

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Miscellaneous Application No.671 of 2024

Date	Order with signature of Judge
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1. For hearing of main case
2. For hearing of MA No.8515/2024 (Stay)

19.7.2024

M/s Saeed Ahmed Khoso and M. Peer Rehman Mehsud advocates for the applicant

Mr. Abrar Ali Khichi, Additional PG alongwith Inspector Haji Liaquat SHO PS Boat Basin Karachi, PI Shafqat Ali SIO PS Boat Basin, Karachi, IO/ASI Hamza PS Boat Basin Karachi, PI Abdul Latif PS Boat Basin Karachi

Mr. Nadir Ali Tunio advocate for respondent No.5 alongwith respondent No.5

The applicant Salman Shah has filed this Criminal Miscellaneous Application assailing the order dated 22.6.2024 passed by the learned Sessions Judge / Ex-Officio Justice of Peace Karachi South in Criminal Miscellaneous Application No.1979 of 2024, whereby the learned Presiding Officer allowed the application filed by respondent No.5 Peerzada Amjad Hussain by directing the SHO PS Boat Basin to record the statement of respondent No.5 in terms of Section 154 Cr.P.C.

2. Learned counsel for the applicant has raised his voice of concern with the narration that the applicant is a businessman and has nothing to do with the purported issue of delivery of cheque(s) in question, however, respondent No.5 has succeeded to obtain favorable order for lodgment of FIR against the applicant in a false complaint. He prayed for setting aside the impugned order.

3. Learned counsel representing respondent No.5 has submitted that the police has already lodged FIR No.429/2024 under Section 489-F PPC against the applicant and others, however, the police is reluctant to arrest the applicant as the learned trial Court has directed not to arrest the accused until sufficient material for sending the accused for trial is collected. He further submits that there is sufficient evidence in terms of Section 489-F PPC, in which the applicant is involved, therefore, in a cognizable offense, the police can arrest without further delay. The investigating Officer present in the Court submits that he is investigating the case without discrimination and if concrete material is available

against the applicant, certainly he will make necessary arrests in the case and without completing the investigation he cannot say for and against the parties.

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

5. I have noticed that the Supreme Court in the recent judgment has dilated upon Section 22-A, Cr. P.C, and held that 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.

6. 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. At whatever time, an Officer in charge of a Police Station receives some information about the commission of an offense, he is expected first to find out whether the offense disclosed fell into the category of cognizable offenses or non-cognizable offenses. There is no provision in any law, including Section 154 or 155 of the Cr.P.C., which authorizes an Officer Incharge of a Police Station to hold any inquiry to assess the correctness or falsity of the information before complying with the command of the said provisions. He is obligated to reduce the same into writing, notwithstanding the fact whether such information is true or otherwise.

8. The condition precedent for recording an FIR is that it should convey the information of an offense and that too a cognizable one. The remedy of filing a direct complaint cannot measure or match up to the mechanism provided under section 154, Cr.P.C., in which the Officer Incharge of a Police Station is duty-bound to record the statement and register the FIR if a cognizable offence is made out. If in every case it is presumed or assumed that instead of insisting or emphasizing the lodgment of an FIR, the party may file a direct complaint, then the purpose of recording an FIR, as envisaged under section 154, Cr.P.C., will become redundant and futile and it would be very easy for the police to refuse the registration of an FIR with the advice to file a direct complaint. However, in some exceptional circumstances, the alternate remedy in the shape of a direct complaint may be availed but not in every case.

9. The statutory duty casts upon the officer of a police station to enter information regarding the cognizable offense first and then the investigation comes later to gather evidence and other relevant material to prosecute the identified culprits. No doubt, an Investigating Officer plays a crucial role in the administration of the criminal justice system and the constituent of the investigation report and its worth keeps hold of plenteous value and repercussions on the outcome of any criminal case, but tainted investigations can become an acute obstacle in the administration of justice. In the case of *Sughra Bibi vs. State* [PLD 2018 SC 595], it was held that during the investigation, the Investigating Officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and as required by Rule 25.2(3) of the Police Rules, 1934. An Investigating Officer has to find out the truth of the matter under investigation. His object shall be to discover the facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person. Whereas in the case of *Babubhai v. State of Gujrat and others* [(2010) 12 SCC 254], the Supreme Court of India held that investigation must be fair, transparent, and judicious as it is the minimum requirement of the rule of law.

10. Investigative activities serve a multitude of purposes, therefore, it is also the duty of the Officer Incharge of Police Stations to ensure that the Investigating Officer follows the provisions of law conscientiously, without any breach, conducting an impartial and honest investigation with the sole aim of bringing the truth to light, which is the foundational pathway for the prosecution's case.

11. In case of declining the registration of FIR or recording the statement, the aggrieved person has a right to approach under Section 22-A, Cr.P.C. and file any such application, and the Justice of Peace is obligated to examine it and, after hearing the parties, pass an appropriate order.

12. In principle, the order passed by the trial Court has been implemented and the only course left is to see whether the Investigating Officer conducts the investigation fairly or otherwise, for that the Investigating Officer has assured to investigate the crime without discrimination. His assurance seems to be reasonable and acceded to with direction to the Investigating Officer to investigate the subject crime honestly and fairly. The DIG Karachi South shall also supervise the investigation and see all aspects of the case at his end as the anxiety of the complainant is premised on the fact that the police is required to arrest the suspect under Section 154 Cr.P.C.

13. This Criminal Miscellaneous application is disposed of in the above terms.

JUDGE

