JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ petition no.3797 of 2022

Faisal Hayat
versus
Learned Additional Sessions Judge/Ex-Officio Justice of Peace, and others

Petitioner by:	Mr. Usman Ali Ch., Advocate
Respondents by:	Ch. Muhammad Mohsin, learned State counsel along with Riaz Hussain, DSP Legal and Wajid Hussain, ASI
Date of Hearing:	**21.03.2023**

Sardar Ejaz Ishaq Khan, J.: This petition assails the impugned order dated 22.09.2022 whereby the learned *ex-officio* Justice of Peace (JOP) dismissed the petitioner's application under section 22-A/B CrPC for registration of an FIR against respondent no.4, the proposed accused. The petitioner claimed in his complaint to the police that the proposed accused had stolen several items from the petitioner's shop after breaking its lock.

2 The impugned order notes that the documents on record depicted that the petitioner and the proposed accused had entered into an agreement for sale of the petitioner's shop to the proposed accused much prior to the date of the alleged occurrence, and that there was a dispute over rent between the petitioner and the proposed accused, that persuaded the learned JOP of the complaint being an attempt to convert a business dispute into a criminal one.

3 The petitioner's learned counsel's contentions were two-fold. His first contention was that, as the police report to the JOP in this case was based on preliminary inquiries carried out by the police, those inquiries and the conclusions based thereon were illegal *per se* because no investigation could be carried out by the police whatsoever without first registering the FIR, and he cited in this behalf *Madawa vs Inspector General Police*[1] and

[1] PLD 2013 Lahore 442

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Mst. Sahib Khatoon vs SHO, Police Station Garhi Khairo[2]. His second submission was that, once the contents of a complaint disclosed the commission of a cognizable offence, it was mandatory to register an FIR, and neither the police nor the JOP had any discretionary role not to register the FIR, and that they were required to act mechanically and administratively, and he cited in this behalf *Muhammad Bashir v. Station House Officer, Okara Cantonment*[3] and *Muhammad Ali v. Additional I.G., Faisalabad* [4].

4 It is to be remembered that the expression 'registration of an FIR' is not found in the CrPC. This expression is the creation of the *Police Rules, 1934*.

5 Learned counsel's first submission is that section 154 CrPC makes it mandatory for the police to '*register an FIR*' before the police can embark on any inquiry or investigation into the information of the commission of a cognizable offence. I am afraid I do not agree. The case law cited by the learned counsel are all judgments of single benches, and to the extent they support the learned counsel's aforesaid contention, I respectfully disagree therewith.

6 Section 154 cannot be read in isolation but must be read in conjunction with section 157 CrPC. It is section 157 CrPC, and not section 154, which speaks of the officer in charge of a police station having *reason to suspect the commission of an offence* and thereafter to proceed to *investigate the facts and circumstances of the case* after *he [has] forthwith sent a report of the same to the Magistrate*. The 'registration of an FIR' does not find mention in section 154 CrPC. Section 154 instead speaks of the *substance of* the information relating to the commission of a cognizable offence to *be entered in a book in such form as prescribed by the Provincial Government in this behalf*, and such prescription by the Provincial Government is laid down in the *Police Rules, 1934*.

7 Chapter XXIV of the *Police Rules, 1934,* deals with information of offences to the police and provides in Rule 24.1 that:

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[2] 2013 PCrLJ 749
[3] PLD 2007 SC 539
[4] PLD 2014 SC 753

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> Every information covered by section 154 Criminal Procedure Code will be reduced to writing as provided in that section and the substance thereof must be entered in the police station daily diary, *which is the book provided for that purpose*. (emphasis added)

Rule 24.1 goes on to provide:

> It is only information which raises a reasonable suspicion of the commission of a cognizable offence within the jurisdiction of the police officer to whom it is given, which compels action under Section 157, Criminal Procedure Code.

The form of the book prescribed for the purposes of section 154 CrPC is in Form no. 24.2(1) appended to Chapter XXIV of the Police Rules.

8 It is plainly obvious that the *book prescribed* for reducing the substance of the information in terms of section 154 CrPC is the police station daily diary, and not the FIR Register prescribed by Rule 24.5 of the Police Rules. Rules 24.5 provides for a register of First Information Reports, which is not the same as the police station daily diary. Rule 24.5, and the FIR Register pursuant thereto, cater to the requirements of section 157 CrPC, and signify the police officer's '*reason to suspect*' the commission of the offence for the purposes of section 157 CrPC, because Rule 24.5 mirrors section 157 CrPC by requiring a copy of the FIR to be dispatched to the Magistrate.

9 There is ample logic in this arrangement under the Police Rules. Section 157 CrPC envisages for the police officer not to investigate the offence if he sees no sufficient grounds to investigate. But if there is no interregnum between entering in the police station daily diary the substance of the allegations as soon as reported (per section 154) and the police officer carrying out preliminary inquiries leading him to consider it likely that the report of the crime is correct, with that suspicion recorded in the FIR register with a copy dispatched to the Magistrate (per section 157), the distinction between section 154 and 157 is obliterated altogether! If learned counsel's submission is accepted, that would mean that if the police officer's initial inquiries do not cause him to suspect the commission of the offence, he would then have to go through the entire process of cancellation report of the FIR, which is a complete waste of time and effort, leads to quasi-judicial orders passed by the Magistrate that germinate revision petitions, and so on. The Police Rules therefore provide a buffer between

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merely recording information of a cognizable offence in the police station daily diary, and a formal investigative process launched by recording of the FIR in another Form no.24.5(1) prescribed for that purpose. But unfortunately, this buffer has been lost by requiring that the police officer is not to apply his mind and must mechanically proceed to register an FIR in Form no.24.5(1), which is the main reason why the instrumentality of FIR has become a tool of abuse *because it triggers the powers of arrest*. It is to be remembered that the power of arrest per section 157 rests on the prior condition that the police officer must harbour the suspicion of the commission of an offence; the power of arrest is not triggered by a mere reporting of the commission of a cognizable offence under section 154. A police officer in an action for unlawful arrest may not rely solely on the report of an offence under section 154, but must demonstrate the reason for him harbouring the suspicion of the report being correct, and to this end there is nothing in the CrPC or the Police Rules which forbids him from making preliminary inquiries before triggering formal investigation and arrest. Would a police officer be required to 'register an FIR' where, say for instance, a complainant files a written complaint stating that he was badly beaten by the accused only a while ago but without there being any bruise or torn clothes of the complainant? Obviously not. The police officer may carry out preliminary inquiries such as asking for witnesses or signs of bruises and medical examination, but the learned counsel's submissions and, with respect, the single bench judgments in the sense relied on him, would dictate that a formal report of the crime must be recorded in the FIR Register prescribed under Rule 24.5 of the Police Rules, which to me appears downright absurd.

10 Once the substance of any complaint is entered in the police station daily diary, then both the letter and spirit of section 154 CrPC are duly satisfied. A police officer is thereafter to investigate after registering the FIR in the separate register provided for this purpose only where he harbours, to use the phraseology of section 157 CrPC, a reasonable suspicion of the commission of the offence, which he obviously cannot form in many cases without making some preliminary inquiries. The way the 'registration of FIR' jurisprudence has developed notwithstanding the clear remit to the contrary under the Police Rules has caused much pain and

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suffering to innocent persons besides increasing the workload of the courts and the police manifold. The Police Rules for good reason dedicate police station daily diary to meet the imperatives of section 154 CrPC, and the FIR register to the imperatives of section 157 CrPC; the latter for the reason that an FIR has to be more comprehensive, for it is meant to reflect the basis of the police officer's reasons for suspicion of the commission of the crime and for him to justify the exercise of his powers of arrest. I would even go to the extent of saying that the 'first information' of the offence per the FIR Register is *by the police to the Magistrate* for the purposes of section 157(1) CrPC and is not the information *to the police by the complainant*.

11 The petitioner's learned counsel's submission is that in each and every case an FIR must be registered by a police officer as soon as he hears verbally or through writing that a cognizable offence has been committed. This submission rests on the assumption that section 154 CrPC necessitates the registration of an FIR in Form no.24.5 (1) prescribed under Rule 24.5 of the Police Rules, and that the letter and spirit of section 154 CrPC is not met when the information relating to the commission of a cognizable offence is entered in the police station daily diary. This interpretation is plainly wrong for the reasons given above.

12 In my humble opinion, section 154 CrPC only requires that the substance of the information of the commission of a cognizable offence is to be recorded in a book provided for this purpose. The expression 'registration of an FIR' has acquired a rather loose meaning in our jurisprudence whereby, as it were, the tail wags the dog, and it is expected that the only book for the purpose is the FIR register in Form no. 24.5(1) stipulated under Rule 24.5. This conceptual misunderstanding has led to an abuse of the expression 'FIR' to the extent that it has become a tool for people to settle their scores and reduces the police to a mere rubber stamp at the preliminary stage for being expected to 'register the FIR' and proceed to arrest straightaway.

13 For the foregoing reasons, learned counsel's first submission is rejected, and I hold that, while the police is bound to record, immediately on receipt, the substance of the information of the commission of a cognizable offence in the police station daily diary, there is no restriction on

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the police carrying out preliminary inquiries thereafter before recording the information (along with such additional information that the police may have gathered on preliminary inquiries) in the FIR Register under Rule 24.5 for the purposes of carrying out formal investigation and proceeding to exercise the powers of arrest if required, and that the recording in the FIR Register under Rule 24.5 ought also include the reasons for the police officer's 'suspicion' and the need for arrest of the accused. Accordingly, the inquiries carried out by the police in the instant case that led to the police refusing to 'register the FIR' in the FIR Register, as reported in the police report to JOP, was not illegal.

14 Turning now to the learned counsel's second submission, the view held by the Supreme Court in *Muhammad Bashir (supra)* and *Muhammad Ali (supra)* was that the police was under a statutory obligation under section 154 CrPC to lodge an FIR whenever a cognizable offence was made out from the contents of the application, and that a JOP upon receiving an application regarding non-performance of that statutory obligation could only issue directions to the extent of lodging of the FIR. The only power available to them in this regard was to assess whether, from the contents of the application, a cognizable offence was made out. If yes, then the JOP must so order without inquiring about the veracity of the contents. The former case discussed the ambit of section 154 CrPC in detail and held that a police officer did not possess the power to refuse lodging of an FIR which was clear from the word "shall" being used under the said provision and, resultantly, a JOP while entertaining an application in this regard must only do the same. It was observed:

> Therefore, in our opinion, the only jurisdiction which could be exercised by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. was to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence and if it did then to direct the concerned S.H.O. to record an F.I.R. without going into the veracity of the information in question, and no more. Offering any other interpretation to the provisions in question would be doing violence to the entire scheme of the Cr.P.C. which could not be permitted.

This position underwent a sea change in the case titled *Younas Abbas v. Additional Sessions Judge Chakwal* [5], where the earlier decisions were overruled, and it was held that the powers of JOP are quasi-judicial in

[5] PLD 2016 SC 581

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nature and not administrative or executive. The role of JOP is not to manage or deal with applications mechanically but the same must be done with due application of mind and demands due discretion and judgment. The JOP before issuing a direction on a complaint for the non-registration of a criminal case under section 22-A CrPC must be satisfied that sufficient material is available on the record, and the applicant has approached the higher police officers before invoking the jurisdiction of JOP. The same view was reaffirmed in *Abdul Rehman Malik v. Synthia D. Ritchie, American National*[6].

15 The report of the police to the JOP in the instant case shows that the police duly looked into the allegations in the complaint but declined to register the FIR (in the Form no.24.5 (1) per Rule 24.5), noting as follows:

> Eventually, the matter was entrusted to SHO/P.S. Ramna, Islamabad for inquiry and probe. The said officer reported that the petitioner has obtained a shop no. 08 at ground floor in sector G-11/3 from Khadim Hussain on rent and also kept Faisal Hayat on work. Afterward, an agreement was contracted between the petitioner and alleged Faisal Hayat and the petitioner has handed over all the items as well as possession of the shop to alleged accused in sum of Rs. 120,000/-. Later on, a dispute aroused between them and both started submitting applications against each other. Preventive action was taken against both of them. Alleged Faisal Hayat has refused to own his signature and thumb impression on the agreement so, the same were verified and the thumb impression was found to be of Faisal Hayat. The agreement of rent has expired in June 2022, between the petitioner and Khadim Hussain and the owner of the shop has issued a notice for eviction of the shop. The owner Khadim Hussain stated that the rent of last 5/6 months was being paid by alleged Faisal Abbas.
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> As the agreement tenancy between the petitioner and owner of shop namely Khadim Hussain has been expired in June 2022, and the agreement between the petitioner and alleged Faisal Hayat was verified through NADRA. During a detailed inquiry by DSP/SDPO Ramna Circle, the version of the petitioner has been found wrong. The instant petition is not based on facts.

16 On the record before me, it is quite obvious that the petitioner and the proposed accused were locked in a protracted business dispute, and that the petitioner's complaint before the police was to convert that business dispute into a criminal one. The petitioner was not rendered remediless, but had his remedy under section 200 CrPC to lodge a private complaint instead.

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[6] 2020 SCMR 2037

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17 The Constitutional jurisdiction under Article 199 of the Constitution necessitates that a violation of any law be shown for directions to be issued thereunder. For the aforesaid reasons, no violation of any law has been shown to arise from the impugned order of the learned Justice of Peace, and this petition is therefore **dismissed**.

(Sardar Ejaz Ishaq Khan)
Judge

Asjid

Announced in open Court on _____.

Judge

Approved for reporting.

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