

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Misc. Application No.S-66 of 2024
(Nuaman Tarique Jat Vs. The State & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. For orders on O/objection No.2 at flag-A
2. For hearing of main case.

Date of hearing and order: 10-05-2024

Mr. Iftikhar Ali Arain, Advocate for applicant.
 Mr. Azhar Ali Memon, Advocate for private respondents.
 Syed Sardar Ali Shah, Addl. Prosecutor General.

ORDER.

Adnan-ul-Karim Memon J:- The Applicant Nauman Tarique Jat has filed Crl. Misc. Application under section 561-A Cr. P.C., assailing the order dated 29-01-2024 passed by the learned Additional Sessions Judge/Ex-Officer Justice of Peace, Kandiaro in Crl. Misc. Application No.264 of 2024, whereby he has dismissed the application of the applicant on the premise that there was/is no robbery committed from the applicant party. Additionally the father of the applicant had filed F.C Suit No. 37/2023 for Declaration, Rendition of Accounts and Perpetual Injunction against the private respondents before the Senior Civil Judge Mehrabpur whereby his plaint was rejected vide judgment dated 15-06-2023; therefore, there was no need to issue direction to the SHO to record the statement of the applicant.

Learned counsel for the applicant submits that mere rejection of plaint is no ground to refuse registration of FIR of a cognizable offence as medical reports support the case of injured Muhammad Tariq, which is cognizable offence, as such the SHO has failed to perform his duty as per law; he prayed for direction to the SHO concerned to register a cognizable case against the private respondents.

On the contrary learned counsel representing the private respondents has supported the impugned order, whereby request of the applicant for recording his statement u/s 154 Cr.P.C was declined. As per learned counsel the medical certificates are managed one, as such no reliance can be placed at this stage. He prayed for dismissal of this 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 the learned Additional Sessions Judge/Ex-Office Justice of Peace, Kandiaro in Crl. Misc. Application No.264 of 2024.

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.PC., was to create a forum at the doorstep of the people for their convenience. Primarily, proceedings before the 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 applicant has shown his voice of concern on the premise that medico-legal certificates of injured show a cognizable offence and police official in connivance with the private respondents is resisting for recording the statement of the applicant-complainant, which is apathy on his part being SHO who is bound to protect and not to abduct, at the behest of private person.

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 subject issue, therefore, the SSP Naushahro-Feroze shall ascertain the factual position of the case first and if he finds something fishy on the part of the private respondents which is based on medical evidence, 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 him 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