**2013 P Cr. L J 553**

**[Sindh]**

**Before Abdul Rasool Memon and Riazat Ali Sahar, JJ**

**MANTHAR ALI---Petitioner**

**Versus**

**STATION HOUSE OFFICER and 3 others---Respondents**

Constitutional Petition No.D-666 of 2012, decided on 18th July, 2012.

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

----Ss.154 & 157---Police Rules, 1934, Ch. XXIV, Rr. 24.4 & 24.7---Constitution of Pakistan, Art. 199---Constitutional petition---Registration of F.I.R. for cross-versions---Scope---Station House Officer (SHO)/respondent conducted investigation into the incident and refused to register F.I.R. for the version advanced by the complainant (petitioner) on the grounds that in respect of the same incident proposed accused party had recorded an F.I.R., and complainant wanted to register a case falsely to pressurize the proposed accused party---Contentions of complainant were that opinion of SHO before lodging of F.I.R. and conducting investigation was beyond the scope of S.154, Cr.P.C.; that investigation was the function of the investigation officer and not the SHO, and that counter-version of complainant could be recorded and investigated in accordance with law---Validity---Once complainant conveyed information to the SHO regarding commission of cognizable offence, the SHO was duty bound to act in accordance with law---Proposed accused had already registered a case against the complainant party and SHO had stated that no such incident as alleged by the complainant had taken place---SHO, in such circumstances, was competent to invoke provisions of Rules 24.4 and 24.7 of Chapter XXIV of Police Rules, 1934 and S.157(b), Cr.P.C.---Constitutional petition was allowed, SHO was directed to record statement of complainant and from statement so recorded if a cognizable offence was made out, then to record the same in terms of S.154, Cr.P.C.

Dr. Inayatullah Khilji and 9 others v. 1st Additional District and Sessions Judge (East) Karachi and 2 others 2007 PCr.LJ 909 ref.

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

----S. 54---Arrest of accused without warrant---Scope---"Reasonable suspicion"---Connotation---Word "reasonable suspicion" used in S.54, Cr.P.C., did not mean a mere vague surmise, but a bona fide belief on part of the police that an offence had been committed or was about to be committed---Such belief had to be founded on some definite averments tending to throw suspicion on the person arrested.

Athar Abbas Solangi for Petitioner.

Ameer Ahmed Narejo, State counsel along with SIP Sadoro Khan Lashari, S.H.O. of Police Station Sanjar Bhatti for Respondents.

Date of hearing: 17th July, 2012.

**ORDER**

**RIAZAT ALI SAHAR, J.**---The petitioner has filed this Constitutional Petition praying therein that the S.H.O. of Police Station Sanjar Bhatti may be directed to record the statement of the petitioner and if a cognizable offence is made out, then the same may be incorporated in 154, Cr.P.C. book.

2. The relevant facts giving rise to this petition are that on 22-6-2012 petitioner Manthar Ali Mugheri along with his elder brother Mumtaz and brother-in-law Muhammad Ali went to Village Gul Bahar Leghari at about 5.00 p.m., to look-after the watering process of seed plantation in their land, where proposed accused Ashiq Ali, 2) Nadir Ali, 3) Zakir, 4) Sabir Ali, all sons of Muhammad Hassan, armed with rifles, 5) Wali Muhammad son of Muhammad Ali, 6) Mashooq son of Wali Muhammad, armed with repeaters, all by caste Leghari, came there and challenged the petitioner that why they had come to the land; saying so, accused Nadir fired upon petitioner's brother Mumtaz Ali, which hit him at right side of face; proposed accused Zakir fired upon Muhammad Ali, which hit him on his right leg; the other proposed accused persons also fired, which hit proposed accused Ashiq Ali, who died at the spot. Thereafter, petitioner brought the injured to Taluka Hospital, where after examining the injured was referred to CMC Hospital, Larkana. Thereafter, petitioner went to Police Station Sanjar Bhatti and approached the respondent No.1/S.H.O. Police Station Sanjar Bhatti to record his F.I.R., who refused to record the same.

3. Respondents Nos.1 and 2 filed their comments. The respondent No.1 (S.H.O. Police Station Sanjar Bhatti) in his comments stated that in respect of the same incident proposed accused Nadir Ali son of Muhammad Hassan Leghari had recorded the F.I.R. on 22-6-2012 being Crime No.20 of 2012, under sections 302, 34, P.P.C. at Police Station Sanjar Bhatti, against Muhammad Ali son of Muhammad Hassan, Mumtaz Ali son of Taj Muhammad (brother of petitioner), Majid Ali alias Rajoo son of Mumtaz Ali, Irfan Ali son of Muhammad Ali, all by caste Leghari, regarding the murder of his brother Ashiq Ali Leghari due to dispute over the land. It is further stated by the respondent No.1 in his comments that Majid Ali and Irfan Ali were arrested; so also Muhammad Ali and Mumtaz Ali in the injured condition. After investigation the accused have been challaned in the Court of law and the S.H.O has stated that accused Muhammad Ali and Mumtaz Ali received injuries in their own firing. Moreover, the respondents Nos.1 and 2 in their statements have also stated that in order to counter-blast to the case registered against present petitioner party by the proposed accused; this case is being registered falsely to pressurize the proposed accused.

4. Learned counsel for the petitioner contended that the opinion of the S.H.O before lodging report and conducting the investigation, is beyond the scope of section 154, Cr.P.C. and it is the function of the Investigating Officer, not S.H.O. He further added that the counter-version of the petitioner be recorded and investigated in accordance with law.

5. The learned State Counsel has contended that the petitioner has equally efficacious remedy before the Justice of Peace under sections 22(A) and (B), Cr.P.C. and before the Magistrate under section 156(3), Cr.P.C., or by filing Direct Complaint under section 200, Cr.P.C. He further contended that the police has investigated the matter in Crime No.20 of 2012 lodged by the proposed accused and during the investigation of said case it has come on record that Muhammad Ali and Mumtaz Ali received the injuries which are self-suffered, which come within the ambit of section 211, P.P.C. He further added that the investigating officer had recorded his opinion in the F.I.R. lodged by the proposed accused being Crime No.20 of 2012.

6. We have given careful consideration to the arguments advanced at bar and have perused the record.

7. No doubt, once the petitioner conveyed the information to the S.H.O regarding commission of a cognizable offence, the S.H.O was duty bound to act in accordance with the law. Still the fact remains that the proposed accused have already registered murder case against the applicant/petitioner party and S.H.O has stated in his statement that no such incident, as alleged by the petitioner, has taken place. In such situation, the S.H.O is competent to invoke the provisions of Rules 24.4 and 24.7 of Chapter XXIV of the Police Rules, 1934 and also the S.H.O can invoke the provisions of section 157(b), Cr.P.C. The provision of section 157, Cr.P.C. provides mechanism of check and balance so that just fair and impartial investigation is conducted.

8. Apart from above, it has been observed that now-a-days some of the people used to file applications under section 22-A and B, Cr.P.C. frequently before the Justice of Peace and in Constitutional Petitions to counter the allegations against them in the cases already registered. It is worthwhile to mention here that while dealing with the similar point in hand and looking to the frequent filing of applications in terms of section 22-A and B, Cr.P.C., a Division Bench of this Court in a case reported as Dr. Inayatullah Khilji and 9 others v. 1st Additional District and Sessions Judge (East) Karachi and 2 others, 2007 PCr.LJ 909 held as under:--

> "7. Indeed, we are conscious of the fact that upon the conferment of powers under section 22-A(6), applications for quashment of F.I.Rs. have been multiplying and parties expect a Court to adjudicate upon the truth or otherwise of the allegations even without investigation process having been completed. Apparently, it happens on account of the apprehension of arrest that they face upon registration of the F.I.Rs. containing allegations, which may be false. We need to reiterate that truth or falsehood of the allegations could only be determined during or after investigation. However, it needs to be made clear that though the police is required to investigate every allegation of commission of a cognizable offence, a person named as an accused cannot be arrested

unless some tangible material becomes available, which can cause a reasonable suspicion of his having committed the offence."

9. In view of the above discussion and it is settled principle of law that each and every case is to be decided on its own peculiar circumstances and facts, considering all the aspects of the case, as above, as well as the dictum laid down in the case of Dr. Inayatullah Khilji (supra), the S.H.O of Police Station Sanjar Bhatti is directed to record the statement of the petitioner and from the statement so recorded if a cognizable offence is made out, enter it into 154, Cr.P.C. book and to act in accordance with law. However, it needs to be made clear that any person named as an accused may not be arrested unless reasonable suspicion exists of his having so concerned; during course of investigation; as prescribed in section 54, Cr.P.C. The words "reasonable suspicion" in section 54, Cr.P.C. do not mean a mere vague surmise, but a bona fide belief on the part of the police officer that an offence has been committed or is about to be committed. Such belief has to be founded on some definite averments tending to throw suspicion on the person arrested; it amounts to availability of some tangible evidence with prosecution.

MWA/M-88/K Petition allowed.

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