


Or 04
23-11-2020

Present:

Petitioner, Shahiran Bibi and her brother Zohaib, along with
Insaf Ali Advocate
Respondent no. 2, Qasim
APP Syed Aamir Shah for State

1. The petitioner (**Shahiran Bibi** d/o Lalwas Khan; caste Aakhel, tapa Dalak Khel Nawasi, Tehsil Upper Orakzai) has filed the instant petition u/s **22-A CrPC**; with prayer that directions may be issued, by the undersigned (as Ex-officio Justice of Peace), to the respondent no. 1 (SHO of PS Upper Orakzai), for registration of criminal case (FIR) against respondents no. 2 & 3 (Qasim s/o Noor Hassan Shah and Saman Badshah).
2. Comments were sought from respondent SHO; which were submitted and placed on file. Notice was issued to respondents no.2 & 3; upon which respondent no. 2 appeared before the undersigned. A file of inquiry (sic) report, purportedly conducted under section 156 (3) CrPC, was also sent to this office today by SHO.
3. Arguments of the counsel for petitioner were heard and the available record, along with comments and report of investigation conducted under section 156 (3) CrPC, has been perused.
4. Facts of the case, as alleged by the present petitioner in her application to DPO Orakzai, are; that she was a teacher in GPS Toor Kanrey, Orakzai. That on 09-10-2020, at 08:10 hrs., she was going to her school for duty when a green color corolla motorcar pulled up in front of her and that two armed persons - having their faces covered, alighted from motorcar; that these persons picked up her minor niece, who was going to school with her, with the intention to kidnap her; that she pushed the masked man to save herself and her niece from abduction, and ran towards the jungle; that the masked men followed her, however, on removal of masks she identified the two persons as Saman Badshah and Qasim (respondents


JAMAL SHAH MAHSUD
Addl: District & Sessions Judge-I,
Orakzai at Hangju

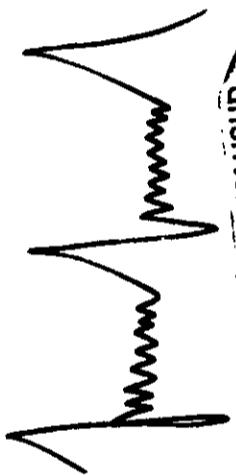
5

no.2 & 3). The petitioner also filed another application with similar allegations before army staff officer Orakzai-Hangu.

5. The perusal of copy of application given by the petitioner to the DPO Orakzai, clearly contain allegations of commission of cognizable offence/s. In such a situation there was no other option with the local police but to register an FIR in the case. However, no FIR was registered in the matter. In the comments of SHO it was stated that the local police had initiated inquiry (sic) under section 156 (3) CrPC and that further action would be taken according to the result of investigation. Along with the comments, a decision of jirga, compromise statement of present petitioner and statements of respondent Qasim and one another were also annexed.


6. According to the inquiry (sic) report the allegation of complainant was entered into the daily diary of PS as madd no. 5, on 09-11-2020; that an application was filed before local judicial magistrate by the police for permission to initiate inquiry (sic), on 11-11-2020; that the same was marked to an ASI; that the ASI tried to contact to the complainant but could not get in touch with her; that the ASI made inquiries from some locals and reduced into writing statements of accused and one another u/s 161 CrPC - and also prepared a site-plan, purportedly on pointation of present complainant. On conclusion of investigation the ASI has opined that the complainant is a cousin of the respondents no. 2 & 3, while the minor girl is a niece of these respondents; that it is impossible for an uncle to kidnap his niece; that the complainant could not produce any eyewitness despite repeated directions; and that thus the complaint was false. The ASI further opined that complainant is a teacher who is residing in her school at a desolate place; that her brother and her accused cousins are not happy with her on this account. The ASI has finally opined that the inquiry (sic) was futile.

7. As far as the procedure in respect of information of cognizable offences is concerned, the wordings of section 154 CrPC are very clear. Every information in respect of


JAMAL SHAH MAHSUD
Addl: District & Session Judge-I,
Orakzai at Hangu

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.


8. In the present case the local police has requested the judicial magistrate for permission to initiate investigation. In fact, the word inquiry has been used in the application, rather than investigation. No investigation can take place before registration of FIR. Neither can an information be declared as false by an ASI on the basis of some personally held notions of possibility or impossibility. Similarly, non-availability of eyewitness would also not make an allegation false.
9. All the proceedings conducted by local police, purportedly under section 156 (3) CrPC, without registration of FIR, are illegal. There can be no investigation without FIR. In cognizable cases it is only for the court of competent jurisdiction to finally dispose the matter after submission of challan/report by local police u/s 173 CrPC. An ASI has no authority to dispose of a case after holding illogical inquiry, and that to in a case of heinous nature i.e. attempted abduction of a female and a minor girl.
10. The file of inquiry (sic) u/s 156 (3) CrPC suggests that complainant was pressurized into compromise through elders/jirgas. The complainant present before the undersigned today stated that she had not compromised the matter and that the local police was pressurizing her into compromise without her will. The malafide of ASI is further revealed by the fact that in his inquiry (sic) report he mentions that complainant never appeared before her, yet he has prepared a site-plan on the pointation of present petitioner. Thus, it is clear that proceedings u/s 156 (3) CrPC were conducted in an unwarranted manner and with malafide.
11. In these circumstances, the instant petition is **accepted** and the respondent SHO of PS Upper Orakzai is directed to register the complaint of petitioner Shahiran Bibi as FIR; and


JAMAL SHAH MAHSUD
 District & Sessions Judge-I
 Orakzai at Hangu

7

- thereafter to proceed further in the case strictly in accordance with law.
12. Let a copy of this order be sent to the SHO of PS Upper Orakzai for compliance. Let a separate copy of this order be sent to DPO Orakzai for information and for taking notice of the neglect and failure committed by local SHO in respect of his functions and duties.
 13. Let the file of proceedings u/s 156 (3) CrPC be returned to the quarter concerned. Let this file be consigned to record room after necessary completion and compilation.

Announced
23-11-2020



JAMAIL SHAH MAHSOOD
ASJ-I/Ex Officio Justice of Peace
Orakzai