ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Writ Petition No. 395 of 2022

Abdur Rehman

Versus

The State etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.02.2022	Mr. Sohail Mehmood Advocate for petitioner, Makhdoom Syed Fakhar Imam Shah, State Counsel with Barkat Ali ASI.

The instant writ petition is arising out of order dated 11.10.2021, passed by the learned Addl. Sessions Judge/Ex-Officio Justice of Peace, Islamabad-West, whereby application under section 22-A&B Cr.P.C, filed by the petitioner for registration of FIR against proposed accused was dismissed by observing as under:-

> *"District Complaint Officer has submitted negative report against version of the petitioner. Petitioner has stated in the application for registration of criminal case that there is stay order regarding his clinic but the accused party has made contempt of court while committing the offence. This fact indicates that a civil case qua the disputed clinic is pending in the learned competent court and petitioner has opportunity to get penalized the accused party by proving before learned Court that they have violated the stay order. Keeping in view negative report, it is futile to give direction for registration of criminal case when no fruitful purpose will be served if cancellation report is prepared by the local police. Therefore, this petition is dismissed."*

2- Relevant facts are that petitioner moved an application to the respondent No.2/SHO, P.S. Tarnol, Islamabad, contending therein that on 26.06.2021, accused persons 10 to 15 in number, launched an attack upon his clinic, caused damage and took along laboratory equipment worth Rs.1,400,000/- despite injunctive order of the Civil Court. Finding no response, petitioner moved the learned Ex-Officio Justice of Peace through an application in terms of Section 22-A&B Cr PC wherein police report was requisitioned. The

learned Ex Officio Justice of Peace after hearing arguments and perusing the report, dismissed the application vide impugned order, hence instant writ petition.

3- Learned counsel argued that in presence of specific allegations regarding commission of a cognizable offence, there was no justification with the learned Ex-Officio Justice of Peace to turn down the application of the petitioner in arbitrary manner without realizing the fact that proposed accused have already committed highhandedness with the petitioner, therefore, impugned order is liable to be set aside.

4- On the other hand, learned State Counsel supported the impugned order and prays for dismissal of instant writ petition.

5- Heard, record perused.

6- It is settled principle that powers of Ex Officio Justice of Peace are required to be exercised sparingly in exceptional cases with due application of mind. In the instant case, police report was requisitioned by the court of first instance, due weight is required to be given to it and in case of contrary view, it is mandatory to given reasons, thereof. Reliance is placed upon case of *Younas Abbas & Others v. Additional Sessions Judge Chakwal & Others* (**PLD 2016 SC 589**).

7- The report of Superintendent of Police (complaint) Islamabad is available on police record, wherein, it was reported that during probe, it revealed that bone of contention between the parties is partnership in a private hospital located at Dhoke Usmania, Sara-e-Kharbooza, Islamabad and quarrel about a sale of house, which was sold to one Atif Khan, who is partner in the hospital, Zulfiqar son of Abdul Sattar sold the house to Atif Khan and Atif Khan got registered a case FIR No. 360/2021, against the petitioner and Zulfiqar, also got registered case FIR No. 317/2021 under section 489-F PPC, PS Tarnol, against the petitioner *(Abdur Rehman*).

8- It was further reported that both the parties have got registered criminal cases against each other. The petitioner alleged that the accused persons caused damage in the hospital, and had stolen the laboratory items, but he failed to

produce any evidence in support of his claim, and that no cognizable offence has been committed.

9- It is thus evident that the parties have business relations and already tagged in criminal and civil litigation, as they got registered FIRs against each other. In addition, during probe petitioner has not produced any evidence in support of his assertions, therefore, in such circumstances, there was no justification to direct the respondent No.2/SHO, P.S. Tarnol, Islamabad, to register FIR against the proposed accused.

10- The impugned order, in the backdrop of the facts of the instant case highlighted above, appears to be in accordance with law, on the subject as there is no hard and fast rule to order registration of FIR on every complaint in routine manner. Consequently, instant writ petition is accordingly **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.Ansari