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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Writ Petition No. 84 of 2016
(Abdul Rehman v. Justice of Peace etc.)

JUDGMENT

DATE OF HEARING	25-10-2017
Appellant by:	**Mr. Fakhar Raza Ajmal,** Advocate.
Respondent No. 3 by:	**Sardar Riaz Karim**, Advocate.
State by:	**Mr. Muhammad Adnan Latif,** DDPP. **Munir**, ASI

Tariq Saleem Sheikh,J:- This constitutional petition is directed against Order dated 04-01-2016 passed by the learned Ex-officio Justice of Peace, Muzaffargarh.

2. Brief facts necessary for our present purposes are that the Petitioner obtained finance from the Zarai Tarqiati Bank Limited, Khangarh Branch (the "ZTBL"), which was *inter alia* secured against the mortgage of an agricultural land. The Petitioner continued to avail that facility for four years and then defaulted. Respondent No. 3, who is the Branch Manager of ZTBL, approached the Petitioner for recovery of the bank's dues. The Petitioner issued Cheque No. 4671462 dated 26-03-2015 for Rs.698,000/- to him but the same was dishonoured. In the circumstances, Respondent No. 3 moved an application under Section 22-A Cr.P.C. before the learned Ex-officio Justice of Peace seeking a direction to the Respondent SHO for registration of FIR against the Petitioner which was

allowed vide impugned order dated 04-01-2016. Hence, this petition.

3. The learned counsel for the Petitioner contended that the learned Ex-officio Justice of Peace had passed the impugned order mechanically without due application of mind. The offence alleged against the Petitioner attracted the provisions of Section 20 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the "Ordinance"), which was a special law. The offence was bailable, non-cognizable and compoundable. Only a Banking Court established under Section 5 of the Ordinance could take cognizance thereof upon a written complaint of ZTBL. Section 489-F PPC was a general law and was not applicable to the facts and circumstances of the case. The impugned order was thus without jurisdiction.

4. The learned Law Officer agreed with the aforementioned contentions while the learned counsel for ZTBL controverted them. The latter argued that the impugned order was lawful and no exception could be taken thereto.

5. I have heard the learned counsel at length. While going through the record it is observed that when Respondent No. 3 filed the aforesaid application under Section 22-A Cr.P.C. the learned Ex-officio Justice of Peace called report from the Respondent SHO who stated that although the Petitioner had issued the cheque in question to ZTBL and the same was bounced, he subsequently liquidated his entire liability owing to which Respondent No. 3 did not want to prosecute him. The learned Ex-officio Justice of Peace has passed the impugned order without considering that report. He did not even make any attempt to verify its authenticity.

6. In "*Mureed Hussain v. Additional Sessions Judge/Justice of Peace Jampur and 3 others*" **(2014 P.Cr.LJ 1146)** this Court held that the learned Ex-officio Justice of Peace was not bound to seek report from the police in each and every case and was fully competent to decide an application under Section 22-A Cr.P.C. and pass an order thereon without it. However, in an earlier case which is cited as "*Khizar Hayat and others v. Inspector General of Police (Punjab) and others*" **(PLD 2005 Lah. 470)**, this Court observed that it was prudent and advisable for him to call for it so that he may know the reasons why the police had refused registration of a case. The Court said:

> "It is prudent and advisable for an Ex-officio Justice of Peace to call for comments of the officer incharge of the relevant police station in respect of complaints of this nature before taking any decision of his own in that regard so that he may be apprised of the reasons why the local police have not registered a criminal case in respect of the complainant's allegations. It may well be that the complainant has been economizing with the truth and the comments of the local police may help in completing the picture and making the situation clearer for the Ex-officio Justice of Peace facilitating him in issuing a just and correct direction, if any."

7. The Hon'ble Supreme Court of Pakistan has authoritatively ruled in the case of "*Younas Abbas and others v. Additional Sessions Judge, Chakwal* and others" **(PLD 2016 SC 581)** that the functions performed by the learned Ex-officio Justice of Peace under Section 22-A(6) are *quasi-judicial* in nature. Further, before issuing any direction on a complaint for non-registration of a criminal case he must satisfy himself that sufficient material is available on the record to justify such a command. It follows that he cannot issue a direction blindfoldedly or mechanically. He must address himself to the facts of the case and where he disagrees with the police report he should give reasons for his disagreement. He cannot haughtily ignore it.

8. It is by now well settled that whether it is the court or an authority performing judicial or quasi-judicial functions or a public functionary exercising executive powers it must act reasonably, justly and fairly. Further, it must give reasons in support of its order. In "*Union of India v. M.L. Capoor and others*" **(AIR 1974 SC 87)**, the Supreme Court of India observed that "reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable".

9. The rule requiring reasons to be given in support of an order is founded on the principles of natural justice. It must be followed in its true spirit and a mere pretence would not satisfy the legal requirement. In "*Basit Ali v. Additional Chief Secretary and 3 others*" **(2005 YLR 1719)**, it was noted that disclosure of reasons is necessary because:

(i) The party aggrieved has the opportunity to demonstrate before the appellate or revisional forum that the reasons which persuaded the authority to reject his case were erroneous;

(ii) The obligation to record reasons operates as a deterrent against possible arbitrary action; and

(iii) It gives satisfaction to the party against whom the order is made.

10. In Pakistan, so far as the judicial orders are concerned, most of the statutes contain a specific provision which requires the Court to pinpoint the controversy involved and to give reasons for its decision while deciding the same. By way of example reference may usefully be made to Section 367 (1) of the Code of Criminal Procedure,

1898, and Order XX Rule 4(2) and Order XLI Rule 31 of the Code of Civil Procedure, 1908. Besides, the Hon'ble Supreme Court of Pakistan has always insisted that the judicial orders must be "speaking orders" and should manifest that there has been due application of mind to the resolution of the issue involved. Attention in this regard is invited to "*Gouranga Mohan Sikdar v. The Controller of Import and Export and 2 others*" **(PLD 1970 SC 158)** and "*Mollah Ejahar Ali v. Government of East Pakistan and others*" **(PLD 1970 SC 173)**. Subsequently this principle was also applied to authorities performing *quasi-judicial* functions. In *"Dost Muhammad Cotton Mills Ltd., Karachi v. Pakistan and 3 others"* **(PLD 1976 Kar. 1078)**, it was held that the Central Board of Revenue exercises *quasi-judicial* functions and was obliged to state reasons while passing an adverse order. Lately, with the insertion of Section 24-A in the General Clauses Act, 1897, the above principle has become all-encompassing and the public functionaries have also come under its sway. They are also enjoined to decide the representations of the citizens with reasons. This obligation on their part was reiterated by the Hon'ble Supreme Court of Pakistan in the cases of "*Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others*" **(1998 SCMR 2268)** and "*Zain Yar Khan v. The Chief Engineer, C.R.B.C., WAPDA D.I. Khan and another"* **(1998 SCMR 2419).**

11. A learned Single Judge of this Court summarized the law relating to "speaking orders" in the case reported as "*Shahzada Zahir Shah and 6 others v. Muhammad Usman Ghani and 3 others*" **(2005 YLR 1394)**. An excerpt therefrom is reproduced hereunder:

> (1) Where a statute requires recording of reasons in support of the order, it imposes an obligation on the adjudicating

authority and the reasons must be recorded by the authority.

(2) Even when the statute does not lay down expressly the requirement of recording reasons, the same can be inferred from the facts and circumstances of the case.

(3) Mere fact that the proceedings were treated as confidential does not dispense with the requirement of recording reasons.

(4) There is no prescribed form and the reasons recorded by the adjudicating authority need not be detailed or elaborate and the requirement of recording reasons will be satisfied if only relevant reasons are recorded.

(5) If the reasons recorded are totally irrelevant, the exercise of power would be bad and the order would be liable to be set aside.

(6) The validity of the order passed by the statutory authority must be judged by the reasons recorded therein and cannot be construed in the light of subsequent explanation given by the authority concerned or by filing an affidavit. Orders are not like old wine becoming better as they grow older.

(7) The duty to record reasons is a responsibility and cannot be discharged by the use of vague general words.

(8) If the reasons are not recorded, the Court cannot probe into reasoning of the order.

(9) The reasons recorded by the statutory authority are always subject to judicial scrutiny.

12. Reverting to the instant case, it is observed that the impugned order is bad in law as it is bereft of reasoning. I confronted the learned counsel for Respondent No. 3 with the report of the Respondent SHO which states that since the Petitioner has liquidated his liability ZTBL does not want to prosecute him. The learned counsel vehemently contradicted this report and termed it false and baseless. He submitted that ZTBL had filed a suit against the Petitioner for recovery of its dues in the Banking Court at Multan which was still pending. In the circumstances, the said report is rejected.

13. The question that finally requires determination by this Court is whether the learned Ex-officio Justice of Peace could lawfully make a direction for registration of FIR in the peculiar circumstances of this case where the Petitioner allegedly issued a bad cheque for repayment of a finance or fulfillment of an obligation towards a financial institution. In "*Syed Mushahid Shah and others v. Federal Investment Agency and others*" **(2017 SCMR 1218)**, the cheques issued by certain customers to the financial institutions were dishonoured and FIRs were registered against the former under Section 489-F PPC. The Hon'ble Supreme Court quashed the FIRs holding as under:

> "In essence, whenever an offence is committed by a customer of a financial institution within the contemplation of the Ordinance, 2001 [Financial Institutions (Recovery of Finances) Ordinance, 2001)], it could only be tried by the Banking Courts constituted thereunder and no other forum. The Special Court under the ORBO [Offences in Respect of Banks (Special Courts) Ordinance, 1984], the ordinary criminal courts under the Code (Criminal Procedure Code, 1898) ….would have no jurisdiction in the matter."

14. In view of the dictum laid down by the august Supreme Court in *Mushahid Shah* case, it is held that the impugned order is without lawful authority and cannot, therefore, be sustained. Accordingly, this petition is ***accepted*** and the said order is set aside. Respondent No. 3 would, however, be at liberty to file a complaint before the Banking Court under the Ordinance.

(Tariq Saleem Sheikh)
Judge

Approved for Reporting

JUDGE

*Shafqat A. Toor**