

Misc.: No. 5/6 of 2019

Or 03
10-08-2019

Present:

Petitioner along with Abid Ali Advocate
APP Zohaib Ahmed Sher
Comments of SHO received and placed on file

1. The petitioner (**Ilyas Khan** s/o Lalbat Khan; caste Mishti, Tapa Haider Khel; r/o Ibrahimzona, District Orakzai) has filed the instant petition u/s **22-A CrPC**; with prayer that directions be issued, by the undersigned to the respondent No. 4 (SHO of PS Lower Orakzai), for registration of criminal case (FIR) against respondents Talib Jan, Tariq Mehmood and Rizwan Ullah (respondents 1 to 3).
2. Comments were sought from respondent No. 4 (SHO Lower Orakzai); which have been submitted. Arguments of the counsel for petitioner were heard and the available record along with comments have been perused.
3. Facts of the case are that the present petitioner filed an application, dated 13-07-2019, before the SHO of PS Lower Orakzai; wherein he alleged that, he had given his land on lease to one Sajid Khan through agreement on 23-05-2019. That on 25th, he went along with Sajid to the land in question for ploughing the same with tractor; that the 03 respondents (Talib, Tariq Mehmood and Rizwan Ullah) came there armed with Kalashnikovs. That these respondents criminally intimidated them and stopped them from ploughing the fields. That the petitioner and Sajid left the place in fear. The comments of the SHO admit that the present petitioner had filed an application with allegation of wrongful restraint and criminal intimidation. The SHO, however, without registering an FIR called Sajid Ullah to the police station and


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obtained his statement. That allegedly Sajid Ullah denied the allegation of presence of Kalashnikovs with the respondents and of hurling threats to the petitioner. On these basis the SHO has refused to register an FIR.

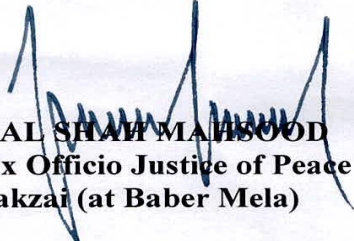
4. The perusal of application, dated 13-07-2019, given by the petitioner to the SHO Lower Orakzai, prime facie sets out an allegation of wrongful restrain and criminal intimidation, which are cognizable offences. In such a situation there was no other option with the local police but to register an FIR in the case.
5. The wordings of section 154 CrPC are very clear. Every information in respect of cognizable offence is required to be entered in the relevant register (FIR Register). After registration of the information, the local police is required to proceed further and investigate the allegation, by collecting evidence in the case – in consultation with prosecution office.
6. The police cannot refuse registration of FIR on the basis of unlawful and private investigation conducted through an illegal procedure. The registration of FIR is a must in every case of allegation of cognizable offence. In case if the FIR is found to be false, after due investigation, the local police may adopt the lawful means for taking legal action against the maker of false report in terms of section 182 PPC.
7. In the circumstances, the instant petition is **accepted** and the respondent SHO of PS Lower Orakzai is directed to register the complaint of petitioner Ilyas Khan; and thereafter to proceed further strictly in accordance with law.
8. Let a copy of this order be sent to the SHO of PS Lower Orakzai for compliance.
9. The local police is repeatedly refusing to register FIRs in respect of allegations of cognizable offences; and has


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adopted a novel and illegal mode of conduct by deciding matters through private investigations. This situation is deplorable. Let separate copy of the instant order be sent to the DPO Orakzai for looking into the matter and for ensuring proper conduct of local police in the important matter of the registration of the criminal cases.

10. This file be consigned to record room after necessary completion and compilation.

Announced
10-08-2019


JAMAL SHAH MAIBSOOD
ASJ-I/Ex Officio Justice of Peace
Orakzai (at Baber Mela)