

HIGH COURT OF AZAD JAMMU AND KASHMIR

*Criminal Misc No.33/2022;
Date of Institution 25.02.2022;
Date of Decision 22.04.2022.*

1. Kashif Ali;
2. Ali Shaukat sons of Shaukat Ali;
3. Kashif Yousaf S/o Muhammad Yousaf;
4. Mansha Bostan;
5. Shaukat Bostan sons of Muhammad Bostan, R/o Gadyan Nathya Town, Tehsil & District Mirpur.

...Petitioners

VERSUS.

1. Ch. Mazhar Hussain S/o Ghulam Din R/o Gadyan, Tehsil & District Mirpur;

...Respondent

2. DSP Mirpur;
3. SHO Police Station Thothal Mirpur.

...Pro-forma-respondents

APPLICATION UNDER SECTION 561-A CR.P.C.

Before;- Justice Mian Arif Hussain, J.

PRESENT:

*Mr. Raashid Nadeem Butt, Advocate for the petitioner.
Raja Mehmood Ayyub, advocate for respondent No.1.
AAG for the State.*

JUDGMENT:

The captioned petition has been directed under Section 561-A Cr. P. C for quashment of the order dated 21.02.2022, passed by learned Sessions Judge/Ex-officio Justice of Peace Mirpur, whereby, while allowing the application under Section 22-A Cr. P. C filed on behalf of respondent No.1, herein, pro-forma respondents have

been ordered to register an FIR against the petitioners herein.

Facts necessary for disposal of the instant petition are that respondent no.1, herein preferred an application under Section 22-A Cr. P. C before Ex.officio Justice of Peace Mirpur, alleging therein that on 23.01.2022, at 10:15 pm, he was present in his home, upon hearing the firing he went to the roof of his house and saw that the accused Kashif Ali, Ali Shaukat, sons of Shaukat, Kashif Yousaf S/o Yousaf, Mansha Bostan, Shaukat Bostan sons of Muhammad Bostan alongwith 5 other unknown persons were making fires near the gate of his house and were shouting that Ch. Mazhar come out from the house we are here to murder you. It is alleged that a video footage of the said scene is within his custody. It is claimed that for registration of the case he proceeded to the Police Station and later on went to DSP office but police officials did not pay head to his complaint and remained reluctant to register a case against the persons nominated in the application, therefore, by allowing the application, the police officials be directed to register an FIR against the said accused persons.

On filing of the said application the learned Justice of Peace Mirpur invited comments from the official

respondents and after hearing the parties, while accepting the application directed the police officials to register an FIR against the accused persons nominated in the application. Feeling dissatisfied from the aforesaid order of the Ex.officio Justice of Peace, the accused-petitioners herein have filed the instant petition.

Learned counsel representing the petitioners herein after narrating the facts at some length contended that in order to counter the case registered against respondent no.1 herein and his sons, a frivolous application was moved before the Justice of Peace which has wrongly been allowed. It is urged that police report was quite clear wherein the reality of the occurrence has categorically been brought into limelight but the said report was not taken into consideration. It is claimed that in view of allegation of commission of arial firing, a complaint has been registered under Section 337/H2, 34 APC. It is maintained that in view of the story narrated by respondent no.1, the commission of non-cognizable offence was established but the learned Justice of Peace while relying upon the so called video clips without determining the nature of offence passed the order impugned herein. It is claimed that there was no

justification to pass such an order, hence, the impugned order may graciously be quashed.

Conversely, the learned counsel for respondent no.1 while defending the impugned order contended that material obtained from the CCTV footage was enough to determine the question of commission of offence and under law when SHO of the concerned police station, in the matter of cognizable offence fails to register an FIR under Section 154 Cr. P. C then the Ex.officio Justice of Peace while invoking the jurisdiction vested under Section 22-A Cr. P. C stands competent to make an order for registration of FIR. It is further claimed that commission of firing is an admitted fact and through the video clips it can easily be examined that the accused-petitioners nominated in the application are involved in commission of alleged offence so, in such circumstances learned Court below was quite justified to pass the order impugned herein. It is contended that admittedly, the order passed by the learned Justice of Peace falls within the ambit of administrative Job and under law the same cannot be challenged by invoking the jurisdiction of the High Court vested under Section 561-A Cr. P. C. The learned counsel referred to and relied upon the following case law:-

1. *2014 SCR 493*;
2. *2002 SCR 150*;
3. *2016 SCR 1029*;
4. *PLD 2014 S.C 753*.

Heard. Record perused.

Through the instant application filed under Section 561-A Cr. P.C order of the learned Sessions Judge//Ex-officio Justice of Peace regarding direction of registration of FIR has been solicited to be quashed. So far as, the question of maintainability of the petition under Section 561-A Cr. P. C in terms of challenging the impugned order is concerned, undoubtedly, in numbers of judgments, it has been observed that duties of the Justice of Peace are of executive, administrative, preventive and ministerial in nature so order passed by the Justice of Peace for issuance of direction for registration of case cannot be challenged under Section 561-A Cr. P. C and the said point of view is available in the case law reported as PLD 2014 S.C 753 but there is also a judgment of the apex Court reported as “Younas Abbas & others vs. Additional Sessions Judge Chakwal & others” (PLD 2016 S.C 581) wherein six learned members bench of the apex Court have enunciated that powers of Justice of Peace are administrative, executive, preventive and ministerial, however, powers of the Ex-officio Justice

of Peace are not executive, administrative or ministerial character. The relevant part of the report is reproduced as under:-

“11. *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 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 us 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 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) inasmuch as it holds that the functions performed by the Ex-officio Justice of Peace are executive, administrative or ministerial”*

In an esteemed judgment titled “Sikandar Azam & others vs. Zulqarnain Akhter & others” dated 09.02.2022 Hon’ble Supreme Court of Azad Jammu & Kashmir, while discussing numerous judgments and relying upon the six members judgment reported as PLD 2016 SCR 581 has been pleased to observe that High Court has powers under Section 561-A Cr. P. C to make judicial review of the order of Ex-officio Justice of Peace to prevent the abuse of process of law or to secure the ends of justice.

In view of the above it can safely be observed that order of the Sessions Judges/Additional Sessions Judges acting as Ex-officio Justice of Peace may be reviewed by invoking the jurisdiction of the High Court vested under Section 561-A Cr. P. C.

Now adverting to the merits of the case, it is observed that at the instance of petitioners herein on 23.01.2022 at 6:30 pm a case No.18/22 in offence under Sections 337/F, 341/34 APC was got registered against the respondent no.1 Mazhar Hussain and his 2 sons. On behalf of respondent no.1 with the allegation of commission of firing an application against the petitioners herein and 5 other unknown persons was preferred with the allegation that the petitioners and the other unknown persons on 23rd Jan 2022 at 10:15 pm

have made firing outside the house of respondent no.1. In view of said application police prepared a complaint under Section 107, 150, 337/H(2) and 34 APC which was preferred before Senior Civil Judge Mirpur but the respondent no.1 herein feeling dissatisfied filed an application under Section 22-A Cr. P. C which in the light of the video clips has been accepted by the learned Ex. officio Justice of Peace. I have also examined the said video clips. Though some persons appear in a state of making fires, however, from the said video it could not be determined that who are these persons and at which place they are committing the act of firing.

Moreover, mere allegation of firing falls within the ambit of non-cognizable offence and in the light of allegation leveled against the petitioners herein, accompanied with the factum of a case already registered against the respondent no.1 herein, the police officials, justifiably prepared a complaint which ultimately was preferred before the Court of competent jurisdiction. So, it can safely be observed that from the allegation leveled in the application preferred before the Ex. Officio Justice of Peace, only the offence of firing appears to be committed which constitutes the non-cognizable offence so, in my estimation there was no occasion to pass the

impugned order for registration of the case against the petitioners herein.

The epitome of the above discussion is that the learned Ex. Officio Justice of Peace has invoked the jurisdiction vested him under Section 22-A(6) Cr. P. C without justification, therefore, by accepting the petition in hand impugned order is hereby, quashed.

Circuit Mirpur,
22.04.2022(MN).

-Sd-
JUDGE

Note: order is written and duly signed.
The office is directed to intimate the parties or their counsel in accordance with law.

-Sd-
JUDGE