

**PESHAWAR HIGH COURT, D.I.KHAN BENCH**

**FORM OF ORDER SHEET**

Date of order or proceedings	Order or other proceedings with signature of Judge(s).
(1)	(2)
07.10.2020	<p data-bbox="492 599 925 675"><u><i>W.P. No.347-D/2018 (M) with C.M. No.286-D/2018 (N).</i></u></p> <p data-bbox="492 738 1275 813"><u><i>Present:-</i></u> Mr. Ahmad Ali Khan, Advocate for the petitioners.</p> <p data-bbox="682 859 1275 934">Mr. Kamran Hayat Miankhel, Addl: A.G. for respondents.</p> <p data-bbox="855 939 905 965">***</p> <p data-bbox="492 1015 1258 2250"><u><i>Sahibzada Asadullah, J.-</i></u> Through instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have prayed that, "By issuance of an appropriate writ and by setting aside impugned order &amp; judgment dated 15.3.2018, the respondents No.1 to 5 may please be directed to include the respondent No.6 as accused in the FIR No.248 dated 05.6.2016 of police station, Dera Town, D.I.Khan; and I.O. may further be directed to produce respondent No.6 before the Judicial Magistrate, D.I.Khan, to record his confessional statement. Any further relief, which this Honourable Court, in the given circumstances, may deem appropriate in the interest of justice, may also be granted to the petitioners".</p>

2. Brief facts of the case are that the local police of police station Dera Town had laid a picket near Gandapur Chowk when in the meanwhile, a white colour motorcar emerged from Waziristan Chowk, which was signaled to stop, but the driver accelerated the speed and drove away the car which was chased and a little ahead the police came across a motorcar bearing registration No.YJ-221/Islamabad, stuck in the mud with no driver nearby, however, the Investigating Officer found a wallet lying on the ground which on inspection found to contain a national identity card in the name of Muhammad Ibrahim son of Amin Shah, resident of Abba Khel, Tehsil and District Lakki Marwat, alongwith Rs.5000/-. The complainant got into the car and on cursory look, a national identity card in the name of Qutab Khan son of Sardar Ali, resident of Abba Khel, Tehsil and District Lakki Marwat, was found lying on the dashboard. The seizing officer searched the motorcar from inside but when its dicky was opened, narcotics i.e. Charas weighing 48000 grams and opium weighing 12500 grams were recovered, which led to case F.I.R No.248 dated 05.6.2016, under Section 9(c) CNSA, police station Dera Town. Though none was found in the motorcar to be implicated as an accused, however, the recovery of

the two national identity cards helped the Investigating Officer to trace out the real culprits and ultimately, the petitioners were charged in the case, who were arrested and after completion of the investigation, the challan was submitted with the petitioners as accused.

3. It is pertinent to mention that for a sufficient length of time calm prevailed and the petitioners accepted their status as accused, however, it was after two years i.e. in the year 2018, when the respondent No. 6 turned up with a strange request, requesting the Investigating Officer to accept him as accused in the instant case, which request was initially taken as abnormal and as such the Investigating Officer remained unmoved. When the respondent No.6 could not convince the Investigating Officer, he struggled hard to get his statement recorded under Section 164, Cr.P.C. from the Court of a Judicial Magistrate, but the same was declined vide order dated 10.02.2018. Feeling dissatisfied from the order, the respondent No.6 preferred a revision before the Court of learned Additional Sessions Judge against the order dated 10.02.2018, which yielded to a judgment/order dated 19.02.2018 by directing the concerned Judicial Magistrate to record the statement of the respondent No.6 under Section 164, Cr.P.C.

and as such the respondent appeared before the Court, it is interesting to note that the respondent was stressing for recording his statement under section 164/364, Cr.P.C. whereas the learned Judicial Magistrate was not in consonance and declined to honour the request of the respondent which resulted into the order dated 24.02.2018, which moved the respondent once again to the Court of Additional Sessions Judge, where on 03.3.2018, the counsel for the petitioner appeared and expressed his satisfaction if the Investigating Officer was directed to record his 161, Cr.P.C. statement. His this request was honoured and eventually, his statement was recorded on 06.3.2018, where he stated that it was a joint venture when he alongwith the petitioners visited Azad Kashmir and on the night falling between 01.6.2016/02.6.2016, while sleeping in the room of a hotel he got up and found the two fast asleep, he left the room and took the keys of the motorcar bearing registration No.YJ-221/Islamabad and left Kashmir. He further stated that after stealing the motorcar he reached to Bannu where he met one Arsala Khan, a renowned drug peddler, who took him inside an unknown house and asked his assistance as a career for taking the contraband to D.I.Khan, to whom he happily surrendered and Charas weighing 48000

grams and opium weighing 12500 grams were placed on the dicky of his car and drove away towards D.I.Khan, when he reached near the bypass road, he found the police standing who signaled him to stop as a result he speeded up the car which led the police to chase him, it was in a haste that he missed the road and stuck into the mud and on reaching the police, he left the car and ran away. He further stated that while snatching the motorcar from Kashmir, it was having the national identity cards of the petitioners with a wallet which at the time of decamping from the motorcar were lying there. He went on to say that he went into hiding but on later realization, he surfaced to confess his guilt and to rescue the petitioners from the burden being innocent.

4. The efforts of the respondent No.6 when were not materialized, to be implicated as an accused instead of the petitioners, the petitioners had no other option but to approach the Court of Ex-Officio Justice of the Peace for redressal of their grievances and as such an application under section 22-A, Cr.P.C. was submitted before the Court of Ex-Officio Justice of Peace.

5. The learned Ex-Officio Justice of Peace was pleased to direct the official respondents to submit a reply to the application of the petitioners. It

is pertinent to mention that soon after their arrest, the petitioners provided a copy of daily diary No.2 dated 02.6.2016 incorporated with police station Teer Kot, Azad Kashmir, where the incident of car snatching/stealing was reported against unknown accused and that it was on its basis that FIR No.186 dated 02.6.2016, under Section 381-A PPC, police station Teer Kot/Dhir Kot was registered. The Investigating Officer having these two documents in possession, left for Azad Kashmir to verify the status of both i.e. the FIR No.186 and the daily diary pertaining to the incident and on his arrival to the concerned police station, he was provided a certificate by the incharge police station Teer Kot by declaring the FIR No.186 as fake and bogus with further clarification that on 02.6.2016, the police station had lastly registered case FIR No.54.

6. The Investigating Officer as was commanded by the Court appeared and submitted his reply containing the copy of FIR No.186 and daily diary dated 02.6.2016 alongwith the verification report from the incharge police station Teer Kot. The parties appeared before the Court and after hearing the arguments, the learned Ex-Officio Justice of Peace, was pleased to dismiss the application of the respondent vide order dated 15.3.2018. Feeling

aggrieved, the petitioners approached this Court through the instant writ petition.

7. The learned counsel for the petitioners alongwith the Additional Advocate General were heard at length and with their valuable assistance, the record was gone through.

8. It surfaces from the record that the petitioners were charged in case F.I.R No.248 dated 05.6.2016, under Section 9(c) CNSA police station Dera Town, and after their arrest, they were investigated by the Investigating Officer and on completion of the investigation, complete challan was submitted before the Court of competent jurisdiction. This is surprising that nothing was brought on record regarding their innocence, but only daily diary No.2 alongwith FIR No.186 were produced to the Investigating Officer in respect of the motorcar which was allegedly stolen by the unknown accused from Azad Kashmir. It is surprising that for sufficient long time, the petitioners did not disclose that it was the respondent No.6 who took away their car and even the respondent No.6 was not charged for the offence in the concerned police station and if the FIR No.186 was taken to be correct, even there the respondent No.6 figures nowhere. It comes out from the record that the petitioners were traced during investigation as

from the abandoned motorcar, their national identity cards were recovered and this clue led to their identification as accused in the case.

9. It is surprising to note that despite the fact that the respondent No.6 claimed himself with the petitioners in the room of the hotel and that it was from there that he stole away the car, but this fact remained unknown and surfaced them when both the petitioners and the respondent No.6 awoke up from a deep slumber. The conduct of the respondent No.6 is not above board despite his hectic efforts, he could not prevail over the Investigating Officer to implicate him as an accused instead of the petitioners and the petitioners after losing their hopes came forward and submitted the application.

10. While reading the impugned order, it came to light that the entire material was scanned and assessed by the learned Ex-Officio Justice of Peace, which led to the impugned order. Though an effort was made to convince the Court to direct the concerned police officials to declare the respondent No.6 as accused, as it was he who claimed the contraband, but the learned Justice of Peace was fully conscious of his powers and jurisdiction, did not agree to the request of the petitioners for issuing a direction to the Investigating Officer/prosecution

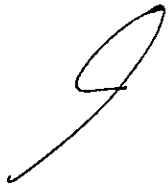


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agency to array the respondent No.6 as accused, by extending benefits to the petitioners. It is needless to mention that the powers of an Ex-Officio Justice of Peace are not unbridled, rather these are structured with prescribed parameters and limits. There are no two opinions that the powers conferred on the Ex-Officio Justice of Peace are not judicial, rather these are ministerial and while dealing with applications under Section 22-A(6), Cr.P.C, he can issue directions to the concerned police officials for observance of all legal and requisite formalities but he cannot step into the shoes of the investigating agency, which is independent in all respect. There is no ambiguity as to what powers an Ex-Officio Justice of Peace will exercise when the matter is brought before him and even the language of the section needs no interpretation as it is clear from all obscurities. It is beneficial to reproduce Section 22-A(6), Cr.P.C. which reads as "An Ex-Officio Justice of Peace may issue an appropriate directions to the police authority concerned on a complaint regarding:-

- (i) *Non-registration of 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".*

The plain reading of the quoted section leaves no ambiguity regarding the powers and functions of an Ex-Officio Justice of Peace. The prayer of the petitioners is regarding the issuance of directions to the official respondents to implicate respondent No.6 as accused in the instant case, but we are afraid to hold that the request so made does not fall within the domain and jurisdiction of an Ex-Officio Justice of Peace. A Justice of the Peace or an ex-officio Justice of the Peace in Pakistan performs functions which are administrative and ministerial in nature and not judicial in character. Even the superior Courts of Pakistan having constitutional, legal, supervisory and inherent judicial jurisdiction have consistently and consciously refrained from directly interfering with investigation of a criminal case by the police and, therefore, it is but obvious that Justices of the Peace or ex-officio Justices of the Peace possessing only administrative and ministerial powers should be twice shy of such direct interference. Thus, if despite possessing constitutional, legal, supervisory and inherent judicial powers the superior Courts of Pakistan have generally considered it imprudent and ill-advised to directly interfere with investigation of a crime by the police then it appears to be nothing but stating the obvious that a Justice of the Peace or an ex-officio Justice of the Peace possessing



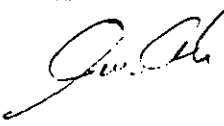
merely administrative and ministerial powers should all the more be reluctant and hesitant in issuing directions to the police as to how and by whom a criminal case is to be investigated.

11. The law is settled that an Ex-Officio Justice of Peace while exercising his powers cannot step into the shoes of the investigating agency though he can issue directions in respect of the matters provided under Criminal Procedure Code, but not more than that. The prerogative to declare a person as an accused or otherwise, lies with the prosecution agency and a proper mechanism has been chalked out for the purpose. It has never been the intent and spirit of the section to bestow unbridle powers upon the Ex-Officio Justice of Peace, if so, the results would be drastic and chaotic. The separation of powers is essential on all scores and all the pillars of State whether Judiciary, Executive or Legislative should and must remain within the allotted spheres, failing which a disharmony will come into play leading to an abnormal situation. The issue in hand has beautifully been dealt by the Honourable Lahore High Court, Lahore in a judgment reported as *Khizer Hayat and others Vs. Inspector-General of Police (Punjab), Lahore and others (2005 PLD Lahore 470)*, where the Honourable Bench has left no stone unturned to explain the stages where an

Ex-Officio Justice of Peace could intervene, however, the crux/theme of the judgment is nothing more but to bifurcate the powers vested in the Ex-Officio Justice of Peace and that of the investigating agency. While assessing on the touchstone provided in the judgment, we feel no hesitation but to hold that the prayer of the petitioner cannot be allowed as the matter relates to the investigating agency and not with an Ex-Officio Justice of Peace. The impugned judgment/order is well-reasoned and is based on proper appreciation of facts and circumstances of the case which calls for no interference. This petition is bereft of merit is, therefore, dismissed.

Announced.  
Dt: 07.10.2020.

  
JUDGE

  
JUDGE

Office  
Jau  
9/10/20

Kifayat/PS\*

(D.B)

Hon'ble Justice Abdul Shakoore  
Hon'ble Justice Sahibzada Asadullah