

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.4180-P/2015

JUDGMENT

Date of hearing.....29.11.2017.....

Petitioner: (Muhammad Iqbal) By Mr. Abdur Rashid
Pirzada Advocate.

Respondents: (SHO, PS Lund Khwar and others) By Syed
Qaiser Ali Shah, AAG for respondents
No.1 and 2 and Mr. Aftab Ahmed Khan,
Advocate for respondents No.3 to 8.

QALANDAR ALI KHAN, J.- Muhammad Iqbal,
petitioner, through the instant writ petition under
Article 199 of the Constitution of the Islamic of
Pakistan, 1973, impugned order dated 17.10.2015 of
the learned ASJ-II, Takht Bhai, District Mardan
(respondent No.9), whereby, his petition under section
22-A Cr.P.C for issuance of directions to respondent
No.1 i.e. SHO Police Station, Lund Khwar, to lodge
FIR against respondents No.2 to 8, was turned
down/dismissed.

2. The facts leading to filing of application under
section 22-A Cr.P.C by the petitioner against
respondents No.2 to 8, briefly stated, are that private
respondents, particularly respondent No.3, Shamsher
Ali, had moved application for possession through

official partition of land measuring 23 *kanal*, 11 *marla* bearing Khasra No.368/466 situated in village Shamsi, Tehsil Katlang, District Mardan, against the petitioner and others before the AAC, Katlang, which was allowed; but appeal of the petitioner and others was accepted by the ADC, Mardan and order of the AAC, Katlang was set aside on 21.07.2014. The revision petition of respondent No.3 before the Additional Commissioner, Mardan was dismissed on 02.04.2015 and decision of ADC Mardan was upheld. Thereafter, respondent No.3 assailed the decisions of the lower forums before SMBR, Khyber Pakhtunkhwa through revision petition which was still pending. The petitioner alleged, in his writ petition, that possession of the land in question was still with them and that they were cultivating the land since long, but were dislodged and dispossessed by the respondents through respondent No.2 i.e. Saleem Riaz DSP, Takht Bhai. The petitioner also alleged that their application for status-quo was allowed by the AAC, but respondents No.2 to 8 alongwith heavy police contingent, three tractors and tree cutting machines entered the property forcibly in violation of the status-quo order of the AC, Takht Bhai at 09:30 AM on 19.08.2015 and destroyed the standing trees and crops of the petitioner on the land in question as well as on the undisputed property.

According to the petitioner, no action was taken on his application to the DIG, Mardan against the DSP and others, therefore, he approached the Ex-officio Justice of Peace i.e. respondent No.9 by filing petition u/s 22-A Cr.P.C, which was dismissed by respondent No.9 vide order dated 17.10.2015; hence the instant writ petition.

3. In the comments of respondent No.2 i.e. DSP, Takht Bhai as well as in the written reply of respondents No.3 to 8, it was brought to the notice of the Court that Shamsher Ali, respondent No.3, had moved application to the DIG, Mardan on 09.08.2015, wherein, he had pointed out that possession of 22 Jareeb land in village Shamsi was handed over to him on the Court order by the revenue staff in the presence of police on 14.05.2014 through legal process of ejection but his rivals/opponents (Muhammad Iqbal and Yousaf Shah etc) used physical force and were interfering in his land. The DIG sent the application to the DSP, Takht Bhai, for legal action, who found illegal interference by Muhammad Iqbal, the petitioner, as possession had been delivered to the respondent under legal process, and for that matter criminal cases had also been registered in Police Station, Lund Khwar, against the petitioner and his other family members on the report of respondent No.3

for unlawful interference. Therefore, respondent No.2 alongwith Patwari Halqa, Mushtaq Ali Khan (respondent No.8) and a police contingent reached the spot on 19.08.2015 and on the pointation of Patwari Halqa, Shamsher Ali, respondent No.3, was allowed to plough his fields already given to him on 14.05.2014, through legal ejectment process.

4. Arguments of learned counsel for the parties and learned AAG on behalf of official respondents heard; and record perused.

5. This writ petition is primarily directed against the order dated 17.10.2015 of learned ASJ-II, Takht Bhai, Mardan, in his capacity as Ex-officio Justice of Peace, whereby, application of the petitioner under section 22-A Cr.P.C for lodging of FIR against respondents No.2 to 8 was turned down/dismissed. Needless to say that FIR is lodged by an officer incharge of a Police Station under section 154 Cr.P.C on the basis of information relating to the commission of a cognizable offence; and provision of section 22-A (6)(i) Cr.P.C is invoked when an Ex-officio Justice of Peace receives a complaint regarding non registration of criminal case. The Ex-officio of the Justice of Peace, then, issues appropriate directions to the police authorities if it is concluded that criminal case was not registered despite receipt of information of

commission of a cognizable offence by the police under section 154 Cr.P.C.

6. The instant case, seen in the aforesaid perspective, does not fall within the ambit of section 22-A (6) (i) Cr.P.C; because neither commission of a cognizable offence is discernible from application of the petitioner to the DIG, Mardan so as to warrant registration of FIR under section 154 Cr.P.C, nor there was any complaint regarding non registration of criminal case by the officer incharge of the police station to justify an appropriate direction to the police authorities concerned by the Ex-officio Justice of the Peace under section 22-A (6)(i) Cr.P.C. It may be added here that the application/complaint of the petitioner to the DIG, Mardan was specifically for disciplinary and legal action against DSP Saleem Riaz for acting illegally and in excess of his authority by allegedly damaging trees and crops of the petitioners and his poor tenants, which was their only source of income, and also making him to pay compensation for the damage and loss caused to the petitioner and others. There was, as such, no prayer for registration of FIR, the non registration of which could accrue a cause of action in favour of the petitioner to move the Court of learned Ex-officio Justice of pace for issuance of directions to respondent No.1 i.e SHO PS Lund

Khwar to lodge FIR against respondents No.2 to 8 including Saleem Riaz DSP, Takht Bhai (PW-2), Shamsher Ali (respondent No.3) and four others i.e. private respondents No.4 to 7 and also Mushtaq Ali Patwari Halqa Shamsi (respondent No.8).

7. Besides, it has been proved on the record, on the basis of reports of both revenue and police officials that in pursuance of order of the Additional Assistant Commissioner (AAC)/AC 1st Grade, Katlang, Mardan dated 04.12.2013, thereby accepting application for partition of the suit land, possession of the property in question was handed over to the respondent in execution proceedings initiated by the respondents against the petitioner and others, on 14.05.2014; and there is nothing on record to suggest that the possession was, later on, restored to the petitioner, notwithstanding acceptance of the appeal on behalf of the petitioner and others by the Additional Deputy Commissioner/Collector, Mardan, vide order dated 21.07.2014, which was maintained by the Additional Deputy Commissioner, Mardan Division, Mardan, by dismissing revision petition on behalf of the respondents vide order dated 02.04.2015 and also, subsequently, by the SMBR, and all the aforementioned orders challenged in writ jurisdiction of this Court by the respondents.

8. Moreover, the impugned action of respondent No.2, which was confined to allowing respondent No.3 to plough the land in question in the presence of local police, as pointed out by the Patwari Halqa, was also not unilateral or without any cause as, at least three criminal cases were already registered against the petitioner and others on the report of respondent No.3 in the years 2014 and 2015, thus justifying concern of the local police about likelihood of law and order situation; and further the local police under the command of DSP, Takht Bhai had also not acted on their own but were directed by the DIG, Mardan when through a written application, dated 09.08.2015, respondent No.3 requested for help of local police while expressing dissatisfaction over role of the local SHO in the matter. In short, there is nothing on the record to show that either damage was caused to the property (crops and trees) of the petitioner by the respondent with the help of police under the command of DSP, Takht Bhai, or a cognizable offence was committed by them while the local police was providing protection to the respondents and taking preventive measures for maintaining law and order which was imminently under threat due to the past criminal cases registered against the petitioner and others on the report of the respondent No.3. Even

otherwise, registration of FIR was not an appropriate remedy for compensation for the alleged damage caused to the standing crops and trees of the petitioner, unless commission of cognizable offence(s) was/were shown to have been committed in respect thereof.

9. In view of the forgoing facts and circumstances, the learned Ex-officio Justice of Peace was perfectly justified in declining the relief of issuance of directions for registration of a criminal case against the respondents on the application under section 22-A Cr.P.C of the petitioner. The writ petition is, therefore, devoid of merit, and dismissed, accordingly.

Announced
29-11-2017

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M.Iqbal

(D.B) *Hon'ble Mr. Justice Rooh-ul-Amin Khan.*
Hon'ble Mr. Justice Qalandar Ali Khan.