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

Writ-Petition No. 665 of 2023
Muhammad Iqbal
Versus
I.G.Police Islamabad etc.

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Petitioner By:	M/s Haroon ur Rasheed & Muhammad Ali Advocates.
Respondents By:	Ch. Abdul Khalid Thind & Mian Azhar Ali Bhatti Advocates:
For the State:	Mian Zain-ul-Abdin Qureshi, State Counsel with M. Akram ASI:
Date of Hearing:	22.03.2023:

ARBAB MUHAMMAD TAHIR, J: Listed writ-petition emanates from order dated 28.10.2022, passed by the Additional Sessions Judge/Ex-Officio Justice of Peace, Islamabad-West, whereby application under section 22-A & B of the Code of Criminal Procedure, 1898 ("**Cr. P. C**") filed by the petitioner was dismissed by observing as under:-

> "4. The comments of the S.P Complaint received perusal of the same reveals that the owner of the house is Ch. Muhammad Tasawar and petitioner sent a written application from Haripur Jail that an agreement for purchase of above said house was contracted with Ch. Zafar Iqbal through Sheikh Aoun Bashir and requested for transfer of hosue as per agreement. It is pertinent to mention that Zafar Iqbal is not owner of the house rather it is in the ownership of his son, therefore, whether the agreement to sell on the basis of which the petitioner intended to initiate criminal proceedings is valid, this controversy can only be resolved in civil court. Thus, dispute between the parties is of civil nature and it appears that the petitioner filed the instant petition to convert a civil litigation to criminal one. Hence, instant petition does not disclose commission of any cognizable offence and the same stands dismissed. The petitioner however, has legal remedy to file private complaint, if he deems appropriate. File be consigned to record room after its due completion/compilation."

2- Precisely, the parties to *lis* are *Muhammad Iqbal* (**petitioner**), presently confined in Central Prison Haripur KPK in connection with a criminal case, and *Ch. Zafar Iqbal, Ch. Muhammad Tasawar son of Ch. Zafar Iqbal and Muhammad Aoun* (**respondents 6 to 8**) while the

subject matter of the *lis* is House No. 77, Street No. 2, Sector G-15, Islamabad ('**house**'). The house is the ownership of **respondent No. 7** *Ch. Muhammad Tasawar son of* respondent **No. 6** *Ch. Zafar Iqbal*. The petitioner claims to have purchased the house from respondent No. 6 through Muhammad Aoun, **respondent No.8** through **two agreements-to-sell dated 19.03.2020 and 26.04.2020**. It is significant to note that at the relevant time, when the stated agreements were executed, the owner of the house, respondent No.7 had been out of country, living in France. There is also a third **agreement-to-sell dated 05.05.2020** inter-se the petitioner and original owner, respondent No.7 *Ch. Muhammad Tasawar*.

3- On 12.09.2022, petitioner filed application under section 22-A & B Cr PC before the Ex-Officio JOP wherein after procuring report from the SHO concerned and the S.P Complaint, learned Ex-Officio JOP after hearing the parties, dismissed the application vide order dated 28.10.2022, being impugned through the instant writ petition.

4- The learned counsel argued that respondents 6 to 8 in league with each other grabbed huge amount from the petitioner through the stated agreements to sell and are reluctant to transfer the house in the name of the petitioner, instead dragged him in litigation, criminal and civil, just to grab the house and to dispossess him illegally; that the application moved to the SHO concerned by the petitioner, on the face of it, discloses commission of a cognizable offence, therefore, it was incumbent upon the police to proceed in terms of Section 154 Cr PC and to investigate the matter on true lines and that the impugned order being in contravention of the law on the subject is liable to be set aside. The learned counsel placed reliance upon case law reported as **PLD 2012 Lahore 188.**

5- Conversely, learned counsel for respondents 6&7 repelled the above submissions with vehemence by highlighting the events that took place till date for which he had also placed on record written synopsis together with copies of agreements, police reports and suits filed by the petitioner and his spouse. According to the learned counsel, the case-at-hand is classic example of abuse of process of law besides the frivolous

and vexatious litigation, commenced both on civil and criminal side with aim and intention to grab valuable property of respondent No.7. Further asserted that purported agreement has since been testified as forged for which a criminal case was also registered against the petitioner and others; that the petitioner is habitual offender, involved in series of like cases of fraud and forgery, presently confined in a Prison in KPK and that under the circumstances petition is liable to outright dismissal. The learned counsel relied upon case law reported as 2009 YLR 550-Karachi.

6- Heard the learned counsel for the parties and perused the record made available on file, with their assistance.

7- The thrust of the arguments advanced by the learned counsel for the petitioner had been on the point that in case of a complaint regarding commission of a cognizable offence, the Ex-Officio Justice of Peace is bound to issue direction to the police for the registration of FIR and that Ex-Officio Justice of Peace, in such eventuality retains no authority to dismiss the complaint, therefore, impugned order being in contravention of the law on the subject is liable to be set aside.

8- The powers vested in Ex-Officio Justice of Peace are required to be exercised with due care and caution by application of judicial mind. The term Ex-officio Justice of Peace is defined under section 25 Cr PC as follows:-

> "**25. Ex-officio Justice of the Peace.** – By virtue of their respective offices, the Sessions Judges and on nomination by them, the Additional sessions Judges, are Justices of the Peace within and for whole of the District of the Province in which they are serving."

9- The powers with regard to complaints regarding non-registration of criminal case, transfer of investigation or neglect, failure or excess committed by the policy authorities were conferred on the Ex Officio Justice of Peace through the Criminal Procedure (Third Amendment) Ordinance, 2002 (Federal Ordinance No. CXXXI of 2002). The said provision reads as under:

> (6) An Ex-officio Justice of Peace may issue appropriate directions to the police authorities concerned on a complaint regarding:
> (i) non-registration of 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.

10- The Supreme Court of Pakistan in the case of *Younus Abbas and others v. Additional Sessions Judge, Chakwal and others* (**PLD 2016 Supreme Court 581**) elaborated the powers vested in the Ex-officio justice in terms of Section 22-A and 22-B' has held that:-

> "The duties, the Justice of Peace performs, are executive, administrative, preventive and ministerial as is evident from subsections (1), (2), (3), (4) and (5) of Sections 22-A and 22-B of the Cr.P.C. Such duties have not been a subject matter of controversy nor have they ever been caviled at by anybody. Controversy emerged with the insertion of subsection (6) in Section 22-A and Section 25 of the Cr.P.C. when Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-officio Justices of Peace. The functions, the Ex-officio Justice of Peace performs, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with things mechanically. His functions as described in Clauses (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.P.C., are quasi-judicial as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind. Every lis before him demands discretion and judgment. Functions so performed cannot be termed as executive, administrative or ministerial on any account. We thus don't agree with the ratio of the judgments rendered in the cases of Khizar Hayat and others v. Inspector General of Police (Punjab), Lahore and others (PLD 2005 Lah. 470) and Muhammad Ali v. Additional I. G. (PLD 2015 SC 753) inasmuch as it holds that the functions performed by the Ex-officio Justice of Peace are executive, administrative or ministerial."

11- Under the principle *ibid*, the functions of the Ex-Officio JOP are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with things mechanically. The functions so performed in terms of Clause (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.PC are quasi-judicial as the Ex-Officio JOP entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind. Every lis before him demands discretion and judgment. Thus, the authority to be exercised by an Ex-Officio JOP in terms of Section 22-A & B Cr PC is quasi-judicial in nature to be exercised with due application of mind. Every *lis* before him demands discretion and judgment as the authority vested in it in terms of Section 22-A (6) contains the words "**may**" issue appropriate

directions to the police authorities concerned on a complaint regarding: (i) non-registration of 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. It is thus abundantly clear that it is not mandatory for the Ex-Officio Justice of Peace to order registration of criminal case on every complaint regarding non-registration of criminal case by the police. The contention to this effect put-forth by the learned counsel for the petitioner is, therefore, misconceived and is accordingly repelled.

12- Perusal of record reveals that after filing of the application by the petitioner, the Ex-Officio Justice of Peace procured reports from the SHO concerned and the SP Complaint Islamabad. The report of the latter was to the following effect:-

> " Eventually, the matter was entrusted to SHO/PS Tarnol, Islamabad for inquiry and probe. The said Officer reported that upon verification from Jammu & Kashmir Housing Society, Islamabad. Ch. Muhammad Tasawar was found the owner of the above said house. The petitioner sent a written application from Haripur Jail that an agreement for purchase of above said house was contracted with Ch. Zafar Iqbal through Sheikh AounBasheer and requested for transfer of house as per agreement. The petitioner was replied that the matter is civil in nature and advised to approach the civil court of competent jurisdiction for redressal of his grievance. No cognizable offence has been found taken place and the petitioner has approached the civil court accordingly. "

13- The above report explicitly indicates that upon verification from Jammu & Kashmir Housing Society, Islamabad. Ch. Muhammad Tasawar(respondent No. 7) was found the owner of the house. It was further confirmed that no cognizable offence has been committed. It is also matter of record that respondent No.7 *Ch. Muhammad Tasawar* also filed application under section 3&4 of the Illegal Dispossession Act, 2005 together with an application under section 7 of the Act of 2007. The Additional Sessions Judge-IX, Islamabad-West accepted the application under section 7 of the Act of 2005 with direction to the respondent/accused to hand over possession of the house to the complainant/respondent No. 7 within a period of seven days and in case

of failure of respondent/accused to comply with the order, the complainant/respondent No. 7 may approach the concerned SHO who would be authorized to take possession of subject property for securing compliance of the order.

14- Record further reveals that initially, on 07.03.2022 petitioner filed suit for specific performance of agreement dated 05.05.2020, declaration, permanent and mandatory injunction against respondents 6 to 8 and the Jammu & Kashmir Cooperative Housing Society ('**Society**'). The said suit was dismissed as withdrawn with permission to file afresh by the Civil Judge 1st Class, Islamabad-West vide order dated 27.06.2022. The petitioner then filed second suit on 01.07.2022 for specific performance of the two agreements-to-sell dated 19.03.2020 & and 24.04.2020 against respondents 6 to 8 and others which, according to learned counsel for respondents 6&7 was also dismissed. Thereafter, on 06.07.2022,*Mst. Farzana Bibi* wife of the petitioner filed third suit for declaration and permanent injunction regarding the house which too, was dismissed.Ultimately, on 12.09.2022, the petitioner filed application under section 22-A & B Cr PC before the Ex-Officio JOP which was dismissed vide impugned order.

15- Furthermore, on the complaint of respondent No. 7 *Ch. Muhammad Tasawar*, FIR No. 1131, dated 20.10.2022 stood registered against the petitioner and others under section 420, 468, 472, 448, 506 & 34-PPC, at Police Station Tarnol Islamabad. Perusal of police record of said case reveals that rent agreement on stamp paper bearing No. 1793, prepared by the accused persons in absence of the complainant/respondent No.7 was a forged document; that the house is in illegal possession of the petitioner; that no sale consideration of the said house was paid by the petitioner to the complainant/respondent No.7; that bogus agreements were prepared regarding the house and that petitioner is involved in various other cases of like nature.

16- Having examined the case from every angle, it can safely be held that the impugned order had been passed in accordance with the law and facts of the case as the complaint, filed by the petitioner, for the registration of FIR was not only short of prerequisite i.e. event

disclosing commission of a cognizable offence but was frivolous and vexatious with aim and intention to usurp the property of the respondent No. 7 by using the process of law as a device. Such frivolous, vexatious and speculative litigation unduly burdens the courts giving artificial rise to pendency of cases which in turn clogs the justice system and delays the resolution of genuine disputes. Such litigation is required to be rooted out of the system and one of the ways to curb such practice of instituting frivolous and vexatious cases is by imposing of costs. The specter of being made liable to pay actual costs should be such as to make every litigant think twice before putting forth a vexatious claim or defence before the Court. These costs in an appropriate case can be over and above the nominal costs which include costs of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost, besides the amount of the process fee and lawyer's fee paid in relation to the litigation. The imposition of costs in frivolous and vexatious cases meets the requirement of fair trial under Article 10A of the Constitution, as it not only discourages frivolous claims or defences brought to the court but also absence of such cases allows more court time for the adjudication of genuine claims. The imposition of costs lay foundation for expeditious justice and promotes a smart legal system that enhances access to justice by entertaining genuine claims. The purpose of awarding costs at one level is to compensate the successful party for the expenses incurred to which he has been subjected and at another level to be an effective tool to purge the legal system of frivolous, vexatious and speculative claims and defences. The imposition of costs encourages alternative dispute resolution; settlements between the parties; and reduces unnecessary burden of the courts, so that they can attend to genuine claims. The costs are a weapon of offence for the plaintiff with a just claim to present and a shield to the defendant who has been unfairly brought into court. Reliance is placed upon *Qazi Naveed ul Islam v. District Judge, Gujrat etc*. (**CP 3127 of 2020**), *Province of Balochistan v. Murree Brewery Company* (**PLD 2007 SC 386 (5-MB),** *Vinod Seth v. Devinder Bajaj* (**2010) 8 SCC)** and *Edwin Coe LLP v. Naseem Ahmad Sarfraz Khan* (**2022 CLC 1064-Islamabad).**

17- In the present case, the petitioner has repeatedly abused the process of courts by repeatedly filing vexatious and frivolous claims in various courts through different civil suits and the application, *highlighted above,* which not only resulted in wasting the precious time of these courts but also causing anguish and pain to the other party that unnecessary, unfair and prolonged litigation brings. I, therefore, **dismiss the present petition with costs of Rs.50,000/-** which shall be paid by the petitioner within a period of two months from today, to respondent No.7 *Ch. Muhammad Tasawar*, under acknowledgment due. The learned counsel for the respondent No. 7 shall submit certificate confirming payment of costswith the Deputy Registrar (Judicial) of this Court.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on **. 3.2023**.

JUDGE

A.R.Ansari