JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 3617 of 2024

HAMMAD NADVI BARLASS

Vs

SENIOR SUPERINTENDENT POLICE (S.S.P) ICT, ISLAMABAD, ETC

Petitioner by	**:**	**Mr. Muhammad Waqas Malik Advocate.**
Respondents by	**:**	**Mr. Muhammad Taimoor Janjua, State Counsel.** **Mukhtar Ahmed, ASI, P.S Koral.**
Date of hearing	**:**	**23.04.2025**

MUHAMMAD AZAM KHAN, J.

1. The Petitioner has filed the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan (**"Constitution"**) against the Order dated 02.11.2024 (**"Impugned Order"**) passed by the learned Additional Sessions Judge-II/Ex-Officio Justice of Peace, Islamabad (East) (**"Justice of Peace"**), whereby the petition under Section 22-A & 22-B of the Code of Criminal Procedure, 1898 (**"Cr.P.C"**) filed by the Petitioner has been dismissed.

2. The brief facts giving rise to the filing of the instant Writ Petition, as per the contents of the petition, are that the Petitioner is a retired Army Officer, now practicing as an Advocate High Court. The Petitioner was induced by one Muhammad Rizwan Shoukat son of Shaukat Ali through Syed Aqeel Bukhari, CEO of Bukhari Estate, for the investment amount in his real estate business. The Petitioner purchased three plots, No. 5022, 5023, 5024, situated at Block P-3 at Gulberg Residencia IBECHS, Islamabad, against the sale consideration of Rs. 3,535,000/- each plot (Thirty-five lac thirty-five thousand Rupees). The Petitioner paid Rs. 750,000/- (Seven lac fifty thousand) as Biana/initial sale consideration through three cheques No. CA-55024511, CA-55024512, and CA-55024513, total amounting to Rs. 750,000/-, drawn at Soneri Bank, Gulberg Branch, Islamabad. Thereafter, it was revealed that the Petitioner was defrauded and the amount meant for the purchase of the plots was misappropriated by the proposed accused under the garb of a property transaction. The Petitioner, soon after gaining knowledge of the fraud, approached the respondents for registration of a criminal case against

Muhammad Rizwan Shoukat and Syed Aqeel Bukhari, CEO of Bukhari Real Estate and Builders Gulberg Green Islamabad, through an application dated 02.05.2024 bearing Diary No. 468-CC/SSP/Ops, which was marked to SHO Koral Islamabad. Due to the overt and covert inaction of the police, the Petitioner filed an application under Section 22-A Cr.P.C. for registration of F.I.R., which was dismissed by the learned Ex-Officio Justice of Peace vide the Impugned Order dated 02.11.2024. Being aggrieved by the Impugned Order, the Petitioner has filed the instant Writ Petition.

3. The learned counsel for the Petitioner argued that the learned Ex-Officio Justice of Peace failed to properly apply criminal law, effectively denying the Petitioner a legal remedy. The Impugned Order dated 02.11.2024 is contrary to law, as it incorrectly linked a cognizable offence with ongoing civil litigation. The police neither investigated the matter nor verified the alleged property transaction, relying solely on civil proceedings. Allegations of misuse of property documents were not probed, and the learned Ex-Officio Justice of Peace overlooked this due to lack of proper police reporting. Instead of recognizing the Petitioner's right to report a cognizable offence, the learned Justice of Peace unjustly directed to await the outcome of civil proceedings. The Impugned Order is harsh, focuses on the Petitioner's character, and grants undue immunity to the proposed accused. The Justice of Peace misapplied legal precedents and exceeded jurisdiction under Section 22-A Cr.P.C., which only allows for determining whether the information disclosed constitutes a cognizable offence. Citing PLD 2007 SC 539, PLD 2008 Pesh 53, PLD 2005 Kar 285, and NLR 2004 Crl (Lah) 351, counsel emphasized the duty of the Justice of Peace to direct for registration of F.I.R. where appropriate. The Petitioner, left without recourse due to police inaction, seeks the setting aside of the Impugned Order and prays that Respondents No.2 & 3 be directed to register an F.I.R.

4. On the other hand, the learned State Counsel argued that, as per the contents of the complaint filed by the Petitioner to SSP Operations Islamabad, no cognizable offence is made out against the proposed accused; that the Impugned Order passed by the learned Ex-Officio Justice of Peace is a well-reasoned order, passed while keeping in view the facts involved in the matter; that there is no illegality or irregularity in the Impugned Order; and that the instant Writ Petition may kindly be dismissed.

5. I have heard the arguments of the learned counsel for the Petitioner as well as the learned State Counsel and perused the available record with their able assistance.

6. The Petitioner alleges that the proposed accused, namely Muhammad Rizwan Shoukat and Syed Aqeel Bukhari, CEO of Bukhari Estate, defrauded him in the garb of selling three Plots bearing Nos. 5022, 5023, 5024, situated at Block P-3 at Gulberg Residencia IBECHS, Islamabad, against sale consideration of Rs. 3,535,000/- per plot and received Rs. 750,000/- as Biana/initial sale consideration through three cheques drawn on Soneri Bank, Gulberg Branch, Islamabad. The proposed accused failed to transfer the said plots and also failed to return the advance money to the Petitioner, rather, misappropriated the said amount. The Petitioner approached the Respondents for registration of a case against the above-mentioned proposed accused vide Application dated 02.05.2024 bearing Diary No. 468-CC/SSP/Ops, which was marked to the Respondent No. 2/SHO P.S. Koral, Islamabad. Since the police failed to register F.I.R., the Petitioner filed a Petition under Section 22-A Cr.P.C. seeking directions for registration of F.I.R., which was dismissed vide Impugned Order dated 02.11.2024.

7. Respondents were asked to file a fresh report regarding the plots in question, which were allegedly agreed to be sold to the Petitioner by the proposed accused. The Report dated 12.04.2025 reveals that after verification from the concerned office record, the plots in question are in the names of Ms. Shafaq Nasir, Mr. Dilshad Hussain, and Mrs. Shazia Asif Malik, and they are not allotted in the names of the proposed accused. *Prima facie*, it appears that the plots in question were not allotted in the names of the proposed accused. Nevertheless, they entered into an agreement to sell with the Petitioner and also received Rs. 750,000/- as advance amount/Biana. Hence, a cognizable offence is made out, and the Respondents are duty-bound to record the statement of the Petitioner under Section 154 Cr.P.C. under the relevant provisions of the Pakistan Penal Code against both proposed accused, namely Muhammad Rizwan Shoukat and Syed Aqeel Bukhari, CEO of Bukhari Estate. Reliance is placed upon the ruling of the august Supreme Court of Pakistan given in the case titled *"Syed Qamber Ali Shah Vs. Province of Sindh"* cited as **(2024 SCMR 1123)**, the relevant portion of which is reproduced as under:

> *"6. Heard the arguments. Under section 22-A, Cr.P.C, it is not the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or*

to render any findings on merits but he has to ensure whether, from the facts narrated in the application, any cognizable case is made out or not; and if yes, then he can obviously issue directions that the statement of the complainant be recorded under Section 154. Such powers of the Justice of Peace are limited to aid and assist in the administration of the criminal justice system. He has no right to assume the role of an investigating agency or a prosecutor but has been conferred with a role of vigilance to redress the grievance of those complainants who have been refused by the police officials to register their reports. If the Justice of Peace will assume and undertake a full-fledged investigation and enquiry before the registration of FIR, then every person will have to first approach the Justice of Peace for scrutiny of his complaint and only after clearance, his FIR will be registered, which is beyond the comprehension, prudence, and intention of the legislature. Minute examination of a case and conducting a fact-finding exercise is not included in the functions of a Justice of Peace but he is saddled with a sense of duty to redress the grievance of the complainant who is aggrieved by refusal of a Police Officer to register his report. The offences have been categorized by the Cr.P.C. into two classes i.e., cognizable and non-cognizable. Section 154 of the Cr.P.C. lays down a procedure for conveying information to an S.H.O. with respect to the commission of a cognizable offence, while the provisions of Section 155(1) of the Cr.P.C. articulates the procedure vis-a-vis a non-cognizable offence."

8. In view of the above, the Impugned Order of the learned Ex-Officio Justice of Peace is set aside, and the instant Writ Petition is accepted. Resultantly, the Respondent No. 2 is directed to register FIR against proposed accused [Muhammad Rizwan Shoukat and Syed Aqeel Bukhari] and to record the statement of the Petitioner under Section 154. Cr.P.C. for taking cognizance against the proposed accused.

(MUHAMMAD AZAM KHAN)
JUDGE

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