facie the grievance of the parties is civil and the applicant is intending to convert it into a criminal dispute, to putting pressure on the respondents by using the proceedings as a lever to settle his claim over the subject dispute. Such practice is not only being deprecated but there is also a serious consequence of putting criminal justice machinery into motion by wrong facts. However, in the instant case, I refrain from initiating any action against the applicant and leave it to the concerned police to take such appropriate action if they so desire, against the applicant for using the court as a tool to settle his vengeance. As the proper forum for adjudication of the property disputes, between the applicant and the respondent, is the Civil Court of competent jurisdiction, it would be wholly inappropriate for this Court, in proceedings under section 561-A Cr.P.C., to examine much less determine the validity of rival claims of the parties over their properties. It is made clear that in case either the parties invoke the jurisdiction of competent

Civil Court, their respective claims shall be adjudicated on merits without being influenced by any observations made in this Order.

10. This Court has only examined the vires of impugned order and has not touched upon the property disputes between the parties; therefore, the learned Sessions /Additional Judges of Hyderabad, Shaheed Benazir Abad and Mirpurkhas Division are directed to look into such like matters if brought before them; and during the preliminary hearing, after calling report from concerned quarters, if they find the matter of civil dispute between the parties, they shall not allow the parties to settle their score through criminal litigation in terms of Section 22-A & B Cr.P.C.

This Cr. Misc. Application stands disposed of.

JUDGE

Sajad Ali Jessar