

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.
Cr. Misc. Application No. 495 of 2023.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case.
3. For hearing of MA No. 4233/2023 (Stay)

21-08-2023.

Mr. Shabbir Ali Bozdar, advocate for applicant.
Mr. Deedar Ali Chohan, advocate for respondent No. 2.
Syed Sardar Ali Shah Rizvi, Addition P.G for the State.

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Khadim Hussain Soomro J:- Through the instant CrI. Miscellaneous Application, the applicant has impugned the order dated 19-07-20123 passed by learned IInd Additional Sessions Judge/Ex-Officio Justice of Peace Naushahro Feroze in CrI. Misc. Application No. 2229/2023 “Re. Shahban Ali Vs. SSP Naushahro Feroze and others” whereby the respondent No. 1/SHO PS Korai was directed to record the statement of respondent No.2 and if cognizable offence is made out, then incorporate the same in 154 Cr.P.C book.

2. The learned counsel for the applicant argues that the applicant did not commit the alleged offence claimed by respondent No.2, and no incident occurred. It is alleged that respondent No.2 fabricated a false story and filed a CrI. Misc. Application, which is the subject matter of the present case. There is an ongoing dispute between the parties regarding a piece of land, and F.C Suit No. 70/2023 has been filed by respondent No.2 against the applicant party, which is currently pending for adjudication. The applicant believes that respondent No.2 is trying to pressure them by lodging the FIR. Additionally, applicant No.4 Nazeer

Ahmed has also registered FIR No. 17/2023 against the respondent party, and it is claimed that the respondents are involved in multiple cases and are attempting to falsely implicate the applicant party in criminal cases for their own advantage. He request for setting aside of the impugned order by contending so. In support of his contention he relied upon case of Mst.Sughran Bibi vs The State (PLD 2018 Supreme Court 595).

3. Learned A.P.G for the State does not support the impugned order and relied upon the case of *Imtiaz Ahmed Cheema V/s SHO P.S Daharki, Ghotki 2 others (2010 Y L R 189)*.

4. Learned counsel for the private respondent by supporting the impugned order has sought for dismissal of the instant Crl. Misc .Application by contending that the narration made by the private respondent in his application constitutes a cognizable offence and it was not the case of second FIR but that of counter version of the incident, which could be recorded.

5. I have considered the above arguments and perused the record.

6. The FIR of the incident has already been recorded at the instance of the private respondent. It is not necessary to create a separate FIR for each new version of the same incident. Instead, it should be communicated to the investigating officer during the investigation. In this context the reliance can be placed upon the case of Mst.Sughran Bibi vs The State (PLD 2018 Supreme Court 595).

7. There is currently a dispute between the parties regarding the demarcation of the land, and this is the real bone of contentions between the parties. As a result, a civil suit has been filed private respondent

party, and the same is pending for adjudication in the court of competent jurisdiction. In this regard the reliance can be placed in the case of **Rai Ashraf & others vs. Muhammad Saleem Bhatti & others (PLD 2010 SC-691)**, it has been held by the Hon'ble Apex Court that;

“Validity---Dispute between parties was over such house---Applicant had secured restrain, order against respondent from Civil Court, and for its violation, he had a remedy before Civil Court-- Applicant had an alternate remedy to file private complaints against respondent--Applicant had filed another application before Ex-officio Justice of Peace/Additional Sessions Judge to restrain public functionaries from taking action against him under Lahore Development Authority Act, 1975, Rules and Regulations framed thereunder-- Application for registration of FIR had been filed with malafide intention.”

7. The learned Justice of Peace, while concluding the impugned order, has shown the possibility of exaggeration made by respondent No.2 to implicate all the male members of the applicant's family. This observation alone was sufficient to dismiss the application of respondent no 2. The learned justice of the peace should not mechanically allow applications under sections 22-A & B. Instead, they should carefully consider whether the applicant has approached with clean hands or is tainted with malice because it has been observed by this court, in various judgments, that the provisions of section 22-A, Cr.P.C. have been misused in numerous cases, and the most of the time, it is being used as a tool to settle the scores and to humiliate the opposite party nothing else, in this context the reliance can be place, **IMTIAZ AHMED CHEEMA V/S S.H.O., POLICE STATION DHARKI, GHOTKI 2 other, 2010 Y L R 189.**

8. The responsibilities of a justice of the peace did not encompass executive, administrative, or ministerial duties. They refrained from engaging in the execution, administration, or mechanized handling of affairs. The functions delineated in clause (1), (ii), and (iii) of Section 22-A(6), Cr.P.C are regarded as quasi-judicial in nature. The Ex-Officio Justice of Peace conducts a thorough examination of the record, attentively listens to the concerned parties, renders decisions, after due application of the judicious mind . In this context reliance is placed upon the case of Younas Abbas and others v. Additional Sessions Judge Chakwal and others (PLD 2016 SC 581).

9. It is clear from the record that the Police Station, Korai filed a written statement along with a list of over 30 criminal cases against respondent No.2 and his other family members. However, the learned Justice of Peace did not give any observations regarding the police report or the list of cases submitted by the concerned SHO. While deciding an application under Section 22-A(6)(i) of the Criminal Procedure Code (Cr.P.C.), it is necessary to carefully examine entire record presented by the parties, in the wake of hearing either the parties or their counsels, pass an order with due application of mind.

10. In view of above, the impugned order is set aside. The private respondent, however may exhaust his remedy under section 200 Cr.PC, if so is advised.

11. The instant Crl. Misc. Application is disposed of accordingly.

JUDGE