

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA  
Constitutional Petition No.D-500 of 2015.

**PRESENT:**

**Mr. Justice Zafar Ahmed Rajput,**  
**Mr. Justice Muhammad Hamyoon Khan,**

Petitioner : Mst. Shahnaz, through Mr. Shahbaz Ali M. Brohi,  
Advocate.

Respondent : Superintendent of Police, Shikarpur & others, through  
Mr. Sardar Ali Shah, Assistant Prosecutor General.

Date of hearing : 06.10.2016.  
Date of order : 06.10.2016.

ORDER

**ZAFAR AHMED RAJPUT, J.-** Through instant Constitutional Petition, the petitioner has assailed the order dated 14.3.2015, whereby Crl. Miscellaneous Application bearing No.109/2015, filed by the petitioner for lodging of F.I.R, was dismissed by the learned Sessions Judge/Ex-Officio Justice of Peace, Shikarpur.

2. Briefly stated the relevant facts of the case are that the petitioner filed aforementioned criminal miscellaneous application under Section 22-A(6) & B, Cr.P.C before the learned Sessions Judge/Justice of Peace, Shikarpur, seeking directions to SHO P.S Abad Milani for registration of her F.I.R against the proposed accused after recording her statement, stating therein that one Muhammad Nawaz Mahar had filed application against SHO Ghulam Kambar and other police officials in Sessions Court and they were annoyed over it. On 13.1.2015 the applicant, her son Abdul Ghani sat on one motorcycle, while Leemo alias Paryal, Irfan Ahmed and Abdul Jabbar sat on another motorcycle. At 3.00 p.m. they reached near Mahmooda Bagh, where they saw proposed accused Ghulam Kambar, Munshi Abdul Jabbar Solangi and Constables Ali Ahmed Soomro, Nawab Punjabi, Ashique

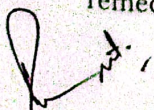


Soomro and Nadeem, having official weapons. SHO Ghulam Kambar instigated others to kill Abdul Ghani as he was filing complaints against them. Saying so, accused Ghulam Kambar fired from his k.k rifle at Abdul Ghani which hit him and he fell down. Accused Abdul Jabbar Solangi also fired from his k.k rifle, which hit on right leg of Leemo alias Paryal. The accused then made aerial firing and escaped. On receiving firearm injuries, Abdul Ghani died, while injured Leemo alias Paryal was taken to hospital. The applicant attempted to lodge F.I.R but it was refused, hence application for registration of F.I.R against the proposed accused was filed by her.

3. The learned Sessions Judge/Ex-Officio Justice of Peace, Shikarpur dismissed the aforementioned criminal miscellaneous application vide order dated 14.3.2015, holding that alternate remedy of filing direct complaint is available to the applicant. It is against this order, instant Constitutional Petition has been preferred by the petitioner/applicant.

4. We have heard the learned Counsel for the petitioner and learned APG appearing for the State and perused the material available on record.

5. Mr. Shahbaz Ali M. Brohi, learned Counsel for the petitioner, has mainly contended that the learned Sessions Judge/Ex-Officio Justice of Peace did not consider the fact that from the facts disclosed by the petitioner in her criminal miscellaneous application, a prima facie case of murder of her son Abdul Ghani and injuries to witness Leemo alias Paryal has been made out and in such circumstances the SHO concerned is duty bound to record the statement of petitioner and incorporate the same into book of 154, Cr.P.C. He has further submitted that although the petitioner has the remedy to file a direct complaint against the proposed accused but the





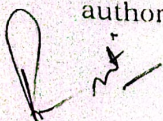
same cannot be a substitute of an F.I.R, hence the learned Justice of Peace acted utterly against the law and passed the impugned order erroneously, which is liable to be set aside.

6. On the other hand, Mr. Sardar Ali Shah, learned APG, has supported the impugned order.

7. We have given due consideration to the contentions of learned Counsel for the petitioner and learned APG.

8. There can be no cavil to the proposition that once the allegation with respect to the commission of a cognizable offence is communicated to police, the police is duty bound to register a case; and in case of refusal or resorting to delaying tactics, the aggrieved person is well within his rights to approach the Justice of Peace under Section 22-A, Cr.P.C, with a prayer for registration of the case, and if the Justice of Peace comes to the conclusion that a cognizable offence is apparent from the data available on the record, he can pass an order for registration of the F.I.R. As such, the Justice of Peace is saddled with the administrative duty to redress the grievances of the complainants aggrieved by refusal of police officer to register their reports. However, he is not authorized to assume the role of investigating agency or prosecution. Even minute examination of the case and fact finding is not included in the function of the Justice of Peace.

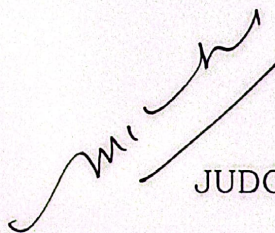
9. So far the instant case is concerned, apparently, the findings of the learned Justice of Peace while refusing to redress the grievances of the petitioner, are erroneous for the reason that the information conveyed by the petitioner prima facie discloses the commission of a cognizable offence. As a consequence, there was no option for the learned Justice of Peace but to pass a direction to police authority concerned for registration of the F.I.R.

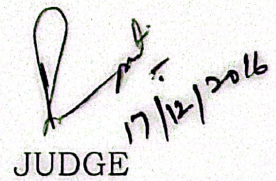




10. For what has been discussed above, we are of the considered view that the learned Justice of Peace has committed serious error while passing the impugned order, which is hereby set aside and instant petition is allowed as prayed. Consequently, the SHO P.S Abad Milani is directed to record the statement of the petitioner under Section 154, Cr.P.C in her verbatim and thereafter if any cognizable offence is made out, he shall proceed further in accordance with law.

11. This Constitution Petition was allowed by us by short order passed on 06.10.2016 and above are the reasons in support thereof.

  
JUDGE

  
JUDGE  
17/12/2016