

**JUDGMENT SHEET
IN THE HIGH COURT OF BALOCHISTAN QUETTA.**

Constitutional Petition No.1409 of 2021.

ID#100107403855

Siraj Ahmed

vs.

The Addl: Sessions Judge-VI, Qta & others.

ORDER

Date of hearing: 28th September, 2021 Annce: on: 30th September, 21

For petitioner: Ms. Aster Mehk, Advocate.

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Muhammad Kamran Khan Mulakhail, J. This constitutional petition is directed against the order dated 18th September, 2021 passed by Additional Sessions Judge-VI, Quetta/designated Justice of the Peace, whereby, the application filed by respondent No.2 under section 22-A(6) Cr.P.C. was accepted and the Investigation Officer ('I.O.') was directed to record counter version introduced by the applicant/respondent No.2.

2. *Ms. Aster Mehk, Advocate* inter alia contended that in fact initially FIR No.133/2021 under sections 302, 324, 34 PPC was lodged with Police Station Airport Quetta for launching an alleged murderous assault upon the petitioner's house and due to indiscriminate firing of assailants, one *Zubair Ahmed* got injured who subsequently succumbed to his injuries. She states that I.O. has

submitted a report, wherein it was categorically mentioned that in fact the respondent party launched an attack in which his three real brothers namely, *Shakeel*, *Abbas* and *Mustaqeem* are nominated but due to their *abscondence* they have not been arrested yet. She further pointed out that it was alleged by the respondent No.2/applicant that due to cross firing made by petitioner's party, number of bullets hit the VIGO vehicle and house of the applicant/respondent No.2, but during police investigation no such bullet signs were found. She further stated that the applicant/respondent No.2 and his other brothers are nominated in the commission of crime and now in order to frustrate the impartial investigation they are trying to raise the counter blast by introducing the counter version. She also referred the medical certificate statedly obtained by the applicant/respondent No.2, but the same is also silent about any injury sustained by him. She vehemently urged that despite having the ample evidence against the applicant/respondent No.2 and his brothers, they are neither arrested nor they themselves surrendered before the court of law but an afterthought application after six months of the occurrence is an attempt to create unnecessary doubts, which were otherwise not available. She, therefore, urged for setting aside the impugned order

dated 18th September, 2021 passed by Additional Sessions Judge-VI, Quetta/designated Justice of the Peace.

3. We have heard the learned counsel for the petitioner at reasonable length and have gone through record of the case. The penultimate *para* of the impugned order being relevant is reproduced herein below:

“4. After going through record of the application in hand it transpires that after arrest of applicant/accused in case FIR No.133/2021 P.S Airport, Quetta offence under Section 302, 324, 34 P.P.C. he had in earlier stage submitted his applications for recording his counter version, in this regard photocopy of application is also submitted by applicant that during remand he had submitted his application before concerned Judicial Magistrate he also produced photocopy of his application for lodging of FIR to concerned S.H.O, that all shows that applicant/accused had made efforts at early stage to get recorded his version. Perusal of record further shows that applicant/ accused has pointed out that Respondent Party/complainant party in FIR No.133/2021 P.S Airport, Quetta had rushed towards their house equipped with weapons and by gun fire injured applicant/accused party and caused damage to the wall of their house, thus, in the light of above discussion, the Investigation Officer of the case FIR No.133/2021 P.S. Airport, Quetta is directed to bring on record the version of applicant/accused Ikhlq Ahmed and investigate the matter and submit his Police report before trial Court, it is further directed that Investigation Officer of the

case without getting influenced by this Order, will independently investigate the matter.”

The aforesaid passage of the impugned order shows that the learned Justice of the Peace instead of rendering any observations, just directed the I.O. to record the version of the applicant/respondent No.2, when he was further directed to impartially and independently investigate the matter. It is an admitted position that subject to provision of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, the right of fair trial is an inalienable right of every citizen of Pakistan, therefore, every citizen has a right to record his grievance and in case of criminal charge to record his version. In view of judgment rendered by the Hon'ble Supreme Court in *Sughra Bibi's* case (PLD 2018 SC 595), it has been held in clear terms that the police/I.O. is bound to record each and every circumstance of the criminal case and if any of the party of a criminal case comes forward with the counter version, it shall also be recorded and investigated impartially.

4. Needless to observe here that the *ipse dixit* of I.O. are not binding upon the court, however, whatever the version or for that matter investigation was/is conducted by him, it shall be made a part of record and, thereafter, be placed before the court of competent jurisdiction. Thus,

neither the I.O. nor the complainant party has any authority to decide the fate of criminal case and whatever the evidence is being gathered during course of investigation, it shall necessarily be placed before the court of competent jurisdiction for its impartial judicial scrutiny and thereafter to render a verdict of innocence or guilt.

For the above reasons, the impugned order dated 18th September, 2021 passed by Additional Sessions Judge-VI, Quetta/designated Justice of the Peace being unexceptional does not warrant any interference by this Court and the petition being bereft of any merit is dismissed in *limine*.

Quetta,
Announced in open court
On: 30th September, 2021.

JUDGE

JUDGE