

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT,**  
**ABBOTTABAD BENCH.**  
**JUDICIAL DEPARTMENT**

**Cr.MQ No.29-A/2017**  
**Mst. Gul Sanga etc. Vs. The State & others.**

Date of hearing: 27.02.2020

Petitioner (Mst. Gul Sanga etc.) by: Mr. Ajmal Khan Tahirkheli  
, Advocate.

State by: Sardar Muhammad Asif, AAG.

Respondents by: Mr. Asad Iftikhar Sheikh, Advocate.

**JUDGMENT**

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**AHMAD ALI, J.** Through the instant petition under Section 561-A Cr.P.C. the petitioner has approached this Court praying that:-

*“On the acceptance of this quashment petition, order dated 08.11.2016 of respondent No. 2 and the proceedings in case No. 50/2 in the court of learned Magistrate-II, Ghazi may kindly be quashed and grant any other kind of relief which this honourable court deem appropriate.”*

2. Brief facts of the case are that respondent Mst. Hassan Taj reported the matter to the local police that she along with

Mst. Saeem Jan were following their cattle and at about 01:45 when they reached near the house of Mir Afzal, Mst. Gul Sanga W/o Mir Afzal along with Shafique and Saeed were present who intervened them and started abusing them, as a result of which a quarrel took place in between them and Shafique and Saeed who were armed with sticks, injured Mst. Hassan Taj and Mst. Saeem Jan. The report was incorporated in the shape of Daily Diary No. 14 dated 25.07.2016 and the injured were referred for medical examination. However, in the light of medical reports of the injured, no cognizable offence was made out, as such the respondent filed an application under Section 22-A(vi) Cr.P.C. which was accepted by the learned Justice of Peace vide the impugned order, hence the instant petition.

3. I have given my anxious thought to the blue streak arguments of learned counsel for the parties and gone through the record with their able assistance.

4. Perusal of record reveals that the learned Justice of Peace, while deciding the application of the respondent, was exercising his powers under Section 22-A (vi) of the Criminal Procedure Code, 1898, which is reproduced for reference:-

*“22-A. Powers of Justice of the Peace. (1) A Justice of the Peace for any local area shall, for the purpose of making an arrest, have within such area all the powers of a Police Officer referred to in section 54 and an officer*

*in-charge of a police-station referred to in section 55.*

*(2) ---*

*(3)---*

*(4)---*

*(5)---*

*(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 a 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.”*

5. Bare perusal of the aforementioned portion of Section 22-A Cr.P.C. makes it clear that the Justice of Peace can be approached in cases where the local police is reluctant to register a criminal case when the matter reported constitutes a cognizable offence, or transfer of investigation from one investigating officer to another is required or where the police neglects, fails or exceeds the authority vested in it. In the instant case, there is no such allegation against the police and the local police was justified in not registering a case because in the light of medical report, no cognizable offence was made out. In the circumstances, when the offence reported was non-

cognizable, the procedure provided under Section 155 Cr.P.C. was required to have been adopted which provides that:-

*“155. Information in non-cognizable cases.(1) When information is given to an officer incharge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.*

*(2) Investigation into non-cognizable cases. No police-officer shall investigate a non-cognizable case without the order of a Magistrate of first or second class having power to try such case or send the same for trial to the Court of Session.*

*(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer incharge of a police station may exercise in a cognizable case.”*

6. Sub-section (1) of Section 155 Cr.P.C provides that when a non-cognizable offence is reported to the local police, the local police is bound to enter the report in a specific register and refer the complainant to Magistrate and only the Magistrate is empowered to order for investigation or otherwise in the

case, while Justice of Peace is not empowered to direct the local police to proceed against the accused. When the police investigate a case of non-cognizable offence without permission of a Magistrate, such act of the police would amount to violation of mandatory direction of law and its continuation shall be an abuse of process of law. Reliance is placed on “*Mst. Malka Jan Vs. IGP NWFP Peshawar and 2 others (PLJ 2000 Peshawar 3)*”, “*Haij Rehman SHO and 3 others Vs. Provincial Police Officer, Government of KPK Peshawar and 3 others*” (2012 P.Cr.L.J Peshawar 1526), *Muhammad Ashiq and 2 others Vs. SHO, PS Northern Cantt. Lahore and 3 others (2005 YLR 1879)* and *Muhammad Shafiq Vs. SHO and others (2012 YLR 828)*”.

7. Learned counsel for the respondent has relied upon the judgment of august Supreme Court of Pakistan in the case of “*Muhammad Ali Vs. Additional I.G. Faisalabad*” reported as “**PLD 2014 SC 753**” in support of his argument that the present petition filed under Section 561-A Cr.P.C. is not maintainable however, the larger bench of the august Supreme Court of Pakistan, overruled its earlier view while deciding Civil Appeals No. 1491 of 201363-L, 64-L/14, Civil Petitions No. 1945-L/11, 933-L, 1840-L/13, 372-L, 589-L, 737-L/14, 1155-L/13 etc. by holding:-

*“The duties, the Justice of Peace performs, are executive, administrative, preventive and ministerial as is evident from sub-sections 1, 2, 3, 4 and 5 of 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 sub-section 6 in Section 22-A and Section 25 of the Cr.P.C. when Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-officio Justice 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 Clause (i), (ii) and (iii) of sub-section 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 lis 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 of Khizar Hayat and others Vs. Inspector General of Police (Punjab), Lahore and others (PLD 2005 Lhr. 470) and Muhammad Ali Vs. Additional I.G. (PLD 2014 SC 753) inasmuch as it holds that the functions performed by the Ex-officio Justice of Peace are executive, administrative or ministerial.”*

8. So in the light of above principle laid down by the apex Court, the petition in hand under Section 561-A Cr.P.C. is maintainable and since the procedure provided under Section 155 Cr.P.C. has not been adhered to in the instant case, therefore, the entire proceedings carried out in continuation of the impugned order would result into the abuse of process of law.

9. In the light of what has been discussed above, this petition is allowed. The impugned order dated 08.11.2016, passed by learned Justice of Peace and entire proceedings carried out thereupon, being alien to law, stand quashed.

***Announced:  
27.02.2020***

**J U D G E**