ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 178 /2022

Yasir Mehmood Khokhar

Versus.

Learned Justice of Peace/ADJ East, Islamabad. Etc.

For Petitioner	:	Abdul Kamran Butt, Advocate,
For State	:	Sadia Shahzadi, State Counsel with Zaheer Ahmed, ASI
For Res. No. 4	:	Ch. Naeem Ali Gujjar, Advocate,
Date of hearing	:	23.05.2022:

ARBAB MUHAMMAD TAHIR, J: The instant writ petition is arising out of order dated 18.11.2021, passed by the learned Additional Sessions Judge-II/Ex-Officio Justice of Peace, Islamabad (East) whereby application under Section 22-A & B Cr.P.C filed by the petitioner for the registration of FIR against respondent No.4, was dismissed.

2. Facts, relevant for the disposal of instant writ petition, are that the petitioner submitted an application to respondents 2 & 3 *(SP, Rural and SHO P.S. Shahzad Town, Islamabad*) for the registration of FIR against respondent No. 4 on the allegations of commission of fraud under the garb of agreement-to-sell dated 10.10.2018 in respect of land measuring 5/4-1/2 Marla, comprising Khasra No. 3567, Mauza Morian Tehsil and District Islamabad. According to the petitioner, on his application, an ASI was deputed for verification from the concerned revenue officer and as per report of the Halka Patwari, respondent No. 4 did not own any land in Khasra No. 3567 and thus committed fraud but despite that respondents 2&3 refused to register FIR while his application

under Section 22-A & B Cr.P.C was also dismissed by the learned Additional Sessions Judge-II/Ex-Officio Justice of Peace in arbitrary manner by relying upon police report, hence instant writ petition.

3. The learned Ex-Officio Justice of Peace dismissed the petition, *inter alia*, observing that *"perusal of comments received from police shows that matter is purely of civil nature regarding which civil litigation is already pending adjudication in the Civil Courts between the parties and by filing instant application, petitioner wants to convert civil proceeding into criminal, which is not warranted by the law. Under the circumstances, no direction is required to be issued to the local police. Resultantly the instant petition having no substance is hereby dismissed being devoid of merits."*

4. Learned counsel for the petitioner argued that in case of a report regarding commission of a cognizable offence, it is the duty of the police to register the FIR at the first instance in terms of Section 154 Cr.P.C and then to investigate the matter. In the present case, the report of the concerned revenue official establishes the fact that the respondent No. 4 committed fraud with the petitioner but despite that the local police joined hands with the proposed accused and that the learned ex-officio justice of peace laid emphasis upon the police report contrary to the report of revenue official, therefore, impugned order is liable to be set aside. Learned counsel placed reliance upon case law reported as ***PLD 2005 Karachi 621, 2010 P.Cr.LJ 296, 2010 PCr.LJ 910, PLD 2016 SC 581, PLD 2007 SC 539, 2009 YLR 436, 2009 P.Cr.LJ 724, 2018 YLR 1374, 2007 PCr.LJ 145, 2015 P.Cr.LJ 1551.***

5. On the other hand, learned counsel for respondent No. 4 argued that the petitioner has attempted to convert civil litigation into criminal for exerting pressure to get undue benefit and that

his application was rightly turndown by the learned Ex-Officio Justice of Peace vide impugned order.

6. Heard, record examined.

7. It is settled principle that the powers of Ex-Officio Justice of Peace are quasi Judicial that includes entertaining applications, examination of record, hearing the parties and to pass appropriate directions with due application of mind. Every application warrants discretion and judgment. Once police report is requisitioned, due weight is required to be given to it and in case of contrary view, it is mandatory for the Ex-Officio Justice of Peace to advance reasons in this regard. Reliance is placed upon case of *Younas Abbas & Others v. Additional Sessions Judge Chakwal & Others* (**PLD 2016 SC 589**).

8. Perusal of record reveals that for the registration of FIR against respondent No. 4, petitioner filed applications to the SHO, P.S. Shahzad Town and S.P Rural, Islamabad, respondent 2 & 3 in May, 2021. Before filing of said applications, petitioner filed suit against respondent No. 4 on 03.03.2020 seeking *decree for specific performance of agreement dated 10-10-2018, mandatory and permanent injunction.* Thus, it appears that after passage of more than a year, petitioner opted to lodge application for the registration of FIR on the allegation of commission of fraud on the basis of agreement to sell dated 10-10-2018, the subject matter of suit filed much prior in time by the petitioner himself.

9. The other documents placed on record through CMA 1320/2022 that include Iqrar-Nama dated 12.09.2019, 30-12-2019 and copy of suit filed by the respondent No.4, against the petitioner for recovery of 550000/- and cancellation of agreement dated 09.05.2018 and 10.10.2018 which was placed on record during arguments also guide to observe that the dispute between the parties is of a civil nature.

10. Although, police opinion is not binding upon the courts yet in the attending circumstances of the case when the dispute, on the face of it, appears to be of civil nature, there exist no justification to take view contrary to the police report. Hence, keeping in view material placed on record and the police report, impugned order appears to be well reasoned, in accordance with law on the subject and does not call for any interference. Consequently, instant writ petition is **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in Open Court, on 06.06.2022:

JUDGE

//*Kamran*//