

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Miscellaneous Application No.S-787 of 2024

Applicant: Muhammad Anwar in person.

Respondents: Through Mr. Irfan Ali Talpur, Assistant Prosecutor General, Sindh.

Date of hearing: 30.01.2025.

Date of decision: 21.02.2025.

ORDER

MUHAMMAD HASAN (AKBER), J.- Through the instant Criminal Miscellaneous Application under section 561-A Cr.P.C., the applicant has impugned the order dated 12-11-2024 passed by learned 7th Additional Sessions Judge, Hyderabad (Ex-officio Justice of Peace), thereby dismissing the application under section 22-A and B(vi)(i) of the Criminal Procedure Code (Cr.P.C) for registration of First Information Report (FIR) under section 154 Cr.P.C..

2. The Applicant is present and on his request, he was allowed to plead in person. He contended that through the impugned order, gross illegality and failure to exercise the powers vested in Justice of Peace, has occurred. Applicant states that he entered into nikah with a widow lady/the proposed accused No.1 against dower amount of Rs.50,000/- and he also extended loan amount of Rs.500,000/- to her relatives, the proposed accused No.2 to 4.

3. However *rukhsati* was refused due to quarrel between the parties, and proposed accused No.1 started demanding *khula*. He further alleges that against harassment by the proposed accused persons, he lodged a complaint dated 23-09-2024 and 28-10-2024. He further alleges that on 27-10-2024 at 11 pm, he was kidnapped by proposed accused No.2 along with other proposed accused who harassed and threatened him to pronounce *talaq* upon proposed accused No.1, however upon his raising hue and cry, he was released.

4. Learned A.P.G. supported the impugned Order since neither any witnesses were available nor is there any evidence of the alleged incident. He further contended that as admitted by the applicant himself, there is

relationship of husband and wife as also a money transaction between the parties, hence it is a civil and matrimonial dispute which the applicant is *mala fide* attempting to convert into criminal proceedings as a pressure tactic. It was lastly argued that the applicant has attempted to abuse the process of Court and has not approached the Court with clean hands.

5. Heard the Applicant-in-person and learned A.P.G. and perused the record with his assistance.

6. There is no cavil with the proposition that the provisions of section 154, Cr.P.C. are quite explicit and the officer in charge of the relevant Police Station is under a statutory obligation to register F.I.R. whenever information disclosing commission of a cognizable offence is provided to him, as held in the case of '*Syed Qamber Ali Shah V. Province of Sindh and others*' (2024 SCMR 1123). It is also settled that the officer in-charge of a police station or for an ex-officio Justice of the Peace are not obliged to afford an opportunity of hearing to the accused party, before registration of a criminal case or before issuing a direction in that regard. Reference in this regard can be made to the cases of '*Saeed Ahmad and others V. Naseer Ahmad and others*' (PLD 2000 Lahore 208 (DB)) and '*Muhammad Aslam v. Additional Sessions Judge and others*' (2004 PCr.LJ 1214).

7. However the provisions of section 22-A(6), Cr.P.C. do not make it obligatory for an ex-officio Justice of the Peace to necessarily or mechanically issue a direction regarding registration of a criminal case, whenever a complaint is filed before him in that regard. The use of the word "may" in section 22-A(6), Cr.P.C. clearly shows that the jurisdiction of an ex-officio Justice of the Peace in that regard is discretionary in nature, and understandably so, because unfortunately, the machinery of criminal law with its coercive process is increasingly being misused by motivated persons for achieving self-serving objectives. Thus, there is a pressing need on the part of the ex-officio Justices of the Peace to exercise caution and restraint before issuing a direction regarding registration of a criminal case. It is for this reason that in some cases, comments are also called from the officer in charge of the relevant Police Station in order to help pierce the veil, which may have been created due to economizing with the truth by the complainant. In an appropriate case, depending upon the circumstances thereof, an ex-officio Justice of the Peace may therefore, rightly refuse to issue a direction regarding registration of a criminal case and may dismiss the complaint under section 22-A(6), Cr.P.C., reminding the complaining person of his alternate statutory remedies under sections 156(3) and 190, Cr.P.C. Such was the ratio settled by a three member bench of the Lahore High Court in the case of '*Khizer Hayat V. Inspector-General Of Police (Punjab), Lahore*' (PLD 2005 Lahore 470).

8. While dealing with applications under section 22-A & B Cr.P.C., it has been held as the duty of the Court to take care of the possible misuse of the process and such applications should not be lightly entertained and decided in a mechanical manner for issuing direction to the police to lodge an FIR, conduct investigation in the matter and prosecute the accused. It has also been held that serious notice should be taken of frivolous, false or vexatious complaints, and where applicable, cases should be registered under sections 182 and 211 of the Pakistan Penal Code, 1860. Reliance is placed on the case of '*Munawar Alam Khan V. Qurban Ali Malano*' (2024 SCMR 985) where such guidelines are worded in the following terms:

"4. Having heard the petitioner and scanned the material available on the record, we observe that there are many precedents regarding misuse of provisions of Sections 22-A and 22-B, Cr.P.C. and it is the prime duty of the Court that such misuse be taken care of and application filed should not be lightly entertained and decided in a mechanical manner for issuing direction to the police to lodge an FIR, conduct investigation in the matter and prosecute the accused..."

9. Likewise in the case of '*Jamal Khan V. Secretary Home Department*' (2021 SCMR 468) refusal to direct police to lodge F.I.R in a dispute of a civil nature between the parties pertaining to alleged forgery of thumb impression on an arbitration agreement was upheld by the Supreme Court.

10. In another case, prayer for registration of F.I.R was refused on the ground *inter alia* that other remedy of criminal complaint was available with the complainant (1975 SCMR 149), whereas in the case of '*Rai Ashraf and others V. Muhammad Saleem Bhatti and others*' (PLD 2010 SC 691) *mala fide* motives and ulterior intentions of the complainant were also probed by the Supreme Court in a complaint under section 22-A & B and based whereon, registration of F.I.R was refused.

11. While taking notice of the trend of frivolous complaints and misuse of section 22-A & B Cr.P.C., a three Member Bench of the apex Court in the case of '*Haider Ali V. State*' (2015 SCMR 1724) at paragraph 9 (ii) of the Judgment, has also recommended action against lodging of false, frivolous and vexatious complaints in the following terms:

"(ii) Serious notice should be taken of frivolous, false or vexatious complaints and where applicable cases should be registered under sections 182 and 211 of the Pakistan Penal Code, 1860."

12. The order dated 12.11.2024 is based upon an application dated

28.10.2024 filed by the applicant, however, during course of hearing before this Court, the applicant also produced copy of an earlier hand written application by himself dated 14.10.2024 with the Senior Superintendent of Police/DIGP Hyderabad with receiving stamp dated 23.10.2024. The contents of such application dated 14.10-2024 clearly reveals that no allegation of any cognizable offence was alleged therein but the applicant imputed allegations of bad character against the proposed accused No.1, and demanded to lodge FIR against her solely for recovery of the loan amount of Rs.500,000/- and dower amount of Rs.50,000/-. Surprisingly, this first application was not disclosed before the Ex-officio Justice of Peace. Apparently, in the first two applications, he demanded lodging of FIR without even alleging any offence, whereas this time he has alleged the purported incident. Based upon the above and the reports from SSP and SHO concerned, the impugned Order was passed.

13. The present application in hand is under section 561-A Cr.P.C., scope whereof is to prevent the abuse of the process and to foster the ends of justice. For seeking discretionary relief, a person who seeks equity and justice from this Court has to firstly disclose all the relevant facts and the ground realities before this Court; and secondly the conduct of the person seeking justice from this Court has also to be looked into, as the applicant must come before this Court with clean hands and without suppressing material facts from the Court. The claim of money transaction with his in-laws by the applicant and repeated applications by him appear to be motivated with malice to subjugate and pressurise the proposed accused persons who, as claimed by the applicant himself, are his wife and her relatives, the same being matrimonial and financial issues of civil nature. The contradictions between such repeated applications are also worth noticing. From the record, it appears that no cognizable offence has been made out and neither any witnesses nor any proof of such incident was placed, whereas the earlier application was also concealed. The applicant has not approached the Court with clean hands, which is *sine qua non* for seeking discretionary relief, but the purpose of filing consecutive complaints under section 22-A & B, Cr.P.C. is to impress upon or to influence his wife and in-laws.

14. Applying the above discussed legal principles to the facts of the instant case, it appears that the ex-officio Justice of Peace did not act in a mechanical manner but exercised jurisdiction after taking into consideration all material aspects of the matter, including the relationship between the parties, the conduct of the complainant and also his motives and has rightly dismissed the application under sections 22-A & B Cr.P.C. For the foregoing reasons, neither any cognizable offence is made out from the complaint nor any infirmity in the Order passed by the Ex-officio Justice of Peace could be

found.

15. For the foregoing reasons, the Application is dismissed.

J U D G E