

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

*Crl. Misc Application No. S-652 of 2023*  
(*Mst. Farhiah Ahmaree Vs. SHO PS A-Section Sukkur & others*)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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*For hearing of main case.*

Date of hearing and order: 10.05.2024

Mr. Muhammad Ali Naper, Advocate for applicant.  
Mr. Abdul Sattar Mahessar, Advocate for respondent.  
Syed Sardar Ali Shah, Addl. Prosecutor General.

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**ORDER.**

*Adnan-ul-Karim Memon J:-* The Applicant Mst. Farhiha Ahmaree has filed Crl. Misc. Application under section 561-A Cr. P.C., assailing the order dated 09.08.2023 passed by the learned I-Additional Sessions Judge/Ex-Office Justice of Peace, Sukkur in Crl. Misc. Application No.2285 of 2023 whereby he has dismissed the application of the applicant on the premise that applicant was/is habitual of filing such applications and she lodged FIR No. 31/2021 against the proposed accused Nizakat Ali.

Learned counsel states that learned justice of peace has not appreciated the case of the applicant which is supported by the documentary evidence as she had purchased a plot against the sale consideration from proposed accused with the promise to handover such plot after due registry, such denial on the part of proposed accused amounts to defraud the applicant of her valuable property as the proposed accused had issued cheques which was not encashed, the aforesaid facts which can only be ascertained by police during investigation of the case but learned Ex-Office Justice of Peace without appreciating the inalienable right of the applicant has dismissed the application of the applicant on false pretext that there was/is civil transaction between the parties. He further

submitted that proposed accused had issued a cheque when on presentation, it was dis-honored, which is cognizable offence of different nature, besides the proposed accused has committed a cognizable offence, which needs to be seen by the SHO concerned. He prayed for allowing the instant Crl. Misc. Application.

Today learned counsel for the private respondent has put his appearance and states that there is civil dispute between the parties over amount of interest for that the applicant has already lodged FIR against the proposed accused based on interest, which are within the exclusive jurisdiction of civil Court under recovery proceedings and the local police had not jurisdiction to register a second criminal case on the application of the applicant/complainant. He referred to the report of DSP Complaint Cell Sukkur whereby he opined that there was issue between both the parties over money transaction; as such no cognizable offence was/is made out as portrayed by the applicant. He supported the impugned order and prayed for dismissal of instant Crl. Misc. Application.

I have given due consideration to the submission made by the parties and have carefully gone through the contents of the instant Criminal Miscellaneous Application as well as the application addressed to the SHO concerned and learned I-Additional Sessions Judge/Ex-Officer Justice of Peace, Sukkur in Crl. Misc. Application No.2285 of 2023.

The rationale beyond the conferring of powers upon the Justice of Peace was to enable the aggrieved person to approach the Court of Justice of Peace for the redressal of his grievances i.e. non-registration of FIRs, excess of Police, transfer of investigation to the Court situated at district level or Session or at particular Sessions Division. The main purpose of section-22-A(6) Cr.P.C, was to create a forum at the doorstep of the people for their convenience. Primarily, proceedings before the Ex-Office Justice of Peace are quasi-judicial and are not executive, administrative, or ministerial to

deal with the matters mechanically rather the same are quasi-judicial powers in every case before him demand discretion and judicial observations and that is too after hearing the parties. It is, therefore, observed that the Justice of Peace before passing any order for the registration of the FIR shall put the other party on notice against whom the registration of FIR is asked for.

As 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.

The check against the lodging of false F.I.R 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.

On the subject issue, the law is quite settled by now that the jurisdiction of a High Court under section 561-A, Cr.P.C. can be exercised only in respect of orders or proceedings of a court and that the provisions of section 561-A, Cr.P.C. have no application viz executive or administrative orders or proceedings of any non-judicial forum or authority. The police have powers under Sections 154 and 156, Cr. P.C., and a statutory right to investigate a cognizable offense without requiring the sanction of the Court.

It is well-settled law that if an investigation is launched malafide or is clearly beyond the jurisdiction of the investigating agencies concerned then it may be possible for the action of the investigating agencies to be corrected by a proper proceeding under

the law, however in the present case the proposed accused is police official is resisting for recording the statement of the applicant-complainant, which is apathy on his part being police official who is bound to protect and not to abduct.

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.

Since the parties have leveled allegations and counter-allegations against each other on the issue of money transaction, therefore, the SSP Sukkur has to ascertain the factual position of the case first and if he finds something fishy on the part of the proposed accused, he would direct the concerned SHO to record the statement of the applicant under section 154 Cr.P.C. forthwith, however, if he finds something fishy on the part of applicant he may propose action against her in accordance with law. The aforesaid exercise shall be undertaken within one week after providing the opportunity of hearing to all concerned.

In view of Crl. Misc. Application stands disposed of.

*J U D G E*