

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No. S-772 of 2023
(*Mst. Bashul Vs. Vs. The State & others*)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
-----------------	--------------------------------

Date of hearing and Order 13-05-2024

Mr. Manzoor Hussain Larik, advocate for the applicant.
Mr. Ali Gohar Shar, advocate for respondent No. 5 to 7.
Mr. Gulzar Ahmed Malano, Assistant P.G for the State.

ORDER.

Adnan-ul-Karim Memon J:- The applicant Mst Bashul is aggrieved by and dissatisfied with the order dated 28-09-2023 passed by learned IInd Additional Sessions Judge/Ex-Office Justice of Peace Khairpur in Crl. Misc. Application No. 1425/2023, whereby the application under section 22-A & B Cr. P.C. filed by the applicant for registration of the FIR against the proposed accused was dismissed on the ground that deceased Asif Ali had committed suicide due to matrimonial dispute as proposed accused Mst. Seema contracting marriage with deceased; thereafter divorce, contracted marriage with proposed accused Zohaib, which was reported in respect of commission of suicide to police by the son of applicant and report under section 174 Cr.P.C was furnished by the police before the concerned Court and due to annoyance, the applicant filed the Miscellaneous application for registration of FIR to pressurize the proposed accused.

2. The Applicant has premised her case on the analogy that proposed accused Mst Seema contracted marriage with her son Asif Ali and she had been living with him for 7/8 years and then she left her son and contracted a second marriage with Zohaib Abro, after obtaining Talaq. On 06.03.2023 Mst. Seema informed the applicant that she along with Asif Ali were living in the house of Mst. Shabana wife of Muhammad Ali Kalhoro and her son left the house at dawn time and received a firearm injury at Shah Hussain Chowk on that she rushed to the pointed place where came to know that proposed accused Mst. Seema had removed the injured to Civil hospital Khairpur, the applicant went to the hospital where saw her son in serious condition in presence of witnesses Mst. Naheed and Mst. Shabana and the applicant further came to know that proposed accused Shoaib at the instigation of accused Mst.

Seema and in connivance and conspiracy of other accomplices committed the offense and thereafter applicant approached the SSP Khairpur, who forwarded her application to SHO PS Shah Hussain at B-section Khairpur but he did not register the case of the applicant, then she approached the learned IInd Additional Sessions Judge/Ex-Office Justice of Peace Khairpur by filling CrI. Misc. Application No. 1425/2023 which was dismissed on the following premises:-

“Perusal of record shows that as per police report dated 31,3,2023 that deceased Asif Ali had committed suicide due to matrimonial dispute as proposed accused Mst.Seema contracting marriage with deceased thereafter obtaining divorce contracted marriage with proposed accused No.2. Record shows that entry No.12 at 1450 hours was kept on 09.03.2023 at PS Shah Hussain in respect of commission of suicide by the son of applicant and thereafter report under section 174 Cr.P.C. was furnished by the Police before the concerned Court of law, which apparently has annoyed the applicant to file this application. Moreover, DSP Complaint cell Khairpur and SHO PS concerned in their reports dated 31.03.2023 did not support the version of applicant. No other substantive material produced by the applicant to show that the alleged incident took place as stated by the applicant in this application, therefore, in such circumstances, I am of the humble view that instant application has been filed by the applicant only to put pressure upon the proposed accused due to such annoyance.”

3. learned counsel for the applicant submits that cognizable offence was/is made out from the contents of the application of the applicant/complainant, which was/ is a cognizable offence in terms of Section 302 PPC; that there are only two things that an S.H.O. has to see in terms of Section 154 Cr.P.C. and these are that an application conveying certain information is placed before him and that the information pertains to the commission of a cognizable offence. He submits that there are no other considerations statutorily prescribed for the registration of FIR and it is legal anathema to read words into a statute. At this stage, the counsel for the applicant has referred to the statement of the applicant whereby it is shown that the private respondents had committed the murder of her son in connivance with each other; that the registration of FIR is a basic right of citizen and victims, which unfortunately has been made like an unfulfilled dream for the poor citizen of the province of Sindh, and due to the political influence, the registration of the FIR is not less than a miracle for common people. He lastly prayed for allowing this

Criminal Miscellaneous Application with direction to the concerned SHO to record her statement under Section 154 Cr. P.C.

4. Learned counsel representing the private respondents has supported the impugned order passed by the learned IInd Additional Sessions Judge/Ex-Officio Justice of Peace Khairpur and prayed for dismissal instant CrI. Misc. Application.

5. I heard the learned counsel for the parties and perused the record with their assistance.

6. Dilating on the subject issue I have come across the decision of the Supreme Court where it is held that under section 22-A, Cr. P.C, it is not the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or to render any findings on merits but he has to ensure whether, from the facts narrated in the application, any cognizable case is made out or not; and if yes, then he can issue directions that the statement of the complainant be recorded under Section 154. Such powers of the Justice of Peace are limited to aid and assist in the administration of the criminal justice system. He has no right to assume the role of an investigating agency or a prosecutor but has been conferred with a role of vigilance to redress the grievance of those complainants who have been refused by the police officials to register their reports. If the Justice of Peace assumes and undertakes a full-fledged investigation and inquiry before the registration of FIR, then every person will have to first approach the Justice of Peace for scrutiny of his complaint and only after clearance, his FIR will be registered, which is beyond the comprehension, prudence, and intention of the legislature. Minute examination of a case and conducting a fact-finding exercise are not included in the functions of a Justice of Peace but he is saddled with a sense of duty to redress the grievance of the complainant who is aggrieved by the refusal of a Police Officer to register his report. The offenses have been categorized by the Cr.P.C. into two classes i.e., cognizable and non-cognizable. Section 154 of the Cr.P.C. lays down a procedure for conveying information to an S.H.O. to the commission of a cognizable offense, while the provisions of Section 155 (1) of the Cr.P.C. articulates the procedure vis-à-vis a non-cognizable offense.

7. It is settled law that even if there is no direction of the Court, the S.H.O. has no authority to refuse to record the statement of the complainant in

the relevant register irrespective of its authenticity/correctness or falsity of such statement. In this context the Supreme Court in the case of Muhammad Bashir vs. Station House Officer, Okara Cantt. and others (PLD 2007 Supreme Court 539) in para-25 and 26 have categorically held that S.H.O. has no authority to refuse to register FIR under any circumstances. He may refuse to investigate a case but he cannot refuse to record FIR.

8. The check against the lodging of false F.I.Rs was not the refusal to record such F.I.Rs, but the punishment of such informants under Section 182, P.P.C., etc. which should be, if enforced, a fair deterrent against misuse of the provisions of Section 154, Cr. P.C.

9. Since the parties have leveled allegations and counter-allegations against each other on the issue of the alleged offense of murder and alleged suicide committed by the deceased son of the applicant and, interference of some influential and SHO may not be in a position to sort out the matter of aggrieved party, therefore, judicial propriety demands that both the parties shall appear before the SSP Khairpur within two days and after hearing them, if he finds a cognizable offense committed by the private respondents, he may direct the concerned SHO to record her statement and if he finds that the applicant/complainant has managed the story then appropriate action may be taken against her under law. However, at this stage, the learned counsel for the applicant/complainant is still insisting on the registration of his FIR. Prima facie, once the learned Justice of Peace has formed his point of view, this Court cannot substitute its view until and unless it is shown that the order is without jurisdiction and perverse, but at the same time, I deem it appropriate to refer the matter to SSP Khairpur to look into the allegations and counter-allegations of the parties and decide whether the cognizable offense was/is made out or otherwise, which decision shall be made on merits after hearing the parties concerned. Resultantly, the instant Criminal Miscellaneous Application is disposed of leaving the parties to approach SSP Khairpur within two days.

10. The aforesaid exercise shall be undertaken within one week time.

JUDGE

Nasim/P.A