

2022 P Cr. L J 534

[Islamabad]

Before Tariq Mehmood Jahangiri, J

MUHAMMAD ASHAR HALIM QURAISHI---Petitioner

Versus

EX-OFFICIO JUSTICE OF PEACE/ADDITIONAL SESSIONS JUDGE, EAST ISLAMABAD and 3 others---Respondents

Writ Petition No. 4041 of 2021, decided on 19th January, 2022.

(a) Criminal Procedure Code (V of 1898)---

---Ss. 22-A, 22-B & 154---Petition under Ss. 22-A & 22-B, Cr.P.C.---Police report requisitioned by Justice of Peace---Where a Justice of Peace calls for a police report, he cannot ordinarily brush aside the same---In case he proposes to give his opinion contrary to the police report he is supposed to furnish tangible reasons for not relying upon the said report.

Petitioner (accused) was the purchaser of the subject plot and the sellers and their legal heirs had no dispute with the petitioner. The petitioner got an FIR registered against persons "A" and "I" who allegedly tried to raise illegal construction and forcibly occupied the petitioner's plot. The respondent, who was an employee of "A" and "I" filed a petition under sections 22-A and 22-B, Cr.P.C. before the Justice of Peace for lodging an FIR against the petitioner. The Justice of Peace sought a report from Superintendent of Police, and in pursuance thereto, a report was submitted, wherein it was mentioned that just in order to counter the case registered against persons "A" and "I", their employee i.e. the respondent had filed the application under sections 22-A and 22-B, Cr.P.C. against the petitioner; that the police had thoroughly enquired into the matter and no cognizable offence had been made out and thus prayed for dismissal of the application filed under sections 22-A and 22-B, Cr.P.C.

Justice of Peace while passing the impugned order for recording statement of respondent under section 154, Cr.P.C. had not mentioned any plausible reasons for not relying on the report, submitted by Superintendent of Police rather passed the impugned order in a mechanical manner. Once Justice of Peace called for the police report, he could not 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 said report.

During pendency of the present Constitutional petition, the concerned Sub-Divisional Police Officer (SDPO) was directed to personally conduct an inquiry, visit the site, call both the parties, record statements of the witnesses and submit his detailed report whether the offence as alleged by the respondent against the petitioner had been committed or not. Subsequent thereto the SDPO informed the Court that he personally conducted an inquiry into the matter and also produced detailed inquiry report containing statements of the witnesses of locality and the parties, pictures of the plot and the alleged crime scene had also been enclosed with the inquiry report. Said report stated that person "A" nominated in the FIR of the petitioner had filed different applications in such regard before different forums; that the respondent, who was an employee of "A" had failed to produce any independent, legal, cogent and convincing evidence in support of his contentions against the petitioner, and that no such occurrence as alleged by the respondent took place.

Constitutional petition was allowed, and the impugned order passed by Justice of Peace was set-aside with the directions that the respondent was at liberty to file a private complaint, if so advised, before the competent forum.

(b) Criminal Procedure Code (V of 1898)---

---Ss. 22-A & 22-B---Proceedings before the Justice of Peace---Nature---Proceedings before Justice of Peace are quasi-judicial and not executive, administrative or ministerial which could be dealt mechanically---Justice of Peace exercises quasi-judicial powers, and every case before him demands discretion and judicial observations.

Younas Abbass and others v. Additional Sessions Judge, Chakwal and others PLD 2016 SC 581 ref.

Barrister Afzal Hussain and Waheed Ur Rehman for Petitioner.

Muhammad Ejaz for Respondent No. 4.

Fahad Ali, State Counsel.

Abid Hussain, D.S.P./SDPO, Sihala Circle, Islamabad.

Zahid Hussain Shah, S.I., Police Station Sihala, Islamabad.

ORDER

TARIQ MEHMOOD JAHANGIRI, J.---The petitioner, through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has challenged order dated 11.11.2021, whereby petition under section 22-A/B, Cr.P.C. for registration of FIR, filed by the respondent No. 4 was disposed of with the direction to SHO Police Station concerned to record statement of respondent No. 4 under section 154, Cr.P.C. and then to proceed in accordance with law. In case information provided by respondent No. 4 found false, proceedings under section 182, Cr.P.C. may be initiated against him.

2. Succinctly stated facts of the matter are that the petitioner is a law graduate, and working as an established businessman. In 2016, he purchased plot with the intention of constructing a Mosque for public purpose. Peaceful possession of the plot along with constructed room and two side boundary wall was handed over to him. Plot is located at the roadside going towards the Cadet College, Humak, Sihala, Islamabad. Further, the petitioner has no dispute with the sellers of the plot or their legal heirs, however, it revealed that part of the plot was purchased by the sellers, from the father of Adnan Shah and Imran Shah/accused.

3. On 03.10.2021, the petitioner filed complaint to SHO Police Station Sihala, Islamabad against Adnan Shah and Imran Shah for registration of FIR/criminal case with the contention that - the accused tried to illegally occupy the plot purchased by him and issued threats of murder and dire consequences, upon the said complaint, FIR No. 506/2021, dated 07.10.2021, offence under sections 447, 511 and 506, P.P.C, at Police Station Sihala, Islamabad has been registered, against the accused namely Adnan Shah and Imran Shah.

4. Thereafter, just to counter the petitioner's application/case against the accused, on 06.10.2021, Waqel Khan/respondent No. 4, who is employee/servant of the accused namely Adnan Shah and Imran Shah filed an application before the SHO/respondent No. 3, by levelling false and frivolous allegations but the police did not register the FIR, consequently petition under section 22-A/B, Cr.P.C. was filed, wherein the impugned order was passed, hence the petitioner being aggrieved has filed the instant writ petition, for setting aside of the impugned order dated 11.11.2021.

5. Learned counsel for the petitioner inter alia contends that the police has thoroughly investigated the matter and filed a report in the Court of learned Additional Sessions Judge/Ex-Officio Justice of Peace, East-Islamabad, stating therein that no such occurrence, as mentioned in the complaint of respondent No. 4 has taken place and no cognizable offence has made out; learned Additional Sessions Judge/Ex-Officio Justice of Peace, East-Islamabad has not mentioned single reason for not relying upon the report submitted by Superintendent of Police (Complaint), Islamabad and passed the impugned order in a hasty manner, which is erroneous in law and liable to be set aside.

5. Conversely, learned counsel for respondent No. 4 has controverted the arguments advanced by learned counsel for the petitioner and has stated that under section 154, Cr.P.C, the police is bound to register the FIR; the impugned order has been passed in accordance with law, as the proposed FIR clearly constitute cognizable offence and has prayed for dismissal of instant writ petition.

7. Arguments advanced by learned counsel for the petitioner, learned State Counsel and learned counsel for the respondent No. 4 have been heard and record has been perused with their able assistance.

8. It is evident from record that the petitioner is owner/purchaser of the plot in village Sihala, Tehsil and District Islamabad and sellers of the plot and their legal heirs have no dispute with the petitioner/purchaser.

9. The petitioner filed an application to the SHO, Police Station Sihala, Islamabad that the accused Adnan Shah and Imran Shah tried to raise illegal construction and forcibly occupied the plot purchased by the petitioner, whereupon case vide FIR No. 506/2021, dated 07.10.2021, offence under sections 447, 511 and 506, P.P.C, at Police Station Sihala, Islamabad was registered.

10. Respondent No. 4, who is servant/employee of the accused nominated in the FIR filed an application for registration of FIR against the petitioner, however, the police did not register the FIR, consequently petition under sections 22-A/B, Cr.P.C. was filed and learned Additional Sessions Judge Ex-Officio Justice of Peace, East-Islamabad sought a report from Superintendent of Police (Complaint), Islamabad, in pursuance thereto, a report was submitted, wherein it was mentioned that just in order to counter the case registered against the accused, their servant filed an application against the petitioner. The police has thoroughly enquired into the matter and submitted a report that no cognizable offence has been made out and prayed for dismissal of the application filed under section 22-A/B, Cr.P.C.

11. Learned Additional 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 (Complaint), Islamabad rather passed the impugned order in a mechanical manner.

12. During pendency of the instant writ petition, DSP/SDPO Sihala Circle, Islamabad was directed vide order dated 02.12.2021, to personally conduct an inquiry, visit the site, call both the parties, record statements of the witnesses and submit his detailed report whether the offence as alleged by Waqeel Khan/respondent No. 4 against the petitioner has been committed or not.

13. Today, DSP/SDPO, Sihala Islamabad present before the Court, stated that he has personally conducted an inquiry into the matter and also produced detailed, inquiry report containing statements of the witnesses of locality and the parties, pictures of the plot and the alleged crime scene has also been enclosed with the inquiry report. DSP/SDPO, Sihala, Islamabad has given his findings that the accused nominated in the FIR namely Adnan Shah has filed different applications in this regard on different forums, whereupon the Superintendent of Police Rural Islamabad has also conducted an inquiry, respondent No. 4/Wakeel Khan who is servant of Adnan Shah and Imran Shah has failed to produce any independent, legal, cogent and convincing evidence in support of his contention, no such occurrence took place.

14. Learned Ex-Officio Justice of Peace once called for the police report, cannot ordinarily brushed aside the same, in case he proposed to give his opinion contrary to the police report he was supposed to furnish tangible reason for not relying upon the police report.

15. 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."

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

"Functions performed by Ex-Officio Justice of Peace under section 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 2025 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."

17. 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, in the every case before him demands discretion and judicial observations.

18. Even the petitioner has alternative statutory remedies under sections 156(3) and 190, Cr.P.C. as well as remedy to file criminal/ private complaint under section 200, Cr.P.C. to press and prove its allegation before the Court of Competent jurisdiction.

19. For the reasons, discussed above, the instant writ petition is allowed, the impugned order dated 11.11.2021 passed by learned Additional Sessions Judge/Ex-Officio Justice of Peace, East-Islamabad, is set aside, further the respondent No. 4 is at liberty to file a private complaint, if so advised, before the competent forum.

MWA/17/Isl.

Petition allowed.