2012 P Cr. L J 1082

[Lahore]

Before Muhammad Qasim Khan, J

AMEER MAI---Petitioner

Versus

JUSTICE OF THE PEACE, YAZMAN, and 3 others---Respondents

Writ Petition No.934 of 2011/BWP, decided on 22nd February, 2011.

(a) Criminal Procedure Code (V of 1898)---

----Ss. 22-A, 107 & 151---Constitution of Pakistan, Art. 199---Constitutional petition---Maintainability---Powers of Justice of Peace---Scope---Application for registration of F.I.R.---Security for keeping the peace---Arrest to prevent cognizable offences---Applicant (petitioner) had assailed the order passed by Justice of Peace whereby on an application filed under S.22-A, Cr.P.C., applicant sought registration of case but concerned S.H.O. was directed to obtain bonds from both the parties and to take precautionary measures under Ss.107 & 151, Cr.P.C.---Applicant's application under S.22-A, Cr.P.C. showed that applicant along with others were severely beaten but there was no medical certificates available on file in support of their contention, which fact might have established the commission of the alleged offence---Said application also showed that there was a dispute between the parties about a sugar cane crushing machine installed by the respondents in front of the house of the applicant, which became a source of nuisance for the applicant but report by S.H.O. showed that no such occurrence had taken place---Disputed factual controversy between the parties required determination through detailed inquiry/ recording of evidence, which exercise could not be undertaken while discharging jurisdiction under Article 199 of the Constitution of Pakistan and thus direction for registration of case could not be issued---Constitutional petition was disposed of accordingly.

Rai Ashraf and others v. Muhammad Saleem Bhatti and others PLD 2010 SC 691; Muhammad Ali v. District Police Officer and others 2008 PCr.LJ 467; Muhammad Younus Khan and 12 others v. Government of N.-W.F.P. through Secretary, Forest and Agriculture, Peshawar and others 1993 SCMR 618; Muhammad Saleem Bhatti v. Syed Safdar Ali Rizvi and 2 others 2006 SCMR 1957 ref.

(b) Criminal Procedure Code (V of 1898)---

----Ss. 22-A, 107 & 151---Constitution of Pakistan, Art.199---Constitutional petition--- Powers of Justice of Peace--- Scope---Application for registration of F.I.R---Security for keeping peace---Arrest to prevent cognizable offences---Applicant (petitioner) had assailed the order passed by Justice of Peace whereby on an application filed under S.22-A, Cr.P.C., applicant sought registration of case, but concerned S.H.O was directed to obtain bonds from both the parties and to take precautionary measures under Ss.107 & 151, Cr.P.C.---Impugned order to the extent

of directing the S.H.O (respondent) to obtain bonds and to adopt preventive measures under Ss.107 & 151, Cr.P.C. against the parties, in the facts and circumstances of the case, was an order which on the face of it had been issued in haste as Justice of Peace himself had found that there was no severe motive between the parties and mere fact that some occasional enmity existed between the parties was not at all a ground to warrant such an action as contemplated under S.107, Cr.P.C.---Justice of Peace could call upon officers within his local area to aid him in the prevention of breach of peace or a disturbance of the public tranquillity, therefore, Justice of Peace ought to have opted for an inquiry or at least must have satisfied his conscience that circumstances in between the parties were such which could result in serious repercussions like breach of peace and disturbance of public tranquillity---Justice of Peace on the basis of an allegation levelled by the complainant in an application under S.22-A, Cr.P.C., without considering the requirements as mandated under Ss.107 and 151, Cr.P.C. directed the S.H.O. to proceed against the parties, therefore, impugned order to the extent of direction to S.H.O. for obtaining surety bond from both the parties and taking preventive measures under Ss.107 and 151, Cr.P.C., was set aside---Constitutional petition was disposed of accordingly.

(c) Criminal Procedure Code (V of 1898)---

----S.107---Security for keeping peace---Scope---Bare possibility of breach of peace is not enough to justify proceedings under S.107, Cr.P.C.

1980 PCr.LJ 126 ref.

(d) Criminal Procedure Code (V of 1898)---

----S. 151---Arrest to prevent cognizable offences---Scope---Under S.151, Cr.P.C. a police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented, however, but arrest made by police officer without any emergency as contemplated by S.151, Cr.P.C. is patently illegal.

1993 PCr.LJ 102 ref.

Sardar Afzaal Ahmad for Petitioner.

Muhammad Naveed Khalil, Assistant Advocate-General for Respondents.

Date of hearing: 22nd February, 2011.

JUDGMENT

MUHAMMAD QASIM KHAN, J.---With the concurrence of learned counsel for the parties, this matter is being decided as PAKKA case.

2. Through this writ petition Mst. Ameer Mai the petitioner has assailed the order dated 10-2-2011 passed by learned Justice of Peace whereby on a petition filed by the petitioner under section 22-A, Cr.P.C. seeking registration of case,

instead the concerned SHO has been directed to obtain bonds from both the parties and to take precautionary measures under sections 107/151, Cr.P.C.

2(sic.) Heard.

3. A perusal of the application filed by the petitioner before the learned Justice of Peace for registration of case although shows that petitioner along with others were severely beaten but there are no medical certificates available on the file in support of their contention, which fact might have established the commission of the alleged offence. Furthermore, para-2 of the said application also shows that there is a dispute between the parties about a sugarcane crushing machine installed by the respondents in front of the house of the petitioner, which became the source of nuisance for the petitioner resulting in the filing of this petition. A report called by the learned Justice of Peace from the concerned SHO is also available on the file, according to which no such occurrence had taken place. The learned Justice of Peace by considering all these facts declined to issue direction for registration of case. Furthermore, the petitioner has an alternate remedy of filing of private complaint against the respondents, the petitioner may avail the same, if so advised.

4. The stance canvassed in this petition rested on disputed factual controversy requiring determination through detailed inquiry/recording of evidence, which exercise cannot be undertaken while discharging jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Thus, direction for registration of case cannot be issued. Reference can be made to the cases "RAI ASHRAF and others v. MUHAMMAD SALEEM BHATTI and others" (PLD 2010 SC 691), "MUHAMMAD ALI v. DISTRICT POLICE OFFICER and others" (2008 PCr.LJ 467), "MUHAMMAD YOUNUS KHAN and 12 others v. GOVERNMENT OF N.-W.F.P. through Secretary, Forest and Agriculture, Peshawar and others" (1993 SCMR 618) and "MUHAMMAD SALEEM BHATTI v. Syed SAFDAR ALI RIZVI and 2 others" (2006 SCMR 1957).

5. However, the impugned order to the extent of directing the respondent/SHO to obtain bonds and adopt preventive measures under section 107/151, Cr.P.C. against the parties, in the facts and circumstances of this case, is an order which on the face of it has been issued in haste. Once the learned Justice of Peace himself held that, there was no severe motive between the parties, mere fact that some occasional, enmity or ill-feeling exist between the parties was not at all a ground to warrant such an action as contemplated in section 107, Cr.P.C. Bare possibility of breach of peace is also not enough to justify proceedings under section 107, Cr.P.C. Reference may be made to the case reported in 1980 PCr.LJ 126. Section 107, Cr.P.C. shows that only Magistrate of the Ist Class on receiving information and having formed an opinion that there are sufficient grounds for proceeding, then he may proceed under section 107, Cr.P.C. Under section 151, Cr.P.C. a police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented but arrest made by the police officer without any emergency as contemplated by section 151, Cr.P.C. is patently illegal. Reference may be made to the case reported in 1993 PCr.LJ 102. The Justice of Peace can call upon police officer within his local area

to aid him in the prevention of a breach of peace or a disturbance of the public tranquillity. Therefore, before proceeding under this section, the learned Justice of Peace ought to have even opted for an inquiry or at least must have satisfied his conscience that circumstances in between the parties were such which could result in serious repercussions like breach of peace and disturbance of the public tranquillity. Whereas, in the case in hand, the learned Justice of Peace just on the basis of an allegation levelled by the petitioner side in an application under section 22-A, Cr.P.C. in a slipshod manner and without considering the requirements as mandated in section 107 or 151, Cr.P.C. directed the SHO to proceed against both the parties within the meaning of sections 107 and 151 of Criminal Procedure Code, 1898. Therefore, the impugned order of the learned Justice of Peace to the extent of above direction to the SHO for obtaining surety bond from both the parties and taking preventive measures under sections 107/151, Cr.P.C., is set aside and this writ petition is disposed of accordingly.

M.W.A./A-15/L Order accordingly.

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