JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 3080 of 2024

Hassan Nawaz Khokhar

VERSUS

Superintendent of Police, Islamabad, etc.

PETITIONER BY:	Barrister M. Shoaib Razzaq, Advocate
RESPONDENT BY:	Mr. M. Taimur Janjua, State Counsel. Mr. Shehzad Malik, ASI, P.S Bhara Kahu, Islamabad.
DATE OF HEARING:	14.09.2026

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AYYAZ SHAUKAT, J:- The petitioner has assailed the order dated 09.09.2024 passed by the learned Additional Sessions Judge-IX, East-Islamabad, in his capacity as Ex-officio Justice of Peace (the **"Justice of Peace"**). By the said order, the Justice of Peace dismissed his application under sections 22-A and 22-B of the Code of Criminal Procedure, 1898 (the **"Code"**). The application prayed for a direction to the Station House Officer, Police Station Bhara Kahu, Islamabad, to register a criminal case against respondent No.5. Through the instant petition, the petitioner seeks the setting aside of the impugned order and a direction to respondent No.2 to register a criminal case against respondent No.5 under the relevant provisions of the Pakistan Penal Code, 1860 (the **"PPC"**).

2. Learned counsel for the petitioner submitted that the petitioner, a resident of Sector E-7, Islamabad, has purchased land situated in Mauza Shahdara, Tehsil and District Islamabad. The land was initially the subject of a bargain struck between respondent No.5, Ashiq Hussain, and one Bilal Ahmed, who is the petitioner's brother-in-law. It was submitted that title thereto now stands transferred to the petitioner by virtue of the agreement

Islamabad High Court

placed on record. According to the memorandum of petition, the land so acquired measures seventeen kanal. Respondents No.1 to 4 are, respectively, the Superintendent of Police, Islamabad, the Station House Officer, Police Station Bhara Kahu, the Assistant Commissioner concerned, and the learned Justice of Peace who passed the impugned order.

3. It was further submitted that under the iqrar nama placed on record respondent No.5, upon receipt of the price, was under an obligation to hand over possession of a twenty-foot-wide passage, whereas the buyer was to construct the passage leading to his land at his own expense. At the time of the sale, respondent No.5 erected pickets to demarcate the area sold. Most of these were replaced by the petitioner with his own fencing. The remaining pickets, it is said, were removed by respondent No.5, who, it is alleged, failed to deliver the passage when it was demanded. The grievance, as pleaded, is that respondent No.5 has not handed over possession and continues to obstruct the petitioner's access to the passage.

4. Learned counsel next submitted that before the land was transferred to the petitioner, Bilal Ahmed had preferred applications before the Assistant Commissioner, the Superintendent of Police and the Station House Officer. These met with no favourable response, and an attempt at arbitration likewise failed. It was alleged that respondent No.5, by virtue of his association with influential political figures, had prejudiced the office of the Assistant Commissioner against the petitioner. The petitioner then preferred his application under sections 22-A and 22-B of the Code. During those proceedings the Station House Officer submitted his reports, along with an affidavit in which respondent No.5 acknowledged that he was bound to hand over the land sold and undertook responsibility for the removal of any obstruction in the passage.

Islamabad High Court

5. It was then submitted that whenever the petitioner commenced work for clearing the passage, various groups approached him and asserted that the land never belonged to respondent No.5 and that he had sold it on the strength of fake documents. Paragraph 16 of the memorandum of petition states that, since the agreement was based upon fake and forged documents, the petitioner, "instead of pursuing specific performance of the agreement", seeks the registration of a criminal case against respondent No.5.

6. On these facts, learned counsel contended that the Justice of Peace failed to exercise the discretion vested in him and omitted to take into account the facts and circumstances of the entire case. He further contended that the findings are contrary to law and the material on record, and that the Justice of Peace failed to exercise his jurisdiction by treating the matter as one involving civil rights and obligations. He also contended that the availability of a civil remedy is no bar to a criminal prosecution, inasmuch as both remedies may be pursued simultaneously, and placed reliance in this behalf upon the judgment reported as ***Haji Sardar Khalid Saleem v. Muhammad Ashraf and others*** **(2006 SCMR 1192)**. He lastly contended that the impugned order is violative of Articles 4, 9, 10-A, 14 and 18 of the Constitution of the Islamic Republic of Pakistan, 1973 (the **"Constitution"**). In support thereof, he referred to a number of judgments on the content of those Articles and on the scope of Article 199, among them ***High Court Bar Association v. Government of Balochistan*** **(PLD 2013 Balochistan 75)**, ***Muhammad Umer Rathore v. Federation of Pakistan*** **(PLD 2009 Lahore 268)**, ***Abdul Rasheed Bhatti v. Government of Punjab through Chief Secretary*** **(PLD 2010 Lahore 468)**, ***Malik Khizar Hayat Awan v. DCO Hafizabad*** **(2005 YLR 1541)**, and ***Muhammad Azhar Siddiqui v. Federation of Pakistan*** **(PLD 2012 SC 774)**.

Islamabad High Court

7. Learned State Counsel, assisted by the police official in attendance, defended the impugned order. He submitted that the representative of the petitioner could point only to a transaction in land between the parties. Respondent No.5 had tendered an affidavit to the effect that he had not blocked the passage and was ready and willing to give it. He submitted that the grievance, as pleaded, is one cognisable by the civil court, and that the remedy of a private complaint under section 200 of the Code remains available to him. He accordingly prayed for dismissal of the petition.

8. Learned counsel for the petitioner and the learned State Counsel have been heard and the record, including the police reports and the documents annexed to the petition, has been perused.

9. The impugned order is brief. It records that despite the issuance of notice, none appeared on behalf of the proposed accused. The Justice of Peace noted that the grievance of the petitioner pertained to the registration of a criminal case against respondent No.5, principally on the allegation that the latter had dishonestly and fraudulently deprived him of a substantial amount on the strength of a false promise of delivering physical possession of landed property purchased through a written instrument. Having perused the comments of the local police and heard learned counsel for the petitioner, he recorded his conclusion in the following terms:

> *"The very nature of dispute virtually involved between the parties, primarily relating to the fulfillment of some reciprocal commitments mutually settled and undertaken by the petitioner and one Ashiq Husain, as oozing from body of the written complaint as well as contents of the agreement dated 03.03.2016, instead of rendering the proposed accused liable to be prosecuted under the set of some criminal charges, to my mind, is giving rise to certain rights and liabilities required to be agitated, pressed and get enforced by resorting to some sort of civil actions and remedies because when a particular aspect of the story revolving around any Act or omission*

Islamabad High Court

of some party to a written instrument, is intrinsically concerning to the set of civil rights, liabilities and obligations simmering out of their previous commitments and promises as stood voluntarily endorsed by them through a written agreement, then there virtually remains no lawful justification for dragging the opposite side under the ordeals of some criminal charge(s).

Thus, faced with such position, the petition in hand, bearing no independent merits and substance for issuance of solicited direction by this forum, and being apparently based upon an attempt intended to be made for settling the scores with reference to a civil conflict rested between the parties regarding some landed property by a direct resort to the scheme and pedestal of criminal justice, is hereby dismissed."

10. The comments of the local police on which the Justice of Peace acted are three in number, and are in Urdu. By the first, placed on the record on 13.05.2024, the Station House Officer sought time inasmuch as neither the petitioner nor the proposed accused could then be contacted. By the second, dated 19.05.2024, he reported that the petitioner's representative, Bilal Ahmed, had informed him that the petitioner resides abroad and could not come to Pakistan on account of his engagements and the illness of his father. He reported further that the application of the petitioner disclosed a transaction in land between the parties, which was a matter for the civil court. By the third, he reported that during the inquiry respondent No.5 tendered a affidavit. In it respondent No.5 stated that he had not blocked the passage of the petitioner, that whenever the petitioner so wished, he was bound to give the passage in his presence, and that if any other person obstructed the passage he would be answerable for it.

11. The controversy which the petitioner brings before this Court is short and precise. The petitioner does not contend that the Justice of Peace disbelieved him, or that he embarked upon an inquiry into the truth of the allegations. His grievance is that the Justice of Peace ought not to have

Islamabad High Court

treated the grievance as civil in nature. The question before the Justice of Peace was not whether the petitioner has a grievance. It was whether the grievance, as he himself stated it, constitutes a crime. That question is anterior to every other in the case, because the power conferred by section 22-A(6) of the Code is a power to set the criminal law in motion, and nothing more. It is convenient to begin with section 154 of the Code, which casts upon the officer in charge of a police station the duty to record information relating to the commission of a cognizable offence. It reads:

> *154. Information in cognizable cases.- Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to 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.*

12. The section discloses two features. The first is that the duty is cast in mandatory terms. The second is that the duty is triggered by the nature of the information. The officer is not the judge of its truth, but the information must, on its own terms, disclose a cognizable offence. The august Supreme Court held in ***Muhammad Bashir v. Station House Officer, Okara Cantt. and others*** **(PLD 2007 SC 539)** that neither the officer in charge of a police station nor anyone else has the authority to refuse to record a first information report where the information conveyed discloses the commission of a cognizable offence, and that no one has the authority to hold an inquiry into the correctness of such information before recording it. The principle was reaffirmed in ***Abdul Rehman Malik v. Synthia D. Ritchie and others*** **(2020 SCMR 2037)**, where, dealing with Rule 24.4 of the Police Rules, 1934, their lordships observed:

Islamabad High Court

> *"Rule 24.4 does not tyrannically foreclose doors to a complainant to voice his/her grievance nor it dogmatically empowers an Officer Incharge to terminate a prosecution before its inception on his subjective belief of its being false ... an Officer Incharge can possibly invoke the Rule, that too, for reasons strong and manifest after registration of First Information Report."*

13. The converse of the same principle was enunciated by the Lahore High Court in ***Arsalan Raza v. Justice of Peace and others*** **(2024 PCr.LJ 351)**. Having traced the history of section 154 through the earlier Codes, the learned Judge concluded:

> *"An overall reading of all the Codes makes it clear that sine qua non for recording a first information report is that there should be an information and that information must disclose the commission of a cognizable offence."*

The law, therefore, protects the informant against a refusal founded merely upon disbelief. It does not convert every grievance, whatever its nature, into information of a cognizable offence. That understanding accords with the exposition of the august Supreme Court in ***Mst. Sughran Bibi v. The State*** **(PLD 2018 SC 595)**, where a first information report was described as the first information to the local police regarding the commission of a cognizable offence, upon the registration of which a criminal case comes into existence and the investigation commences.

14. Section 22-A of the Code confers diverse powers upon a Justice of the Peace. Sub-section (6), inserted by the Code of Criminal Procedure (Third Amendment) Ordinance (CXXXI of 2002), confers upon an ex-officio Justice of the Peace the jurisdiction which the petitioner invoked. It reads:

> *(6) An ex-officio Justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding-*
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> *(i) non-registration of a criminal case;*

Islamabad High Court

(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.

In terms of section 25 of the Code, Sessions Judges and, on nomination by them, Additional Sessions Judges are ex-officio Justices of the Peace.

15. The nature of this jurisdiction was settled by a larger Bench of the august Supreme Court in ***Younas Abbas and others v. Additional Sessions Judge, Chakwal and others*** **(PLD 2016 SC 581)**. Their lordships drew a distinction between the duties of a Justice of the Peace under sub-sections (1) to (5) of section 22-A and under section 22-B, which are executive, administrative, preventive and ministerial, and the functions of an ex-officio Justice of the Peace under sub-section (6). As regards the latter, it was held:

> "... 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."

16. That characterisation obliges the Justice of Peace to examine the record and to bring his own mind to bear upon it, for every application before him calls for discretion and judgment. It also renders the order so made amenable to scrutiny for legality. Their lordships observed that *"the orders passed, directions issued and actions taken by the Justice of Peace in excess of his powers being justiciable can well be quashed through judicial review."* The review so contemplated is a review of legality, and not a rehearing of the application.

17. The discretionary character of the jurisdiction had earlier been noticed by a Larger Bench of the Lahore High Court in ***Khizer Hayat and***

Islamabad High Court

others v. Inspector General of Police (Punjab), Lahore and others **(PLD 2005 Lahore 470)**. In **Younas Abbas**, the Supreme Court dissented from that judgment insofar as it held the functions of an ex-officio Justice of the Peace to be administrative and ministerial. The observations of the the Larger Bench on the word "may" in sub-section (6), and on the caution with which the jurisdiction is to be exercised, stand on a different footing. They gain, rather than lose, force once the function is recognised as quasi-judicial. The larger Bench held:

> *"... the provisions of section 22-A(6), Cr.P.C. do not make it obligatory for an ex-officio Justice of the Peace to necessarily or blind-foldedly issue a direction regarding registration of a criminal case whenever a complaint is filed before him in that regard. The use of the word "may" in section 22-A(6), Cr.P.C. clearly shows that the jurisdiction of an ex-officio Justice of the Peace in that regard is discretionary in nature, and understandably so. ... there is a pressing need on the part of the ex-officio Justices of the Peace to exercise caution and restraint before issuing a direction regarding registration of a criminal case. ... In an appropriate case, depending upon the circumstances thereof, an ex-officio Justice of the Peace may refuse to issue a direction regarding registration of a criminal case and may dismiss the complaint under section 22-A(6), Cr.P.C. reminding the complaining person of his alternate statutory remedies under sections 156(3) and 190, Cr.P.C."*

The Larger Bench also observed that a complainant may be better placed in prosecuting his allegations by filing a private complaint rather than by compelling the police to register and investigate a case of which the police are themselves not convinced.

18. In his concurring note in **Younas Abbas**, Justice Manzoor Ahmad Malik addressed the misuse of the provision in the following terms:

> *"The past experience of around 14 years (since the insertion of these provisions into the Code of Criminal Procedure) would unmistakeably reveal that these provisions especially Section 22-A of the Code of*

Islamabad High Court

> *Criminal Procedure, though beneficial and advantageous to the public at large, yet in myriad cases, it has been misused and abused. ... There is no denying the fact that at times false and frivolous cases are got registered just to humble and harass the opposite party."*

His lordship went on to enjoin that, before issuing a direction for registration, the ex-officio Justice of the Peace must satisfy himself that sufficient material is available on the record, such as an application to the Station House Officer and, upon his refusal or reluctance, a complaint to the higher police officers, so as to show that the aggrieved person had recourse to the police hierarchy before invoking the jurisdiction.

19. The same concern was recently reiterated by the august Supreme Court in ***Munawar Alam Khan v. Qurban Ali Malano and others*** **(2024 SCMR 985),** which stressed that such applications are not to be lightly entertained or decided in a mechanical manner for the issuing of a direction to the police to lodge an FIR.

20. It is equally settled that the jurisdiction under section 22-A(6) does not constitute a forum for the adjudication of civil rights, and that disputes of that character are not to be resolved through it. In ***Rai Ashraf and others v. Muhammad Saleem Bhatti and others*** **(PLD 2010 SC 691)** the Justice of Peace had declined relief in a matter arising out of a dispute over property, and the High Court, in its constitutional jurisdiction, had nonetheless remitted the matter to the Station House Officer. The august Supreme Court set that order aside and held:

> *"It is also a settled law that the learned High Court had no jurisdiction whatsoever to decide the disputed questions of fact in constitutional jurisdiction. ... It is also admitted fact that there is a dispute qua the property in question between the parties as alleged by the petitioners and observed by the Courts below."*

Islamabad High Court

Similarly, in ***Jamal Khan v. Secretary Home Department and others*** **(2021 SCMR 468)** the Supreme Court upheld the refusal to direct the police to register a case in a dispute of a civil nature between the parties, which concerned an alleged forgery of a thumb impression upon an arbitration agreement.

21. This Court has taken a consistent view. In ***Safdar Ali v. S.H.O. Police Station Bhara Kahu, Islamabad and 7 others*** **(2011 PCr.LJ 913)**, a matter which also arose within the jurisdiction of Police Station Bhara Kahu, it was held:

> *"As such Justice of Peace is only required to summon the concerned police officer, so that a direction may be issued to him to register a case provided, the justice of peace comes to the conclusion that on the basis of available information cognizable case is made out."*

The learned Judge also observed that there could be no question, in such proceedings, of determining the civil rights of the parties. That judgment described the function of the Justice of Peace as administrative, a view which cannot survive the pronouncement in **Younas Abbas**. However, whatever the character of the function, sub-section (6) confers no jurisdiction to determine civil rights.

22. The legal position emerging from these authorities may be summarised thus. The officer in charge of a police station is bound to record information which discloses a cognizable offence, and neither he nor the Justice of Peace may decline to act upon it merely because he doubts its truth. The Justice of Peace, however, exercises a discretion which is quasi-judicial in nature. He must apply his mind to the question whether the information, taken as it stands and read with the material upon which it is founded, discloses a cognizable offence at all. He may call for the comments of the police for that purpose. He is not to adjudicate upon civil rights. Where the grievance, in substance, is the enforcement of civil rights and

Islamabad High Court

obligations, he is not bound to set the coercive machinery of the criminal law in motion. A refusal does not leave the complainant without a remedy, inasmuch as the remedy of a private complaint remains open to him.

23. The information actually laid by the petitioner must now be measured against it. The petitioner seeks a case "under the relevant provisions" of the PPC without specifying them. His complaint before the Justice of Peace, as recorded in the impugned order, was that respondent No.5 had dishonestly and fraudulently deprived him of a substantial amount on the strength of a false promise of delivering physical possession of land. Before this Court, he has added that the agreement rested upon fake and forged documents. The information therefore alleges cheating and forgery, and it must be tested against the ingredients of those offences. The test is to be applied to the information as the petitioner himself has laid it, including the documents which he has chosen to place before the Justice of Peace and before this Court. Such an exercise is not an inquiry into the truth of the information; it is an inquiry into what the information discloses.

24. Cheating is defined in section 415 of the PPC. The section, with the illustration relevant for present purposes, reads:

> *415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person [or any other person] in body, mind, reputation or property, is said to "cheat".*
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> *Illustrations ...(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and*

Islamabad High Court

afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

25. The section requires deception practised upon a person, and a fraudulent or dishonest inducement of the person so deceived to deliver property, or to do or omit something which causes or is likely to cause harm. A promise dishonestly made, with no intention of performing it, is cheating. A promise honestly made and afterwards broken gives rise only to a civil action. Dishonest intention must therefore exist at the time of the inducement. A promise broken is not, without more, a promise never meant. The Supreme Court of India, construing a provision in identical terms, expressed the position thus in Sarabjit Kaur v. State of Punjab ((2023) 5 SCC 360), a decision which is referred to for its persuasive value alone:

"A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. ... The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance."

26. Set against these ingredients, the information which the petitioner laid fails at the threshold, and it fails for three distinct grounds. The first relates to the person said to have been deceived. On the petitioner's own documents, the bargain with respondent No.5 was struck by Bilal Ahmed. The two iqrar namas dated 03.03.2016 are executed by respondent No.5 in favour of Bilal Ahmed, and they record that respondent No.5 received the entire consideration from Bilal Ahmed in the presence of witnesses. The agreement dated 07.05.2024 records that the balance of Rs.2,600,000/- was received by Bilal Ahmed from the petitioner by cheque of that date. The petitioner, therefore, did not deliver any property to respondent No.5. Nor does he claim to have been induced by any representation of respondent

Islamabad High Court

No.5 to do so. The person who dealt with respondent No.5 was Bilal Ahmed, and Bilal Ahmed is not the complainant.

27. The second relates to the nature of the promise. The iqrar namas are not silent as to what was agreed. They record that the price had been received, that possession had been delivered, that the passage had been marked, that the buyer was thereafter entitled to take out the passage at his own expense, and that if anyone attempted to take away possession, respondent No.5 would be bound to restore it. These are reciprocal covenants. Their breach, if established, gives rise to a contractual claim. Nothing in the information suggests that when respondent No.5 made these promises in 2016 he never intended to honour them. Even the application of Bilal Ahmed dated 29.08.2022 complains only that seven years had elapsed and the passage had not been delivered in accordance with the agreement. That is the very situation which illustration (g) places on the civil side of the line.

28. The third relates to the subsequent conduct of respondent No.5, upon which the petitioner himself relies. In his affidavit, respondent No.5 affirms that he sold the land to the petitioner, that he also gave land for a passage twenty feet wide from the road, that the petitioner may pave it or use it as he wishes, and that he will be answerable if any person obstructs it. Before the police he stated that he had not blocked the passage and was bound to give it. The petitioner describes this affidavit, in paragraph 15 of his petition, as an acceptance by respondent No.5 of his responsibility to hand over possession and to clear any hurdle. A person who acknowledges his obligation on oath is not, on that material, shown to have intended from the outset never to perform it. Whether he has since performed it, and whether he is in breach, are questions of fact, which fall to be determined by the civil court.

Islamabad High Court

29. The allegation of forgery fares no better. Forgery under sections 463 and 464 of the PPC requires the making of a false document with one of the intents specified in section 463. The petition identifies no document said to be false. It names no person as its maker. It gives no particulars of how, when or by whom any document was fabricated. The allegation rests upon what unnamed "different groups" are said to have told the petitioner, namely, that the land never belonged to respondent No.5. That does not constitute information of forgery; it is, at best, a doubt as to the title of respondent No.5. A document is not shown to be false by the assertion that the title standing behind it is weak. The petitioner founds his title, his claim to possession and his claim to the passage upon the very instruments which he now describes as forged. The agreement dated 07.05.2024 relied upon by him recites that an oral sale mutation bearing No.3203 has been sanctioned in his favour in respect of fifty kanal. He cannot, on the one hand, rely upon these documents and, on the other, allege that they are forgeries for the purpose of initiating criminal proceedings, for that would be to approbate and reprobate at the same time.

30. The documents furnish a further and independent ground for relegating the petitioner to the civil forum. The record discloses numerous disputed questions of fact, contested at every turn. Whether the land is eleven kanal, as the impugned order records, or seventeen kanal, as the memorandum of petition asserts, or fifty kanal, as the affidavit of respondent No.5 and the agreement dated 07.05.2024 would have it; whether it is the shamlat land of Khewat No.226, with which the two iqrar namas deal, or Khasra No.1109, with which the agreement dated 07.05.2024 deals; whether the thirteen kanal of shamlat rights which that agreement records as lying in Zone-I, where transfers are closed, could be conveyed at all; whether the thirty-three kanal purchased, according to the application of Bilal Ahmed dated 29.08.2022, from a third person, Nusrat

Islamabad High Court

Mehmood Kiyani, form part of the same holding; whether respondent No.5 was entitled to the shamlat land he purported to sell; where the passage of twenty feet runs and whether it was ever marked upon the ground; whether possession of it was delivered, taken back, or never delivered at all; and whether the covenants of 2016 have been performed. None of these questions can be resolved upon a complaint and the comments of a police officer. Each of them requires a plaint, a written statement, the framing of issues, and witnesses who can be tested in cross-examination. They belong to a civil suit and, where the record of rights is in question, to the revenue hierarchy. The Justice of Peace was neither equipped to answer them nor obliged to attempt to do so.

31. Nor can such questions be resolved by this Court in exercise of its constitutional jurisdiction. In *Col. Shah Sadiq v. Muhammad Ashiq and others* **(2006 SCMR 276)** the august Supreme Court reiterated:

> *"It is a settled proposition of law that High Court has no jurisdiction to resolve the disputed question of fact in constitutional jurisdiction ..."*

32. Two further circumstances lend support to the view taken by the Justice of Peace. The first is delay. The transaction dates back to 03.03.2016. Bilal Ahmed complained to the police in August 2022. The petitioner invoked the jurisdiction of the Justice of Peace in 2024, some eight years after the transaction. No explanation for the delay has been offered. The second is the absence of prior recourse to the police hierarchy by the petitioner himself. The applications on record were preferred by Bilal Ahmed in 2022. The record placed before this Court does not show that the petitioner approached the Station House Officer and, upon his refusal, the higher police officers before invoking the jurisdiction of the Justice of Peace, as contemplated in the concurring note of Manzoor Ahmad Malik, J. in **Younas Abbas.**

Islamabad High Court

33. The purpose of the recourse is also manifest from the petition itself. In paragraph 16 the petitioner states that, "instead of pursuing specific performance of the agreement", he seeks the registration of a criminal case. That is a candid admission that the criminal process is sought as a substitute for the civil remedy. The Justice of Peace described the application as an attempt to settle scores arising from a civil conflict "by a direct resort to the scheme and pedestal of criminal justice". The criminal law is not an instrument for enforcing the performance of a contract, and a Justice of Peace who declines to lend his jurisdiction to that end acts within, and not in excess of, his discretion.

34. The contention that the civil and the criminal remedies may be pursued concurrently is sound as far as it goes. In ***Seema Fareed and others v. The State and another*** **(2008 SCMR 839),** the august Supreme Court held, as it had earlier held in *Haji Sardar Khalid Saleem v. Muhammad Ashraf and others (2006 SCMR 1192):*

> *"It is well-settled that, a criminal case must be allowed to proceed on its own merits and merely because civil proceedings relating to same transaction have been instituted it has never been considered to be a legal bar to the maintainability of criminal proceedings which can proceed concurrently. While the spirit and purpose of criminal proceedings is to punish the offender for the commission of a crime the purpose behind the civil proceedings is to enforce civil rights arising out of contracts and in law both the proceedings can co-exist and proceed with simultaneously without any legal restriction."*

The principle, however, presupposes that the facts disclose a criminal offence. It lays down that where a crime is disclosed, the availability or pendency of a civil remedy is no bar to its prosecution. It does not lay down that where the facts disclose only the breach of a civil obligation, the civil claim may be pursued through the criminal law. **Seema Fareed** itself identifies the purpose of civil proceedings as the enforcement of civil rights

Islamabad High Court

arising out of contracts, and that is precisely what the petitioner seeks. The Justice of Peace did not decline relief because a civil remedy existed. He declined it because what the information disclosed was a civil claim and nothing more. The judgment reported as **2010 PCr.LJ 585**, cited by learned counsel for the same general proposition, does not advance the petitioner's case any further.

35. The constitutional grounds may be disposed of briefly. Article 4 guarantees the right to be dealt with in accordance with law. The law provides the petitioner with a civil forum for the enforcement of his agreement, and a criminal forum, by way of a private complaint, for any offence which he believes to have been committed. He is dealt with in accordance with law when his grievance is relegated to the forum which the law designates for it. Article 10-A provides:

> *10A. Right to fair trial.- For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.*

36. The guarantee runs both ways. The petitioner's claim to possession and to a passage is a claim of civil right. It falls to be determined after a fair trial before the civil court, wherein both sides may adduce evidence. Respondent No.5 is equally entitled not to be exposed to a criminal charge upon what is, in substance, a civil claim against him. Articles 9 and 14 safeguard liberty and dignity. In a matter of this kind, it is the liberty and dignity of the person facing the coercive process of the criminal law that are most directly engaged. Article 18 has no bearing on the controversy. The judgments cited by learned counsel enunciate general principles on these Articles and on the scope of Article 199. None of them holds that a Justice of Peace is bound to direct the registration of a criminal case where the information discloses only the breach of a civil obligation.

Islamabad High Court

37. There remains the question of interference. This Court, in its constitutional jurisdiction, does not sit in appeal over the Justice of Peace. It examines whether he acted within his jurisdiction, whether he applied his mind to the material before him, and whether his conclusion is one which could reasonably be reached on that material. Where the order is reasoned and rests on relevant material, interference is not warranted merely because another view is possible. The High Courts have consistently declined to disturb a reasoned order under section 22-A of the Code which reflects due application of mind, as in ***Syed Zafar Ali Shah v. Falak Sher Farooka, Additional District and Sessions Judge, Multan and 4 others*** **(2005 MLD 1593)**. In the present case the Justice of Peace called for and considered the comments of the police. He examined the complaint and the agreement upon which it was founded. He addressed the correct question, namely, whether the facts disclosed rendered respondent No.5 liable to criminal prosecution or gave rise to civil rights and liabilities. The order suffers from no jurisdictional defect, no misreading or non-reading of the record and no perversity.

38. The petitioner is not, in any event, without a remedy. If he believes that respondent No.5 has committed an offence, the Code provides him with the remedy of a private complaint under section 200, in which the Court may, under section 202, direct an inquiry or investigation. The availability of that remedy was treated as a relevant consideration for declining relief in ***Jamshed Ahmad v. Muhammad Akram Khan*** **(1975 SCMR 149)** and in **Rai Ashraf**. As regards his civil claims, the civil court is competent to decree specific performance, possession, declaration and injunction, and to determine any right of way which he asserts.

39. A final observation is called for regarding the ambit of what has been decided. It is not the law that a dispute concerning land can never involve

Islamabad High Court

a crime. Where the information discloses a specific act of criminal trespass, forcible dispossession, or the fabrication of an identified document, the law must take its course, and the pendency of a civil dispute in the background furnishes no answer. Each case turns upon what the information actually discloses. What the law does not permit is the use of the coercive machinery of the criminal law as a substitute for a civil action, or as a means of pressure to coerce the performance of a contract. It is for this reason that the gate is guarded with care, for a criminal case once registered is not easily shaken off, and the years and the expense that go into securing its cancellation or an acquittal are never to be restored to the person who ought not to have faced it at all.

40. For the reasons recorded above, this petition is **dismissed**. The pending miscellaneous applications, if any, stand disposed of. There shall be no order as to costs.

(AYYAZ SHAUKAT)
JUDGE

Announced in open Court on **08.10.2026.**

JUDGE

Approved for reporting.

Saeed.

Islamabad High Court