

ORDER SHEET
IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Criminal Miscellaneous Application No. S-101 of 2024

(Mst. Naziran Vs. SSP Complaint Cell MPS & others)

DATE **ORDER WITH SIGNATURE OF JUDGE**

Date of hearing & Order 06.08.2024

Mr. Rao Faisal Ali advocate for applicant a/w applicant.

Mr. Dhani Bakhsh Mari, Assistant P.G, Sindh.

Respondent No.3 is present in person.

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ORDER

Adnan-ul-Karim Memon, J. Applicant Mst Nazeeran has assailed the legality of the order dated 13.3.2024 passed by the learned Additional District and Sessions Judge Mirpurkhas, whereby her request for lodgment of F.I.R against the private respondents was declined on the premise that there is a contradiction in the application of the applicant addressed to S.S.P. Mirpurkhas and the application filed by her before the court. It is further held that it is a civil nature dispute of immovable property and the applicant malafidely wants to convert it into a criminal case to bring the opposite party on her terms.

2. At this stage, I asked the learned counsel for the applicant as to why she had not filed a Direct Complaint under Section 200 Cr. P.C. if she has no confidence in the police. Learned counsel argued that the remedy under Section 154, Cr. P.C. was/is more effective than the filing of a direct complaint. He further contended that ample material and evidence is available which shows a prima facie involvement of the private respondents. The learned counsel for the applicant has argued that the applicant is residing in house No. 94 Um-e-Hani Town Phase-1, District Mirpurkhas, and on 23.02.2024 at 1200 hours, proposed accused entered her house armed with weapons and forcibly occupied the house of the applicant and proposed accused persons extended threats of dire consequences and attacked upon the applicant and caused injuries to her and her son and dragged her on the ground and torn her cloths and outraged her modesty and later on she went to P.S. Women, lodged N.C and obtained police letter for medical treatment and then she went to Civil Hospital Mirpurkhas and after treatment Provisional Medico Legal Certificate was issued but police refused to lodge FIR. Learned counsel emphasized that F.I.R. should be registered against the private respondents.

3. The other side has opposed the request of the applicant, supported the impugned order, and prayed for dismissal of the instant application.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. After arguing the matter at some length, the parties agreed to the disposal of this Crl. Misc. Application in terms that the D.I.G Police Mirpurkhas shall hear both the parties and if he finds something fishy on the part of the complainant he can initiate proceedings U/S 182

Cr.PC and in case he finds a commission of cognizable offence on the part of respondents he can directly record the statement U/S 154 Cr. PC.

12. In view of the above facts and circumstances of the case, and the law discussed supra and keeping in view the anxiety of the complainant on the premise that the police is required to protect not to abduct, let DIG Police Mirpurkhas make an impartial preliminary inquiry into the matter and see all aspects of the case after hearing the parties as the learned presiding officer has opined that there is family dispute between the parties over the house No. 94 Um-e-Hani Town which belongs to her ex-husband Munir Khan and as per Mohallah people her ex-husband Munir Khan had sold out the said house. However, the applicant has alleged against the private respondent in her application as the aggressor and illegal occupier of house No. 94, Um-e-Hani Town, Mirpurkhas. This exercise shall be undertaken within one week.

13. In the above terms, instant Crl. Misc. Application stands disposed of.

JUDGE

Jabbar