

PLD 2005 Karachi 285  
Before Sabihuddin Ahmed and Amir Hani Muslim, JJ.  
Naseem Akhtar Khan.....Petitioner.  
Versus.  
District and Sessions Judge.....Respondent.  
Constitution Petition No.D-7 of 2005, heard on 7<sup>th</sup> January  
2005.

O R D E R.

The petitioner has called in question the orders dated 20.11.2004 and 21.12.2004 under Section 22-A Cr.P.C. passed by the learned Sessions Judge and ex-officio Justice of Peace Karachi East n Criminal Miscellaneous Nos.411 and 455 of 2004. The facts leading to the passing of the aforesaid two orders seem to be more or less similar and same questions of law are involved in both these matters. It appears that separate applications were made by the Respondent No.2 in both these matters before the ex-officio Justice of Peace (Respondent No.1) alleging that the petitioner who was working as S.H.O P.S Zaman Town Karachi was not performing his legal obligations in registering F.I.Rs. relating to commission of cognizable offences. The Respondent No.1 found that it was the mandatory duty of the petitioner to record an F.I.R. whereafter the investigation would commence

and drafted that a F.I.R. be duly registered. At the same time the T.P.O. Korangi Town was required to register a case against the petitioner for negligence in failure to comply with the requirements of section 154 Cr.P.C.

2. Mr. Nawab Mirza learned counsel for the petitioner in the first instance argued that the learned ex-officio Justice of Peace had no jurisdiction to make the latter part of the order i.e. direct registration of a case against the petitioner. We regret we find this contention to be untenable in view of the specific provision of section 22-A (6) (iii) of Criminal Procedure code duly amended in 2002. The above provisions explicitly show that a Sessions Judge acting as ex-officio Justice of Peace can always issue appropriate directions to the police authorities on a complaint regarding non-registration of a criminal case or neglect or failure by a police authority in relation to its functions.

3. Learned counsel next argued that the T.P.O. is a supervisory officer and does not fall within the definition of “officer in charge of police station” contemplated by section 4 (p) Cr.P.C. and could not therefore, register a case under section 154 Cr.P.C. We find no force in this contention either as much as section 551 clearly provides that police officers superior in rank to an officer incharge of a police station may exercise powers of the latter throughout the local area to which they are appointed.

4. (sic) Thirdly Mr. Nawab Mirza argued that the responsibility to deal with complaints of neglect of police officers are required to be entertained by a Zila Nazim under Article 35 of the Police Order, 2002 and not by the Sessions Judge. We regret our inability to accept this contention either. In the first place there is nothing to suggest any inconsistency between Article 35 of the Police Order or section 22-A Cr.P.C. and prima facie both the Nazim and the Justice of Peace have concurrent powers in terms of the specific statutory provisions under which they have been respectively conferred. Moreover

section 22-A was added in the Criminal Procedure Code through Ordinance CXXXI of 2002 on 21.11.2002 whereas the Police Order was promulgated earlier in point of time i.e. on 14.8.2002. Therefore, the latter could not be deemed to prevail over the former under the doctrine of implied repeal.

5. Fourthly Mr. Nawab Mirza argued that under Article 155 (2) of the Police Order prosecution for offense under sub-clause (1) required a report in writing by an officer authorized under the rules and there was nothing to indicate that the T.P.O. was so authorized. We do not think it is necessary to go into this question at this stage inasmuch as the T.P.O. has only been directed to register a case and no prosecution in a competent Court has commenced as yet. Finally learned counsel further argued that an offence under Article 155 of Police Order was non-cognizable. We are not impressed by this contention either. Indeed the Police Order only requires a prosecution to be initiated upon a written report but does not say that no arrest can take place without a warrant. The offence being punishable with imprisonment up to three years,

it would be deemed to be cognizable under the Second Schedule to the Cr.P.C. For the forgoing reasons, we find no substances in these petitions and dismiss them in limine.

Petition dismissed.