

*Order Sheet*  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Cr. Misc. Application No.981 / 2023**  
 [ Danish Dad Muhammad vs.XI ADJ, South, Karachi]

Date	Order with signature of Judge
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FOR HEARING OF MAIN CASE.

**Date of Hg: 16.01.2024**

Mr. Ali Muhammad Advocate for the applicant.  
 Mr. Zahoor Shah, Addl. Prosecutor General Sindh  
 a/w SIP Anisul Hassan and SIP M Manzoor, PS Garden.  
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ARSHAD HUSSAIN KHAN.J. Through this Cr. Misc. Application the Applicant has assailed the order dated 21.11.2023, passed by learned XITH Additional Sessions Judge, Karachi South, in Cr. Misc. Appl. No.3498 /2023, whereby the Application under Section 22-A & 22-B Cr.P.C. filed by the applicant for registration of FIR and providing protection against the respondents was declined to the extent of registration of FIR, however the prayers with regard to the legal protection was allowed.

Learned counsel for the applicant, inter alia, has contended that the impugned order is patently illegal in law as the same has been passed without applying his judicious mind and considering the material available on the record. He has further contended that that the proposed accused are land grabbers and professional criminals. He has further contended that learned ADJ/ Ex- Officio Justice of Peace erroneously declined prayer of the applicant for lodgment of the FIR on the premise that the dispute is of civil nature which is hardly a ground to refuse the relief sought by the applicant, even otherwise, the proposed accused threatened the applicant of dire consequences as well as beaten seriously which caused serious injuries to the applicant's brother and his friend Dad Shah; it was a good case for issuance of direction to the concerned SHO for recording the statement of the applicant. He has further contended that the order of learned ADJ/Ex-Officio Justice of Peace is illegal and without legal justification. He has lastly contended that the applicant has prima facie made out a case of cognizable offence, as such; the SHO concerned cannot refuse to register FIR who is duty bound under section 154, Cr.P.C. to record the statement of the applicant.

Learned APG while supporting the impugned order submits that the concerned Additional Sessions Judge after carefully perusing the material

available on the record and the law cited before him has rightly dismissed the application under Section 22-A & 22-B, Cr.P.C. and hence the impugned order does not warrant any interference by this Court.

Heard learned counsel for the applicant and perused the material available on the record.

Precisely the case of the applicant is that his younger brother Muhammad Salman every month use to visits his grandfather's land to look after the same. On 29.10.2023, said Muhammad Salman with his friends Dad Shah went to Gadab Town to visit the land, however, when they reached there, the proposed accused attacked them with wooden stick and caused injury at his backbone, chest, shoulder, legs and other parts of the body. However, when the police did not register the FIR, the applicant filed the application under section 22-A & 22-B, Cr.P.C., which was dismissed by learned XIth ADJ/ Ex-officio Justice of Peace, Karachi South, through the order impugned in the instant proceedings. Relevant portion of the order for the sake of ready reference is reproduced as under:-

“.....It was held in the case of Mian Abdul Waheed vs. ASJ Lahore (2011 P.Cr.L.J 438) that: "Jurisdiction under section 22-A and 22-B, Cr.P.C is not to be exercised mechanically by Ex-Officio Justice of Peace by directing registration of FIRs in each and every case, and each case is to be decided on its own peculiar facts." The applicant in this case wants to convert civil nature dispute into criminal liability on the basis of allegation of physical assault which was not reported at PS and lacking corroboration through medical evidence therefore his allegations are tainted with malafide. In the case of Imtiaz Ahmed Chema v/s SHO of PS Dharki (2010 YLR 189 Karachi) Hon'ble Sindh High Court held that:

"The Provision of section 22-A. Cr.P.C have been misused in a number of case. The wisdom of legislature was not that any person who in discharging of duties takes an action against the invoking provision of section 22-A Cr.P.C. The Courts in mechanical manner should not allow application under sections 22-A&B and should apply its mind as to whether the petitioner has approached the Court with clean hands or it is tainted with malice."

In view of above discussed reasons I have come to the conclusion that it is not a fit case to issue appropriate directions to police for registration of FIR. So far as legal protection is concerned it is the fundamental right of every citizen. In the case of Mehran Hussain v. SSP Hyderabad (2019 P.Cr.L.J 281 Sindh) Division Bench of Hon'ble Sindh High Court held as under:

"6. However, leaving regret to mourn, we would add that a direction for Lodgment of FIR may well be a discretion but when someone comes with a complaint of insecurity and requests for an instruction to police to provide protection same should not be declined rather it always be hammered thereby instructing to police to provide protection which otherwise is undeniable duty and obligation of the police. A negligence/failure on part of the police authority, if resulting into a complaint of insecurity, may well be entertained be Ex-Officio-Justice of Peace within meaning of section 22-A (6)(iii), Cr.P.C which reads as:

"neglect, failure or excess committed by a police authority, in relation to its functions and duties."

From perusal of the reply of the SHO concerned, filed in the instant Cr. Misc. Application, it appears that there is a dispute between the applicant and the proposed accused over immovable property and they had filed civil suit No.24/2023 before the trial court.

In the case reported as Jamal Khan v. Secretary Home Department [2021 SCMR 468], the Supreme Court of Pakistan, in a matter involving civil dispute, refused to interfere in the findings whereby registration of a criminal case was declined.

Facts and the circumstances of the case and perusal of the impugned order, shows that no any illegality is committed by learned Vth ADJ/ Ex-officio Justice of Peace while passing the impugned order which may justify this Court to make interference with it in exercise of its inherent jurisdiction. Consequently, instant Criminal Miscellaneous Application is dismissed.

JUDGE