ORDER-SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 273/2022

Malik Naeem Akhtar
Vs.
I.G, Islamabad & others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	27.01.2022	Sardar Shahbaz Ali Khan Khosa, Mr. Muhammad Jamshed Khan & Ghulam Murtaza Malik, Advocates for petitioner.

Through the instant writ petition, petitioner Malik Naeem Akhtar prays for a direction to the respondents 1 to 4 (*IG, DIG-Operations, SSP, and SP-Rural Zone ICT)* to act in accordance with law, without fear or favour and further prayed that respondent No.1 (*IG ICT*) be directed to entrust the inquiry to any impartial and unbiased Officer other than respondent No. 4(*SP-Rural Zone ICT*), as the said respondent is in league with respondent No.5 (*Raza Saleem*), on whose application inquiry is in progress.

2- Learned counsel argued that petitioner and respondent No.6 had entered into an agreement to sell some landed properties but same could not be materialized due to non-fulfillment of the obligations on the part of respondent No.6; that respondent No. 6 then submitted an application to the respondent No. 2 (*DIG-Operations ICT*) which was marked to the respondent No. 4(*SP-Rural Zone ICT*), and on his coercion, petitioner was forced to enter into another agreement.

3- Learned counsel further argued that apprehending injustice at the hands of respondent No.4, petitioner moved an application to respondent No.2 for transfer of the said inquiry,

but no heed had been paid to his request, hence instant writ petition.

4- Heard, record perused.

5- Through the Ordinance CXXXI of 2002, Section 22-A (6) was inserted in the Code of Criminal Procedure Code 1898 whereby an ex-officio justice of peace was given the powers to issue appropriate directions to the police regarding non registration of criminal case, transfer of investigation and neglect, failure or excess committed by a police authority in relation to its functions and duties. Section 22-A (6) of the Code reads as under:-

> [(6) An ex-officio justice of the peace may issue appropriate directions to the police authorities concerned on a complaint regarding—
>
> (i) Non-registration of a criminal case;
>
> (ii) Transfer of investigation from one police officer to another; and
>
> (iii) **Neglect, failure or excess committed by a police authority in relation to its functions and duties**.] (emphasis added)

6. In the present case, petitioner alleges neglect, failure and excess on the part of police authorities in relation to its functions and duties, therefore, remedy available to the petitioner is to approach the forum of the Justice of Peace instead of moving the High Court directly.

7. In the light of principles laid down by the Hon'ble Supreme Court of Pakistan in the case **Dr. Sher Afgan Khan Niazi (2011 SCMR 1813)** the remedy before the ex-officio justice of peace is adequate and efficacious alternate remedy for an aggrieved person, with respect to its nature, extent of relief, point of time of

availability of relief and the conditions on which that relief would be available particularly the conditions relating to the expense and inconvenience involved in securing the same.

8. Under the principle, when a petition is to be decided on the sole ground of maintainability, this Court should refrain from commenting upon merits of the case in view of the law laid down by the Hon'ble Supreme Court of Pakistan in the case of *Khalid Mehmood v. Collector of Customs, Customs House, Lahore* **(1999 SCMR 1881**).

9. In view of above, in presence of alternate efficious remedy, instant writ petition is not maintainable. It is accordingly **dismissed in limine.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

Kamran