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Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

W.P. No.66649 of 2020

Muhammad Rafi **Versus** Regional Police Officer,
etc.

JUDGMENT

Petitioner by:	Ch. Muhammad Rafique, Advocate.
Respondents by:	Barrister Lehrasib Hayat, AAG. Haji Furqan Sarwar, Research Officer.
Date of hearing:	07.9.2022.

MUHAMMAD SHAN GUL, J:- Through this judgment the titled constitutional petition is sought to be decided.

2. The question before this Court is whether Section 182 Pakistan Penal Code, 1860 is attracted to a matter where criminal prosecution has not even commenced? In other words, whether short of an FIR being recorded, investigated and discarded or short of a complaint being filed, tried and rejected, can the provisions of Section 182 PPC become applicable in a matter? This judgment seeks to address this question of law.

3. Facts of the case are that respondent No.4, Saleem Raza, who is apparently a tenant of the petitioner before this Court, filed a petition under Section 22-A and 22-B Cr.P.C. on 16.5.2020 before a Justice of Peace praying for

registration of a criminal case against the petitioner. A report from the police was summoned and which report controverted and negated the contents of the application filed by respondent No.4. A Justice of Peace vide order dated 11.7.2020 dismissed this petition in the following terms:-

“The petitioner Saleem Raza has moved this petition U/S 22-A/B Cr.P.C. for issuance of direction to the SHO PS Civil Line, Gujrat for registration of case against the proposed accused person. The petitioner alleged that on 29.03.2020 at about 8.00 p.m., proposed accused Muhammad Rafi alongwith two unknown persons armed with pistol trespassed into the house of petitioner and outraged the modesty of his wife by use of criminal force. The petitioner further stated that he moved an application for registration of case but local police did not register his case and prayed that his application for registration of criminal case may kindly be allowed and SHO PS Civil Line, Gujrat may kindly be directed to get the criminal case against the proposed accused person.

2. Notice to the proposed accused person was also issued and comments were summoned from the local police.

3. Arguments on behalf of the learned counsel for the petitioner as well as learned counsel for the proposed accused person have been heard, record perused.

“4. The petitioner has moved this application for registration of case with the allegation that the proposed accused persons had trespassed into his house and outraged the modesty of female. As per comments submitted by the local police, the petitioner has to pay the amount of proposed accused person for which the proposed accused person had filed the petition U/S 22-A/B of Cr.P.C. and instant petition has been filed to counter the same. The petitioner has alleged in his application for registration of case that the alleged occurrence took place on 29.02.2020 whereas, as per the receipt of Front Desk Online complaint he had moved some application at Police Station on 02.03.2020 with the delay of more than two days. So, the petitioner has not even annexed the copy of any application that he had allegedly moved before the local police. So, it cannot be inferred from the Front Desk Online complaint receipt dated 02.03.2020 that the matter reported to local police was regarding the occurrence agitated through instant petition U/S 22-A/B of Cr.P.C. It is apparent

from the comments furnished by the local police that the matter between the parties is of civil nature. The petitioner has moved this application in order to convert the civil litigation into criminal with some ulterior motive. There is no cavil to the proposition that the Ex-officio Justice of Peace is bound to issue direction for the registration of case, if cognizable offence is made out from the contents of the petition. In the instant case, from bare perusal of the application for registration of case moved by the petitioner, no cognizable offence is made out rather the matter between the parties is of civil nature. Furthermore, now, it has become settled principle of law that Ex-officio Justice of Peace is not required to pass order for registration of case upon every application. In this regard, I am humbly guided by the law laid down in case titled as "Nazim Hussain vs. Additional Sessions Judge, Nankana Sahib" reported in 2017 P.Cr.LJ Note 35 (Lahore) wherein it was held by the Hon'ble Lahore High Court, Lahore that: "Ex-officio Justice of Peace was not required to pass order for registration of case in each and every case, rather should look into respective contentions of both the parties."

In sequel to above discussion, the instant application of the petitioner U/S 22-A/B is hereby dismissed. File be consigned to the record room after its due completion."

4. This dismissal prompted the petitioner to file an application dated 23.7.2020 addressed to the District Police Officer, Gujrat, praying for initiation of criminal proceedings under Section 182 and 211 PPC read with other enabling provisions against respondent No.4 for filing an allegedly false and frivolous petition against the petitioner and on account of presenting incorrect facts, incorrect affidavits and false information in a petition filed under Sections 22-A/B Cr.P.C.

5. According to the petitioner the said application filed for initiating proceedings for malicious prosecution has not been attended to by the police and on account of this

inaction the petitioner has been left with no choice but to seek a Mandamus from this Court under Article 199 of the Constitution. The petitioner also claims that on account of incessant inaction he has also approached the Regional Police Officer, Gujranwala by means of filing an application dated 03.9.2020 but even then no action on the said application has been initiated and which is why there is no alternative remedy available with the petitioner but to approach this Court in its constitutional jurisdiction so as for this Court to direct a public functionary to do what he is so required by law to do.

6. Learned counsel for the petitioner has placed reliance on “Muhammad Ashraf v. Judicial Magistrate, Toba Tek Singh and 3 others” (2009 P.Cr.LJ 1182), “Haider Ali and others v. DPO, Chakwal and others” (2015 SCMR 1724) and “Muhammad Bashir v. Station House Officer, Okara Cantt and others” (PLD 2007 SC 539) in support of his contentions.

7. After hearing the arguments advanced by the counsel for the petitioner this Court straightaway posed a question to the counsel asking him as to how in the absence of registration of an FIR or for that matter short of filing a private complaint and which FIR or complaint were never investigated and rejected, Section 182 PPC or for that matter Section 211 PPC could be attracted to the present

matter? Learned counsel for the petitioner has reiterated his earlier arguments, relied on the precedent cases noted above and primarily indulged in rhetoric.

8. On the other hand, learned Asstt. Advocate General, Barrister Lehasib Hayat, on the strength of “*Umer Hayat v. Inspector General of Police, Islamabad and others*” (2015 P.Cr.LJ 1551) and “*Rana Riaz Ahmad Khan v. The State and others*” (2008 MLD 746) submits that unless an FIR is registered and is found to be false or in the case of a complaint, unless the complaint is tried and rejected, no question of application of Section 182 and Section 211 PPC arises. He has unequivocally submitted that the proceedings before a Justice of Peace are quasi-judicial proceedings and not criminal proceedings in terms of the law laid down in “*Younas Abbas and others v. Additional Sessions Judge, Chakwal and others*” (PLD 2016 SC 581) and since neither an FIR was registered nor a complaint was filed in the matter, there is no merit in the petition and the same merits to be dismissed.

9. Heard. Record perused.

10. It can be observed immediately that the entire basis and thrust of the petition is misaimed. Learned counsel for the petitioner is not only confusing quasi-judicial proceedings with criminal proceedings but he is also, albeit incorrectly, referring to proceedings under Sections 22-A/B

Cr.P.C. as prosecution. In none of the judgments cited by the counsel for the petitioner has it been observed judicially that even in the absence of an FIR or a complaint, Section 182 PPC or Section 211 PPC gets attracted to a matter. All judgments relied upon by the counsel for the petitioner are indeed distinguishable, proceed on different facts and the law laid down therein has no nexus with the proposition involved in the present matter.

11. Had the petition filed under Sections 22-A/B Cr.P.C. against the petitioner met success and had an FIR been registered with a trial ending in acquittal or if the FIR had been found to be false and cancelled, the question of Section 182 PPC being attracted could have arguably been in issue. However, since no FIR was registered and even no complaint was filed and tried, the arguments advanced by the counsel for the petitioner come across as misplaced. What is even more alarming is the lack of acquaintance of the petitioner with trite law which holds that a private person has no *locus standi* or legal authority to initiate or insist on initiating proceedings under Sections 182 PPC or 211 PPC. It is only the public authority mentioned in such sections which has the authority and prerogative of initiating proceedings under the said provisions of law and not a private person.

12. Precedent cases on the issue need to be highlighted so as to drive home this trite position of law.

13. In “Muhammad Ashraf v. Justice of Peace/Additional District Judge, Chakwal and 3 others” (2014 P.Cr.LJ 343),

it has been held in paragraphs No. 7 and 8 as follows:-

“Similarly in PLD 2001 Lahore 84 it was held as under by this Court:-

“That the prerogative for proceedings under section 182, PPC lies only with the police officer who has moved the machinery of law against the accused persons nominated in the FIR by the complainant. No other authority can direct the concerned police officer to proceed against the first information who has given false information.”

8. ***In the instant case even no FIR was registered so on the basis of illegal proceedings conducted by the police there was no occasion for the learned Ex-official Justice of Peace to direct the police to proceed under section 182 PPC. The provisions of section 195 Cr.P.C. are also relevant for the disposal of the instant petition which provide that no Court can take cognizance of any offence punishable under sections 172 to 188, PPC except a complaint in writing of the concerned public servant or of some other public servant to whom he is subordinate.”***

14. In “Muhammad Ashraf v. Judicial Magistrate, Toba Tek Singh and 3 others” (2009 P.Cr.LJ 1182) (wrongly

relied upon by the counsel for the petitioner) it has been held at paragraph No.6 as follows:-

*“In another case, where after being dissatisfied by police, a complaint was filed. **The petitioner’s prosecution under section 182 PPC on charge of getting a false case registered was not warranted during the pendency of petitioner’s complaint.** It was held as under:--*

“The order that emerges from the above authorities is that so long petitioner’s direct complaint is pending in Court, no action could be taken against him under section 182 PPC or section 211 PPC. It is only after his complaint is disposed as false, that the Court

concerned can direct filing of complaint against the petitioner under section 211 PPC (1983 P.Cr.LJ 1097). Therefore, as decided in the above case if a complaint is found false, section 182 PPC can be invoked.”

15. In “Syed Iqbal Hussain v. District Police Officer, Hafizabad and 5 others” (2004 P.Cr.LJ 256), it has been held at paragraphs No.16, 17 and 18 as follows:-

“16. However, it may also be referred here with advantage that according to the case of Nasim Akhtar Soofi v. The State 1990 P.Cr.LJ 336 (Karachi) that in order to initiate action under section 182, PPC it is essential that the false complaint involving cognizable offence should properly be registered, investigated and found to be false and baseless.

17. There is no denying the fact that neither any case was registered nor investigated. So, proceedings under section 182, PPC could not be initiated against him.

18. In this regard the case of Haji Muhammad Aslam v. Inspector General and others PLD 2001 Lah. 84 can also be referred to with advantage. In the same it has been held that prerogative to proceed under section 182, PPC lies only with the Police Officer, who has moved the machinery of law against the accused nominated in the FIR by the complainant and no other Authority can direct the concerned Police Officer to proceed against the first informant, who has given the false information.”

16. In “Umer Hayat v. Inspector General of Police, Islamabad and others” (2015 P.Cr.LJ 1551), it has been held at paragraph No.8 as follows:-

“The report of police does not mean that same was called to ascertain the real facts about the incident but same was called merely to ascertain whether application was moved or not. In case of denial by SHO, even directions could be issued for lodging FIR. If allegations leveled in the FIR are proved to be false, there is a way to compensate the party adversely affected by initiating proceedings under section 182, PPC, but if FIR is not lodged, there is no compensatory process.”

17. In “Rana Riaz Ahmad Khan v. The State and others” (2008 MLD 746), it has been eloquently noted at paragraph No.7 as follows:-

“7. Under the law, a person who lays information to police, is entitled to have his case judicially determined before he is called upon to answer the charge of giving false information. Reliance in this regard is placed on the cases of Sarwar Begum v. The State (PLD 1970 Lah. 726). In this backdrop, the continuation of the proceedings under section 182, PPC would amount to abuse of process of law.”

18. But most importantly what needs to be addressed is the misconceived approach of the petitioner in filing a constitutional petition seeking a Mandamus. Now, a Mandamus only lies where a legal duty exists and which duty is not being performed by a person within the meaning of Article 199 of the Constitution. In the present matter no legally enforceable right of the petitioner or for that matter legally enforceable duty of the respondents is at stake which could warrant issuance of a Mandamus and in this respect paragraph No.8 of the judgment reported as “Jhammad Aslam v. Inspector-General and others” (PLD 2001 Lahore 84) is being relied upon wherein it has been held as follows:-

“8. It is the public servant to whom a false information is given by a person knowing it to be false, who thereafter, moves the machinery of law against the accused person. The framers of law left the question for determination to the public servant, as to how far powers exercised, by him cause detriment annoyance and injury to the person proceeded against as accused in consequence of the false information given to him by the complainant. It is not for any other authority to direct the concerned

police officer to proceed against the first informant who is giving false information.”

19. In the same vein, it has been held in “Muhammad Ibrahim v. Umaid Ali and 4 others” (2016 MLD 346) that:

“I have also noticed that the Magistrate in the impugned order has not referred section 182, PPC. However, it is an admitted position that such direction cannot be issued for lodging the case against the complainant under section 182, PPC have been initiated this may not be treated under the order of the Magistrate and police itself should decide that whether or not any proceedings are warranted in such matter or not. This application, therefore, is allowed to the above extent and impugned order is modified to the extent of observation made in this order and as a result impugned order may not be treated as a direction to the police to proceed against the complainant under section 182, PPC.”

20. In “Manzoor Hussain v. The State and 8 others” (2013 P.Cr.LJ 18), a Division Bench of Baluchistan High Court has held as follows:-

“Without prejudice to above, even otherwise, the proceedings under section 182, PPC could only be initiated, on a written complaint of a police officer, but this section has been inserted in the FIR, on a letter of the District Attorney. Since, the offence has not been included on a written complaint of the police officer concerned, therefore, the proceedings under section 182, PPC have unlawfully been initiated against the petitioner.”

21. In “Syed Iqbal Hussain v. District Police Officer, Hafizabad and 5 others” (2004 P.Cr.LJ 256), it has been held at paragraphs No.16 and 17 as follows:

“16. However, it may also be referred here with advantage that according to the case of Nasim Akhtar Soofi v. The State 1990 P.Cr.LJ 336 (Karachi) that in order to initiate action under section 182, PPC, it is essential that the false complaint involving cognizable offence should properly be registered, investigated and found to be false and baseless.

17. There is no denying the fact that neither any case was registered nor investigated. So, proceedings under section 182, PPC could not be initiated against him.”

22. What is evident and conspicuous from a reading of the precedent cases listed above is that:-

- a). *Section 182 PPC only stands attracted where an FIR or a private complaint are registered and filed, subject matter of the same is investigated and the allegations contained in the FIR or the private complaint are rejected and discarded as false or untrue and not otherwise.*
- b). *It is only the public servant concerned to whom such information has been provided who has the authority and prerogative to initiate proceedings and not a private person but which condition comes to pass after an FIR has been lodged and discarded by way of cancellation or in trial or when a complaint has been filed and rejected as being false or baseless.*
- c). *A petition under Sections 22-A/B Cr.P.C. is not competent for the purpose of seeking a direction for initiation of proceedings under Section 182 PPC.*

23. For what has been noted above, this petition is meritless and is accordingly **dismissed**.

**(MUHAMMAD SHAN GUL)
JUDGE**

Approved for reporting.

Judge

Waseem