

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Misc. Application No.404 of 2022

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| Date | Order with signature of Judge |
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1. For order on MA. No. 8658/2022
2. For hearing of main case

12.07.2023

Mr. Muhammad Shahid, Advocate for applicant.
Mr. Talib Ali Memon, APG.

1. The applicant through the present application sought indulgence of this Court for issuance of directions to S.H.O concerned for registration of case against the proposed accused as his application filed by him before the learned IVth Additional Sessions Judge Karachi, East was dismissed vide order dated 15.04.2022 (“Impugned Order”).
2. Learned counsel for the applicant contended that the learned Justice of Peace/IVth Additional Session Judge Karachi, East failed to apply his judicial mind while deciding the application and passed the impugned order. He further contended that a cognizable offence was committed by the proposed accused and they be punished according to law, therefore, the impugned order be set aside and directions be issued to the SHO concerned for registration of FIR.
3. Learned APG supported the impugned order contending that the impugned order was passed by the learned Ex-officio Justice of Peace/IVth Additional Sessions Judge Karachi East is according to law.
4. Heard the arguments and perused the record. The essence of impugned order is that there is a civil dispute between the parties and that the alleged story set out by the applicant in his application under

Section 22-A Cr.P.C is merely a slefmade as at the time of agreement dated 11.10.2021 the proposed accused were out of country being an overseas Pakistanis and wherefrom they addressed application to the SHO concerned for taking legal action against the present applicant for harassing them. The learned Justice of Peace having applied his judicial mind passed the impugned order and also set out in the impugned order that the signatures appearing on the alleged cheques are different which casts a doubt into the genuineness of the applicant's story.

5. The law in its true perspective is settled that duty of justice of peace is administrative in nature and he is saddled with the administrative duty to redress the grievance of complainant aggrieved by refusal of police officer to register their report and is not authorized to assume the role of investigating agency or prosecution. But Justice of peace is supposed to apply his judicial mind after perusing the facts of the application enumerated in the application and police report as to whether the facts introduced by applicant/petitioner is cognizable in nature or otherwise. The version of the applicant as introduced on record seems to be in mystery and no firm opinion can be drawn keeping in view the impugned order.

6. Section 22-A Cr.P.C does not permit Justice of Peace to go into the veracity of the pleadings in depth, which is introduced on record by the applicant lest object of filing 22-A Cr.P.C would become redundant. But it is settled that Justice of Peace is duty bound to apply his judicial mind in order to form a prima facie view that cognizable information has been brought on record by the applicant. From the facts of the application no cognizable information stated by the applicant/petitioner. It is now settled law that Ex-Officio/Justice of

Peace is not bound to issue in all cases a direction to concerned SHO for the registration of FIR. The Section 22-A Cr.P.C. is an enabling and beneficiary piece of legislation and therefore the duty is also casts upon the courts to save it to be misused and abused and to be used in only genuine cases.

7. In 2009 YLR 1533 Muhammad Arif v. the state this Court observed as under:-

“Not always necessary to direct the Police to register the F.I.R., if on the face of it application filed by the complainant appeared to be mala fide---No doubt before passing the order of registration of F.I.R., no enquiry was necessary, but Justice of Peace had to apply his mind to form an opinion about the commission of a cognizable offence and it was not obligatory for the Justice of Peace to issue direction in every case irrespective of the facts and circumstances of the case”.

8. In another judgment reported in 2010 YLR 189 mylord Mr. Justice Amir Hani Muslim (as his lordship then was) has been pleased to observe as under: -

“The provisions of section 22-A Cr.PC have been misused in a number of cases. The wisdom of legislature was not that any person who in discharging his duties takes an action against the accused would be subjected to harassment by invoking the provision of section 22-A Cr.PC. The Courts in mechanical manner should not allow application under section 22-A & B and should apply its mind as the applicant has approached to the Court with clean hands or it is tainted with malice. Unless such practice is discharged, it

would have far reaching effect on the police officials who on discharge of duty take action against them. The law has to be interpreted in the manner that its protection extent to everyone”” I do not want to comment upon the conduct of the complainant, however it would be open to complainant to file direct complaint against the applicant...”

9. The impugned order passed by the learned Ex-officio Justice of Peace/IVth Additional Sessions Judge Karachi East does not need any interference and based on sound reasons, therefore, the application in hand is dismissed.

JUDGE

Aadil Arab.