Form No: HCJD/C-121

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,

(JUDICIAL DEPARTMENT).

Writ Petition No. 2181 of 2024

Nosherwan Adil and another

Versus

Altaf Hussain Shah and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(05)	05.12.2024	Ch. Hafeez Ullah Yaqub, Raja Muhammad Mudassir Iqbal and Mr. Assad Ullah, Advocates for the petitioners. Mr. Aamir Nadeem Tabish and Sheikh Azeem Shamas, Advocates for respondent No. 1. Mr. Muhammad Naseem Khan, learned State Counsel. Riaz Hussain Noon, S.I. Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, read with section 561-A, Cr.P.C., the petitioners have challenged order dated 06.07.2024, passed by learned AD&SJ / Judge Special Anti-Rape Court, East-Islamabad/Ex-Officio Justice of Peace, whereby petition filed by respondent No.1 under Section 22-A & B, Cr.P.C., for registration of F.I.R. against the petitioners, has been allowed and order for registration of F.I.R. against the petitioners,

has been passed.

02. Succinctly stated facts of the matter are that respondent No. 1 filed an application before SHO concerned for registration of FIR against the petitioners, however, the police has refused to register the same. Being aggrieved, the respondent No. 1, filed an application under section 22-A & B, Cr.P.C., which was accepted by learned AD&SJ / Judge Special Anti-Rape Court, East-Islamabad, vide impugned order dated 06.07.2024, hence the instant writ petition.

03. Learned counsel for the petitioners, *inter-alia*, contends that the contents of proposed F.I.R. do not constitute a cognizable offence; there is no criminality reflected in the proposed F.I.R.; there is a civil litigation pending between the parties; respondent No.1 has also filed a petition for contempt of Court before learned Civil Court, Islamabad, cognizance has been taken by the Civil Court. Learned counsel

further contends that the Superintendent of Police (Complaints), Islamabad has also furnished report before the Court of learned Justice of Peace, wherein it is mentioned that no such occurrence has taken place, dispute is of civil nature between the parties; impugned order is erroneous and not tenable under the law, hence the same is liable to be set-aside.

04. Learned counsel for respondent No. 1 has controverted the arguments advanced by learned counsel for the petitioners and has stated that impugned order dated 06.07.2024, has been passed strictly in accordance with law and facts of the case; the occurrence is admitted, regarding which F.I.R. is liable to be registered against the petitioners; proposed F.I.R. clearly constitutes a cognizable offence; police is duty bound to register the F.I.R under Section 154, Cr.P.C., whenever information regarding commission of cognizable offence is received but in this case police has

committed violation of law and has not performed its legal obligations, so respondent No. 1 filed a petition under Section 22-A/B, Cr.P.C. before the Court of learned Sessions Judge, Justice of Peace, East-Islamabad, which was allowed vide order dated 06.07.2024, and has prayed to dismiss the instant petition.

05. Arguments heard, record perused.

06. Civil suit filed by respondent No. 1, against the petitioners is pending adjudication in the Civil Court of Islamabad; the petitioners and respondent No.1 are co-owners of the land in question. Learned counsel for respondent No. 1 has stated that the petitioners/proposed accused are not in possession of the land mentioned in the proposed FIR. It was further stated that the petitioners visited the site with a tractor and left shortly thereafter. Additionally, Respondent No. 1 has neither undertaken construction on the land nor established constructive possession of the property

mentioned in the complaint.

07. SP (Complaints) has submitted report, wherein it is stated that neither the respondent No. 1 filed any application at the time of alleged occurrence nor produced any evidence in support of his allegations, dispute pending between the parties is of civil nature and has prayed for dismissal of petition filed by respondent No. 1, under section 22-A & B, Cr.P.C.

08. Learned Ex-Officio Justice of Peace once called for the police report, cannot ordinarily brush aside the same, in case he proposed to give his opinion contrary to the police report, he was supposed to furnish tangible reasons for not relying upon the police report. Reliance is placed upon a case titled as ***Muhammad Ashar Halim Quraishi Vs. Ex-Officio Justice of Peace/Additional Sessions Judge, East Islamabad and 3 others (2022 PCr.L.J 534)***.

09. There is distinction in sections 22-A(6)

and 154, Cr.P.C, for convenience both the sections are reproduced here under:

- ***Section-22-A(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 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."

- ***Section 154 Cr.P.C Information in cognizable cases:***

  Every information relating to the commission of a cognizable offence if given orally to an officer incharge of a police station, shall be reduced into writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form

as the Provincial Government may prescribe in this behalf."

10. By comparing the abovementioned provisions of the Criminal Procedure code, it is established that in section 154, Cr.P.C., the word shall have been used while in section 22-A(6), Cr.P.C., the word may have been used, which manifests the intention of the legislature that the Justice of Peace is still left with discretion to pass an order for the registration of FIR that's too in appropriate/certain cases.

11. The Larger Bench of Supreme Court of Pakistan in a case titled as ***Younas Abbass and others Vs. Additional Sessions Judge, Chakwal and others (PLD 2016 SC 581)***, has held that:

"Functions performed by Ex-officio Justice of Peace under S.22-A (6) Cr.P.C.---Such functions being quasi-judicial in nature could not be termed as executive, administrative or ministerial.. Said functions were complementary to those of the police and thus did not amount to interference in the investigative domain of the police

... Khizar Hayat and others v. Inspector General of Police (Punjab), Lahore and others PLD 2005 Lahore. 470 and Muhammad Ali v. Additional I.G, PLD 2015 SC 753 dissented from.

Functions performed by the Ex-officio Justice of Peace were not executive, administrative or ministerial inasmuch as he did not carry out, manage or deal with things mechanically. Such functions as described in clauses (i), (ii) and (iii) of section 22-A(6) Cr.P.C, were quasi-judicial as Ex-officio Justice of Peace entertained applications, examined the record, heard the parties, passed orders and issued directions with due application of mind. Every lis before him demanded discretion and judgment. Functions so performed could not be termed as executive, administrative or ministerial on any account."

12. In exercise of powers under section 22- A, Cr.P.C., the Justice of Peace, is not supposed to proceed and act mechanically by simply considering the version of events narrated by a party applying for registration of an FIR, but instead, in order to safeguard

against misuse or abuse of such process, the Justice of Peace has to apply his judicial mind and has to satisfy himself that prima-facie there is some material available on record to support such version. Reliance in this regard is placed on additional note of judgment of the Supreme Court in the case reported as ***Younas Abbas and others Vs. Additional Sessions Judge, Chakwal (PLD 2016 SC 581)***, wherein following was observed:

> ***"2. The past experience of around 14 years (since the insertion of these provisions into the Code of Criminal Procedure) would unmistakably reveal that these provisions especially Section 22-A of the Code of Criminal Procedure, though beneficial and advantageous to the public at large, yet in myriad cases, it has been misused and abused.***
>
> ***Once a false criminal case is registered against an individual, it becomes exceedingly difficult for him/her to get rid of it. The time and money which is spent on acquiring a clean chit by way of cancellation of the case or acquittal is not hard to fathom. There is no denying the fact***

that at times false and frivolous cases are got registered just to humble and harass the opposite party. In such a milieu, powers given to an ex-officio Justice of the Peace under subsection (6) of Section 22-A, Code of Criminal Procedure, to issue appropriate directions on a complaint filed by an aggrieved person for registration of a criminal case (Clause-i) and for transfer of investigation from one police officer to another (Clause-ii) though efficacious and expeditious besides being at the doorstep, but at the same time, these provisions should not be unbridled or open-ended. These provisions must be defined, structured and its contour delineated to obviate misuse by influential and unscrupulous elements. Therefore:-

(i) The ex-officio Justice of the Peace, before issuance of a direction on a complaint for the non-registration of a criminal case under subsection (6)(i) of section 22-A, Code of Criminal Procedure must satisfy himself that sufficient material is available on the record, such as application to the concerned SHO for registration of the criminal case and on his refusal or reluctance, complaint to the higher

police officers i.e. DPO, RPO etc., to show that the aggrieved person, before invoking the powers of ex-officio Justice of the Peace, had recourse to the high ups in the police hierarchy.

(ii)……"

13. Learned Additional District & Sessions Judge/Ex-Officio Justice of Peace, East-Islamabad while passing the impugned order has not mentioned any plausible reasons for not relying on the report, submitted by Superintendent of Police (Complaints), Islamabad rather passed the impugned order in a mechanical manner.

14. Proceedings before Justice of Peace are quasi-judicial and are not executive, administrative or ministerial to deal with the matters mechanically rather the same are quasi-judicial powers, every case before him demands discretion and judicial observations.

15. Even the respondent No. 1/complainant has alternative statutory remedies under Sections 156(3) & 190 Cr.P.C as well as remedy to file criminal /

private complaint under Section 200 Cr.P.C to press and prove his allegation before the Court of Competent jurisdiction.

16. For the reasons, discussed above, the instant writ petition is **allowed**, the impugned order dated 06.07.2024, passed by learned AD&SJ / Judge Special Anti-Rape Court, East-Islamabad/Ex-Officio Justice of Peace, is **set-aside**, further the respondents No. 1 is at liberty to file a private compliant, if so advised, before the competent forum.

17. All pending C.Ms are disposed of accordingly.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

*Bilal /**

Approved for reporting.