ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Writ petition no. 3597/ 2022
Sohaib Zaheer
versus
SHO Police Station Kirpa, Islamabad and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
4	20.12.2022	Mr. Umar Ali Satti, Advocate for the petitioner Ch. Muhammad Mohsin, State counsel with Zafar Iqbal ASI Mr. Ali Sajjad Noon, Advocate for respondents no. 2 and 3.

CM no.2/2022

The learned counsel for the petitioner states that he was unable to furnish the required affidavit due to an emergency. Learned counsel for respondents no.2 and 3 states that he does not contest the authenticity of the photocopies. I proceed to hear the main case.

Main case

This writ petition impugns the order dated 22.09.2022, whereby the learned Ex-officio Justice of Piece (**JOP**) directed the police to register the FIR on the complaint filed by respondent no.2. Paragraph no.3 of the said order reads as follows:-

> As per contents of petition, the petitioner has specifically alleged that the proposed accused armed with weapons along with heavy machinery came to their land, attempted to take illegal possession of land, abused and physically tortured the complainant party and also advanced life threats. Perusal of allegations reveals that cognizable offences are made out. In such cases, local police was under obligation to register an FIR and had no power to postpone registration of FIR. Under section 154 Cr.PC, the SHO is under statutory duty to register the case if a cognizable offence is made out from the contents of the information/application filed. Investigation cannot be conducted prior to the registration of a case, as one cannot put a cart before the horse.

2 This Court's role in its Constitutional jurisdiction is limited to seeing whether the impugned order suffers from lack of jurisdiction or other

illegality, and not to substitute its take on the documents appended with the petition as to whether a different view could have been taken. The aforesaid paragraph of the impugned order reproduced above is well-reasoned and no exception can be taken to it.

3 The culture of registration of an FIR being a momentous event emanates from the tendency of the police to arrest the accused immediately on registration of an FIR. This of course is completely uncalled for, is not within the spirit of the Criminal Procedure Code, and has also been deprecated by the Hon'ble Supreme Court[1]. Further, articles 155 and 156 of the Police Order 2002 criminalise vexatious arrest and abuse of lawful powers by police officers.

4 As rightly noted by the learned JOP, the registration of an FIR is simply recording of the information received by the police of the commission of a crime. The police is meant to investigate after registration of an FIR and not before it. It is equally possible that police after investigation finds out that the complaint was baseless and then cancel the FIR or take other steps for discharge of the accused. The discretion vested in the JOP under sections 22-A/B CrPC is there for a reason, and has been properly exercised in this case.

5 I therefore find no reason to interfere with the impugned order, and **dismiss** this writ petition. However, it is expected that the police will comply with the observations in paragraph 3 of this order, and will not rush to arrest the accused, unless it is satisfied for reasons to be recorded that it is unable to investigate the case without their arrest or that the accused are not joining the investigation.

(Sardar Ejaz Ishaq Khan)
Judge

Imran

[1] PLD 2021 SC 708; 2014 SCMR 1762