

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

Criminal Miscellaneous Application No.S-358 of 2024
(Arbab Ibrahim Rahimoon Vs. S.S.P Umerkot and others)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing and order 26-09-2024.

Ms. Haseena Kanwal Laghari advocate for the applicant.

Mr. Dhani Bakhsh Mari, Assistant P.G.

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ORDER

Adnan-ul-Karim Memon, J. The applicant Arbab Ibrahim Rahimoon, has filed this Criminal Miscellaneous Application challenging the order dated August 19, 2022, passed by the Ex Officio Justice of the Peace/ Additional Sessions Judge-I, Umerkot, who dismissed the applicant's application under Section 22-A and B of the Cr. P.C for the registration of an FIR against private respondents. An excerpt of the order is reproduced as under:-

“I have heard rival submissions and perused the police reports, whereby it is unfolded that applicant and proposed accused persons are closely related to each other, however, none from School Administration come forward to complain the alleged misappropriation on the part of proposed accused persons. Even otherwise, the proposed accused Subhan is watchman of School and he is accountable to his superiors, if any theft of School material is committed by him, but there is nothing on record in this respect. The Police after inspecting spot, have also denied the theft of School material, which suggests the instant application as personal grudge against proposed accused persons rather than an act of social work. It is worth to notice that according to Police report, the police recorded statement of one Dilawar Khan Rahimoon and Hakeem Rahimoon, they are co-villagers of applicant, but they have also denied the allegations of applicant. The Police also recorded statement of one Ghulam Rasool Rahimoon, who is brother of applicant, but he also did not support the applicant. In this connection, police also contacted with Taluka Education Officer Umerkot, who also did not support the version of applicant. It has been a rampant practice to misuse the provision of S. 22-A & B Cr.P.C in order to humiliate and disgrace their opponents, and same circumstances prevails in the instant matter. My reliance is made to case law reported in 2014 MLD 1033 KARACHI-HIGH-COURT-SINDH which reads as under:-

Ss. 22-A & 154---Application before Justice of Peace for lodging of F.I.R.---Ulterior motives of complainant---Duty of Justice of Peace to decide application judiciously---Scope---Public had made it a practice to settle their accounts by approaching the Justice of Peace under S.22-A, Cr.P.C. for lodging of F.I.R. against the opposite party so as to humiliate and disgrace them in society at large as well as in front of relatives and friends---Prime duty of court was to examine each and every case minutely and such applications must not be allowed in routine, as the hands of a judge were tied by the provisions of S. 22-A,

Cr.P.C. and an application under the said section must be considered independently and judiciously to meet the ends of justice.

I also take guidance from another case law reported in 2021 MLD 994 the Hon'ble High Court held that adjudication of application u/s 22-A Cr.P.C by Ex Officio Justice of Peace. While exercising powers u/s 22-A Cr.P.C, Justice of Peace was not supposed to proceed and act mechanically by simply consideration version of events narrated by party applying for registration of FIR, but instead in order to safeguard against accused, justice of peace must apply his/her mind and satisfy himself that prima facie there existed some material available on record to support such version. Such powers u/s 22-A Cr.P.C were quasi judicial in nature and were not executive, administered or ministerial, but instead exercise of such powers demanded discretion and judicial observations after granting hearing to parties involved.

Therefore, in view of the above discussion and observations and in the light of case laws referred hereinabove, I am of the opinion that the applicant has not come with clean hands and he has misused the provision of S. 22-A & B Cr.P.C with ulterior motive, hence in view of above stated position I find no merit in the application in hand, therefore, the same is hereby dismissed.”

2. The applicant alleges that on June 13, 2022, at around 8:30 AM, the private respondents stole building materials from the Government Primary School Keerlo Naseerani. As the chairman of the School, the applicant approached the respondents to demand the return of the stolen materials, but they allegedly abused him. The applicant then complained to the education authorities and the SHO for the registration of an FIR, but no action was taken. Therefore, the applicant filed an application seeking the registration of an FIR against the private respondents.

3. The petitioner, who claims to be a social worker and education advocate, filed a criminal application against the theft of construction materials from a government primary school in Umerkot, Sindh. The petitioner had filed a complaint with the Sindh Education Department for school building repairs, which led to the award of a tender to M/s Black Gold Government Contractor. During construction, old materials were removed and stored on-site. However, the school's watchman allegedly stole these materials. Despite multiple complaints to relevant authorities, no action was taken. The petitioner filed a criminal application with the Additional Sessions Judge Umerkot, which was dismissed.

4. The petitioner's counsel argued that the dismissal was based on irrelevant reasons, that the Education Officers and police failed to perform their duties, and that the court did not consider all relevant evidence or hear the petitioner's arguments. The counsel requested that the court set aside the dismissal, direct the authorities to lodge an FIR against the thieves, and take necessary steps to prevent future theft of school property.

5. After arguing the matter at some length, learned counsel states that the applicant may be permitted to file a private complaint in terms of section 200 Cr.P.C before the learned Magistrate concerned so far as the allegation of the applicant is concerned, which shall be dealt with by learned Magistrate after recording his statement on oath. If this is the position of the case, let the Magistrate concerned entertain the private complaint of the applicant and the same shall be decided within reasonable time in accordance with law.

6. In view of the above, instant Criminal Miscellaneous application stands disposed of.

JUDGE

Ali Sher