

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II/JUSTICE OF PEACE ORAKZAI AT BABAR MELA

Cr. miscellaneous application No.03/6 Of 2021

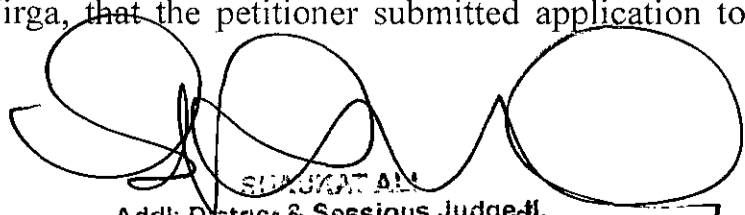
Mukbara Khan vs SHO

ORDER
20.03.2021

Mr. Insaf Ali advocate counsel for petitioner present.
Mr. Nisar Ahmad APP for the state present. Comments/report of the SHO received and placed on file.

The petitioner Mukbara Khan s/o Khanan Khan r/o Tribe Feroz Khel Tappa Qasam Khel Tehsil Lower District Orakzai seeks to invoke the jurisdiction of this Court u/s 22-A Cr. PC for issuing directions for registration of FIR against respondents namely Danish Khan and Juma Khan r/o Tribe Feroz Khel Tappa Qasam Khel Tehsil Lower District Orakzai.

The petitioner in his application u/s 22-A Cr.PC alleged that on 05.08.2020 at 12:00 PM three tolas gold and five lacs cash was stolen from his house by unknown persons, that to save his honor, he did not report the occurrence and continued search of the accused, that later on after search and due satisfaction, he was lodging FIR against the respondent No.1 and 2 but respondent No.3 incorporated his report in the daily diary of the PS, that in meanwhile Jirgas were also convened to resolve the issue and the stolen property was found in the house of respondents No.1 and 2, that the respondents No.1 and 2 admitted the commission of offence before the witnesses in the Jirga, that the petitioner submitted application to DPO



SHANIKAT ALI
Addl. District & Sessions Judge-II,
Orakzal at Hangu

but no action was taken against the respondents. The petitioner invoked the jurisdiction of this Court u/s 22-A Cr.P.C seeking directions of this Court for registration of FIR against respondents.

Arguments of learned counsel for the petitioner and learned APP for the state heard and record perused.

The petitioner reported to the police regarding the occurrence on 11.02.2021 and his report was reduced in the shape of daily diary No.5 dated: 11.02.2021. The petitioner has charged the respondent No.1 and 2 for theft of five tola gold and five lac cash from his dwelling house and also for extending life threats to the petitioner, therefore as the offences are cognizable one, the SHO was required to register FIR against the respondents. The comments submitted by the SHO shows that after the report of petitioner vide DD No.5 dated: 11.02.2021 inquiry was initiated to dig out the facts of the case. In cases of report in cognizable offences it is not permissible under the law for the incharge of the PS to conduct inquiry before registration of FIR. The SHO is bound u/s 154 Cr.PC to register FIR when he receives information in cognizable offences and it is after the registration of FIR to investigate the case and to dig out the guilt or innocence of accused. The SHO PS lower Orakzai could not exercise his powers to register FIR in a cognizable offence, therefore in such circumstances the petitioner had no other option but to invoke the jurisdiction of this court u/s 22-A Cr.PC for registration of FIR against the


SHAUKAT ALI
Addl: District & Sessions Judge-II,
Orakzai at Hangu

8

respondents. It is worth to mention here that it is not necessary that soon after the registration of FIR the police may arrest the accused. It is the sole prerogative of the investigation officer to proceed against the accused if during investigation sufficient material is brought on record regarding the involvement of accused in the commission of offence and if the report of the complainant was found false then in such circumstances the investigation officer and the SHO concerned may proceed u/s 182 PPC against the complainant.

As sequel to the above discussion the instant petition u/s 22-A Cr.PC is accepted and the SHO PS lower Orakzai is directed to register FIR against respondents No.1 and 2 forthwith without any further delay. The copy of this order along with petition u/s 22-A Cr, PC be sent to the SHO PS concerned for compliance. The copy of FIR be sent to this court.

File be consigned to District Record Room after necessary completion and compilation.

Announced
20-03-2021



(SHAUKAT ALI)
Additional Sessions Judge-II/
Justice of Peace,
Orakzai at Babar Mela