

**P L D 2005 Lahore 470**

**Before Iftikhar Hussain Chaudhry, C. J., Asif Saeed Khan Khosa and Sheikh Abdul Rashid, JJ**

**KHIZER HAYAT and others---Petitioners**

**Versus**

**INSPECTOR-GENERAL OF POLICE (PUNJAB), LAHORE and others---  
Respondents**

Writ Petitions Nos. 11862, 14415, 17169 and 16453 of 2004, decided on 1st June, 2005.

**(a) Criminal Procedure Code (V of 1898)---**

---Ss. 22, 22-A, 22-B & 25---Justices of the Peace---Historical and global perspective in respect of the role of a Justice of the Peace in keeping the peace in the society, if any, surveyed.

Justice of the Peace, as the name itself suggests, was an institution conceived and conjured up centuries ago mainly to assist the police and the other law enforcing agencies in maintaining peace in the society but over the last many centuries this concept has witnessed many developments, and variations in different parts of the world. In some countries the role of a Justice of the Peace is still restricted to an administrative function and relevant only till a stage when a crime is not yet committed or where it has been committed and not yet reported to the police and not beyond that stage but in others the role of a Justice of the Peace has been enlarged and extended to exercise of some judicial and other powers including trial of petty offences and trifling civil disputes as well.

The concept of a Justice of the Peace has evolved and developed over the last many centuries; it had originated in England and had been introduced by the British colonists in some of their colonies; the original role of a Justice of the Peace was conservation of the peace within the area of his jurisdiction through administrative and ministerial measures but gradually his role was enlarged in some countries to include a minor judicial role qua summary trial of petty civil and criminal cases; and every enlargement of his role had been achieved through express legislation. It is quite clear that beyond the express authority, both administrative and judicial, conferred upon him by a statute a Justice of the Peace does not possess any implied or inherent jurisdiction to dispense justice among the people in his local area.

During their rule over the Indo-Pak sub-continent the British colonists had also introduced the concept of Justices of the Peace in the local system of governance and conservation of the peace. However, with almost simultaneous introduction of an elaborate system of hierarchy of Magistrates the role of Justices of the Peace never assumed any significant importance in the Indo-Pak sub-continent and Justices of the Peace were never conferred any judicial power. Although since their original induction in

the system some additional powers have been bestowed upon Justices of the Peace from time to time yet their role essentially remains restricted so far to conservation of the peace and in case of breach of the peace their role ends by apprehending the culprit, if possible, and by reporting the breach of the peace to the police. It can, thus, be observed without any fear of contradiction that at least in the context of Pakistan the role of a Justice of the Peace at the present juncture in Pakistan history is primarily of rendering assistance to the police in the matters of keeping the peace and, in case of breach of the peace, apprehending the culprit and rendering assistance to the police in investigation of the crime. On November 21, 2002 ex-officio Justices of the Peace in Pakistan were conferred an additional role through promulgation of the Criminal Procedure (Third Amendment) Ordinance (Federal Ordinance No. CXXXI) of 2002 and this role was in respect of entertaining complaints and issuance of appropriate directions to the police authorities concerned regarding registration of criminal cases, transfer of investigation of criminal cases and in respect of neglect, failure or excess committed by a police authority in relation to its functions and duties. These and other roles of a Justice of the Peace and an ex-officio Justice of the Peace in Pakistan are evident from provisions of Ss.22, 22-A and 22-B of the Code of Criminal Procedure, 1898.

Halsbury's Laws of England 4th Edn., Vol.29; Jowitt's Dictionary of English Law 2nd Edn., Vol. 1; Encyclopaedia Britannica, Vol. 13; The New Encyclopaedia Britannica 15th Edn., Vol. 6; Corpus Juris Secundum Vol. 51; The Encyclopaedia Americana (International Edn.); American Jurisprudence 2nd Edn., Vol. 47; Words and Phrases (Permanent Edn.); Grolier Encyclopaedia of Knowledge; Collier's Encyclopedia Vol. 13; The Law Lexicon of British India; Venkataramaiya's Law Lexicon with Legal Maxims, 2nd Edn; K.J. Aiyar's Judicial Dictionary, 11th Edn.; Law Terms and Phrases Judicially Interpreted with Legal Maxims and Legal Words and Phrases in Ordinary Usage; Hand Bhook of Legal Terms and Phrases by M. Ilyas Khan and Words and Phrases Legally defined 2nd Edn. ref.

#### **(b) Criminal Procedure Code (V of 1898)---**

----Ss. 22, 22-A, 22-B & 25---Justice of the peace/ex-officio Justice of the Peace---Role statutorily defined in Pakistan for a Justice of the Peach/ex-officio Justice of the Peace, detailed.

Provisions of Ss.22, 22-A, 22-B and 25 of the Code of Criminal Procedure, 1898 show that the roles statutorily defined in Pakistan for a Justice of the Peace are, by and large, as follows:

A Justice of the Peace in Pakistan has the powers

- (a) to make an arrest in circumstances enumerated in sections 54 and 55, Cr.P.C. and to hand over custody of the arrested person to the officer in charge of the nearest Police Station;
- (b) to call upon any member of the police force on duty to aid him in arresting or preventing the escape of a person involved in commission of a cognizable offence;
- (c) to call upon any member of the police force on duty to aid him in the prevention of

crime, breach of the peace or disturbance of the public tranquility; and

(d) to issue a certificate of identification of a person, to verify any document and to attest any document.

An ex-officio Justice of the Peace in Pakistan (i.e., Sessions Judges and nominated Additional Sessions Judges in the relevant Districts under section 25, Cr.P.C.) has the power to issue appropriate directions, to the police authorities concerned on a complaint regarding non-registration of criminal case, transfer of investigation from one police officer to another and neglect, failure or excess committed by a police authority in relation to its functions and duties.

The duties of a Justice of the Peace in Pakistan are

(a) to make inquiries and- to report in writing to the nearest Magistrate and to the officer in charge of the nearest police station whenever he receives information of an occurrence of any incident involving a breach of the peace or of commission of any offence within his local area;

(b) if the information received by him is in respect of commission of a cognizable offence then to also prevent any interference with the place of occurrence or removal of anything therefrom;

(c) to render assistance to a police officer,, if so required in writing by him, making an investigation in respect of any offence within the relevant local area; and

(d) to record any statement, if so required in writing by a police officer making an investigation in respect of any offence within the relevant local area, made under expectation of death by a person in respect of whom a crime is believed to have been committed.

**(c) Criminal Procedure Code (V of 1898)---**

---Ss. 22, 22-A & 22-B---Justice of the Peace---Functions to be performed---Nature--- Powers and duties of a Justice of the Peace or an ex-officio Justice of the Peace in Pakistan as provided in Ss.22-A & 22-B, Cr.P.C. do not involve any jurisdiction which can be termed as judicial in nature or character---Functions to be performed by a Justice of the Peace or an ex-officio Justice of the Peace are merely administrative and ministerial in nature and character---Principles.

The powers and duties of a Justice of the Peace or an ex-officio Justice of the Peace in Pakistan as provided in sections 22-A and 22-B, Cr.P.C. do not involve any jurisdiction which can be termed as judicial in nature or character. In this context the role of a Justice of the Peace or an ex-officio Justice of the Peace in Pakistan is sharply different from that now enjoyed by their counterparts in the United Kingdom and the United States of America where some . judicial role regarding summary trial of petty 'civil and criminal cases has been conferred upon the Justices of the Peace through legislative intervention. That surely is not the case in Pakistan where no statute confers any judicial power upon a Justice of the Peace or an ex-officio Justice of the Peace. Functions to be performed by a

Justice of the Peace or an ex-officio Justice of the Peace in Pakistan are merely administrative and ministerial in nature and character. Such view is fortified by, the provisions of section 6, Cr.P.C. which categorizes the classes of criminal courts and Magistrates in Pakistan and a Justice of the Peace or an ex-officio Justice of the Peace is not included in any such class of courts or Magistrates. Apart from that sections 28 and 29, Cr.P.C. specify as to which Courts are to try which offences and in those, sections too a Justice of the Peace or an ex-officio Justice of the Peace does not figure at all.

Pir Abdul Qayyum Shah v. S.H.O. and 4 others 2005 PCr.LJ 357 ref.

#### **(d) Criminal Procedure Code (V of 1898)---**

---Ss. 22-A(6) & 25---Justice of the Peace/ex-officio Justice of the Peace---Extent and scope of direct interference by an ex-officio Justice of the Peace under S.22-A(6), Cr.P.C. explored.

A Justice of the Peace or an ex-officio Justice of the Peace in Pakistan performs functions which are administrative and ministerial in nature and not judicial in character. Even the superior Courts of Pakistan having constitutional, legal, supervisory and inherent judicial jurisdiction have consistently and consciously refrained from directly interfering with investigation of a criminal case by the police and, therefore, it is but obvious that Justices of the Peace or ex-officio Justices of the Peace possessing only administrative and ministerial powers should be twice shy of such direct interference.

Thus, if despite possessing constitutional, legal, supervisory and inherent judicial powers the superior Courts of Pakistan have generally considered it imprudent and ill-advised to directly interfere with investigation of a crime by the police then it appears to be nothing but stating the obvious that a Justice of the Peace or an ex-officio Justice of the Peace possessing merely administrative and ministerial powers should all the more be reluctant and hesitant in issuing directions to the police as to how and by whom a criminal case is to be investigated. It must not be lost sight of that a Justice of the Peace in Pakistan has no judicial powers and an ex-officio Justice of the Peace is a Justice of the Peace only by virtue of the office that he already holds and his powers as such do not become judicial simply because the other office already held by him happens to be a judicial office. By virtue of his jurisdiction under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace can issue appropriate directions to the police authorities concerned on the basis of complaints regarding non-registration of a criminal case, transfer of investigation from one police officer to another and neglect, failure or excess committed by a police authority in relation to its functions and duties but the directions to be issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. are to be directions to the concerned police authorities to attend to the grievance of the complaining person in accordance with the relevant law and through the jurisdiction under section 22-A(6), Cr.P.C. An ex-officio Justice of the Peace cannot arrogate to himself the power of redressing the actual grievance itself. An exception to this can be visualized in cases of a clear legal obligation on the part of a police officer to act in a particular manner in which situation a direction may be issued by an ex-officio Justice of the Peace to the concerned police officer to do the needful. Under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace is to perform the role of a facilitator and that of a bridge or a conduit between

the complaining persons and the police authorities concerned and the jurisdiction under section 22-A(6), Cr.P.C. does not allow an ex-officio Justice of the Peace to put on the mantle of a higher police authority himself and to start exercising all those executive powers himself which the relevant law has vested in the concerned- police authorities. This interpretation appears to be a correct statement of the law as the same is in accord with the ratio decidendi of the precedent cases besides being a safe and prudent approach vis-a-vis the well-entrenched constitutional doctrine of separation of powers. If in their capacity as ex-officio Justices of the Peace judicial officers like Sessions Judges and Additional Sessions Judges are allowed to play a proactive, hands on and upbeat role of direct interference in the administrative working of the police then such executive role of judicial officers may militate against the constitutional mandate of separation of the Judiciary from the Executive enshrined in Article 175(3) of the Constitution of the Islamic Republic of Pakistan, 1973. In that eventuality the provisions of section 22-A(6), Cr.P.C. may themselves become vulnerable to a serious challenge on the touchstone of the Constitution.

Emperor v. Khwaja Nazir Ahmad AIR (32) 1945 PC 18; Federation of Pakistan v. Shah Muhammad Khan and others PLD 1960 SC (Pak) 85; Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan and another PLD 1971 SC 677; Muhammad Saeed Azhar v. Martial Law Administration, Punjab and others 1979 SCMR 484; Malik Shaukat Ali Dogar and 12 others v. Ghulam Qasim Khan Khakwani and others PLD 1994 SC 281; Brig. (Retd.) Imtiaz Ahmad v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others 1994 SCMR 2142; Anwar Ahmad Khan v. The State and another 1996 SCMR 24; Muhammad Latif v. Sharifan Bibi and another 1998 SCMR 666; Muhammad Ali and 12 others v. District Magistrate, Faisalabad and 3 others PLD 1978 Lah. 1325.; Nasir Ali Inspector-General of Police, Punjab, Lahore and 8 others 2000 YLR 225 ref.

**(e) Criminal Procedure Code (V of 1898)--**

---S. 22-A(6)---General complaints in the context of criminal justice, against the working of the Police in the Province of Punjab and kind of "directions" can/should an ex-officio Justice of the Peace issue in respect of such complaints while exercising his jurisdiction under S.22-A(6), Cr.P.C.---High Court, for facility of cognition and for guidance of the ex-officio Justice of the Peace in the Province of Punjab recorded resume and conclusions on the subject.

High Court had framed the following questions and had required the counsel for the parties to address arguments in respect of the same so as to assist the Court in arriving at an appropriate decision:

- (a) Looked at in historical and global perspective what is the role of a Justice of the Peace in keeping the peace in the society, in maintenance of law and order and in the criminal justice system, if any?
- (b) Whether in .Pakistan a Justice .of the Peace or an ex-officio Justice of the Peace exercises judicial powers or his functions are merely administrative and ministerial in nature and character?

(c) What, in the context of his jurisdiction under section 22-A(6), Cr.P.C., is the extent and scope of direct interference by an ex-officio Justice of the Peace in Pakistan with investigation of a criminal case by the police?

(d) What, in the framework of criminal justice, are the general complaints against the working of the police in the Province of the Punjab and what kind of "directions" can/should an ex-officio Justice of the Peace issue in respect of such complaints while exercising his jurisdiction under section 22-A(6), Cr.P.C.?

(e) What are the remedies against non-compliance of directions issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C.?

(f) Whether the orders passed by different ex-officio Justices of the Peace impugned through the present and the connected writ petitions are legally sustainable or not?

Generally the public at large brings the following kinds of complaints against the police before the High Court while invoking writ jurisdiction of High Court under Article 199 of the Constitution and now similar complaints are being brought before ex-officio Justices of the Peace by filing petitions under section 22-A(6), Cr.P.C.:

(i) complaints about unjustified harassment by the police in the absence of any criminal case having been registered against the aggrieved person;

(ii) complaints regarding failure of the police to register a criminal case despite commission of a cognizable offence having been reported to it;

(iii) complaints pertaining to failure by the investigating officer to add appropriate penal provisions to an FIR or a cross-version of the accused party;

(iv) complaints about failure by the investigating officer to record a cross-version of the accused party;

(v) complaints regarding failure to arrest an accused person nominated in the FIR or in the cross-version of the accused party;

(vi) complaints pertaining to unfair, biased and improper investigation and, thus, seeking transfer of the investigation; and

(vii), complaints about failure to finalize investigation of a criminal case and to submit a Challan within a reasonable time.

High Court adverted to each one of such complaints one by one so as to examine what kind of directions can/should be issued by an ex officio Justice of the Peace under section 22-A(6), Cr.P.C. in respect of such complaints. While exercising its constitutional jurisdiction regarding judicial review of administrative action a High Court is not to substitute its own decision for that of the competent authority and that, after stating the correct legal position, the High Court is to issue a direction to the competent authority to pass an appropriate order in terms of the legal position so declared. Likewise, except in cases of a clear legal obligation on the part of a police officer to act in a particular manner in which situation a direction may be issued by an ex-officio Justice of the Peace to the

concerned police officer to do the needful, it would be inappropriate to the verge of being illegal for an, ex-officio Justice of the Peace to issue directions to the police arrogating to himself the role of a supervisor or superintendent- of the police in the matter of actual investigation of a crime. While exercising his jurisdiction under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace is only to activate the available legal remedy or procedure so that the grievance of the complaining person can be attended to and redressed, if found genuine; by the competent authority of the police. In this view of the matter if an ex-officio Justice of the Peace can issue the desired direction under section 22-A(6), Cr.P.C. activating the available legal remedy or procedure which the High Court would also have done if seized of a writ petition filed in that regard under Article 199 of the Constitution then the remedy before an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. can ordinarily be termed and accepted as an adequate alternate statutory remedy busting a direct recourse by an aggrieved person to the High Court by invoking its extraordinary jurisdiction under Article 199 of the Constitution. - It is, therefore, declared that in the matters of complaints against the working of the police covered by the provisions of section 22-A(6), Cr.P.C. an aggrieved person, except where the High Court feels satisfied that it is an exceptional case arising out of extraordinary circumstances warranting direct interference by the High Court and rendering the remedy under section 22-A(6), Cr.P.C. inadequate, cannot file a writ petition before this Court under Article 199. of the Constitution before availing of the normally adequate alternate statutory remedy before an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C.

For facility, of cognition and for guidance of the ex-officio Justices of the Peace in the Province of the Punjab the discussion is summed up with the following resume and conclusions:

- (i) The powers and duties of a Justice of the Peace or an ex-officio Justice of the Peace in Pakistan stand specified in sections 22-A and 22-B, Cr.P.C. and they possess no other additional power and perform no other additional duty except that which is specifically conferred upon them by a statute.
- (ii) The powers and duties of a Justice of the Peace or an ex-officio Justice of the Peace in Pakistan do not involve any jurisdiction which can be termed as judicial and the functions performed by him are merely administrative and ministerial in nature and character.
- (iii) The superior Courts of Pakistan having constitutional, legal, supervisory, and inherent judicial jurisdiction have consistently and consciously refrained from directly interfering with investigation of a criminal case by the police and, therefore, Justices of the Peace or ex-officio Justices of the Peace possessing only administrative and ministerial powers should be twice shy of such direct interference.
- (iv) The directions to be issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. are to be directions to the concerned police authorities to attend to the grievance of the complaining person in accordance with the relevant law and through the jurisdiction under section 22-A(6), Cr.P.C. An ex-officio Justice of the Peace cannot arrogate to himself the power of redressing the actual grievance itself. An exception to this is a case of a clear legal obligation on the part of a police officer to act in a particular manner in which situation a direction may be issued by an ex-officio Justice of the Peace

to the concerned police officer to do the needful. Under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace is to perform the role of a facilitator and that of a bridge or a conduit between the complaining persons and the police authorities concerned and the jurisdiction under section 22-A(6), Cr.P.C. does not allow an ex-officio justice of the Peace to put on the mantle of a higher police authority himself and to start exercising all those executive powers himself which the relevant law has vested in the concerned police authorities.

(v) Barring exceptional and extraordinary cases, the remedy before an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. can ordinarily be termed and accepted as an adequate alternate statutory remedy ousting a direct recourse by an aggrieved person to the High Court by invoking its extraordinary jurisdiction under Article 199 of the Constitution.

(vi) The proceedings before an, ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. are essentially summary in character. He is not required to treat such proceedings as regular lis and no elaborate orders having semblance of a judgment are required to be passed.

(vii) In such proceedings notice, if required, may be issued only to the concerned police officer and not to any private party as no direction adverse to any private party is to be issued in such proceedings. A direction to the relevant police officer regarding activating any legal remedy of the complaining person cannot be termed as a direction adverse to any party. Even a direction to a police officer to comply with a mandatory provision of law cannot be called a direction adverse to any person. Under Articles 4 and 5 of the Constitution it is an inalienable right of every citizen to be treated in accordance with the law and obedience to the law is an inviolable obligation of every citizen.

(viii) **Complaints about unjustified harassment by the police.**--A complaint before an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. which does not contain all the necessary factual details regarding the date, time and place of the alleged harassment as well as full particulars of the concerned police officer who is being complained against is to be out-rightly dismissed. In an appropriate complaint of this nature the ex-officio Justice of the Peace may require the concerned police officer to submit his comments to the complaint. If through his comments the relevant police officer fails to satisfy the ex-officio Justice of the Peace regarding falsity of the allegations leveled against him then the ex-officio Justice of the Peace may, depending upon the circumstances of the case, either warn the relevant police officer not to transgress the limits of the law in future or may issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to consider the complaint and to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002. In an extreme case of highhandedness and totally unjustified harassment the ex-officio Justice of the Peace may issue a direction to the relevant police authority to register a criminal case against the delinquent police officer if he had seemingly committed some cognizable offence during the harassment perpetrated by him.

(ix) **Complaints regarding failure of the police to register a criminal case.**--The officer in charge of the relevant Police Station may be under a statutory obligation to

register an F.I.R. whenever information disclosing commission of a cognizable offence is provided to him but the provisions of section 22-A(6), Cr.P.C. do not make it obligatory for an ex-officio Justice of the Peace to necessarily or blind-foldedly issue a direction regarding registration of a criminal case whenever a complaint is filed before him in that regard. An ex-officio Justice of the Peace should exercise caution and restraint in this regard and he may call for comments of the officer in charge of the relevant Police Station in respect of complaints of this nature before taking any decision of his own in that regard so that he may be apprised of the reasons why the local police have not registered a criminal case in respect of the complainant's allegations. If the comments furnished by the officer in charge of the relevant Police Station disclose no justifiable reason for not registering a criminal case on the basis of the information supplied by the complaining person then an ex-officio Justice of the Peace would be justified in issuing a direction that a criminal case be registered and investigated. It is not obligatory for the officer in charge of a Police Station or for an ex-officio Justice of the Peace to afford an opportunity of hearing to the accused party before registration of a criminal case or before issuing a direction in that regard. In an appropriate case; depending upon the circumstances thereof, an ex-officio Justice of the Peace may refuse to issue a direction regarding registration of a criminal case and may dismiss the complaint under section 22-A(6), Cr.P.C. reminding the complaining person of his alternate statutory remedies under sections 156(3) and 190, Cr.P.C. The impression entertained by a large section of the legal community in our country that in case of filing of a private complaint the accused person cannot be arrested and recovery cannot be effected from him is nothing but erroneous and fallacious.

(x) **Complaints about failure by an investigating officer to add appropriate penal provisions to an F.I.R. or a cross-version of the accused party.**--Such complaints are not worthy of being taken with any degree of seriousness by an ex-officio Justice of the Peace. The stands taken by the complaining persons in this regard normally touch the merits of the allegations and an ex-officio Justice of the Peace would be well advised to refrain from entering into any such controversy at a premature stage. The overall incharge of a criminal case is the Area Magistrate who, even during the progress of an investigation, gets many opportunities to go through the record of investigation conducted by the police and in an appropriate case and at an appropriate stage he can require the investigating officer to consider addition or deletion of any, penal provision. After submission of a report under section 173, Cr.P.C./Challan the Magistrate taking cognizance of the offence or the trial Court taking cognizance of the case can take cognizance of any offence disclosed by the material available on the record of investigation even if the police have not invoked the relevant penal provision. Even at the time of framing of the charge a trial Court can frame a charge in respect of any offence disclosed by the record even if the same finds no mention in the report submitted under section 173, Cr.P.C./Challan. With so many opportunities being available with the Magistrate and the trial Court regarding rectification of a mistake, deliberate or otherwise, committed by the police in this connection it would be unwise for an ex-officio Justice of the Peace to interfere with such a matter at an inappropriate and premature stage. In case of receipt of such a complaint an ex-officio Justice of the Peace may advise the complaining person to approach the Area Magistrate or the trial Court, as the case may be, rather than entertaining such a complaint himself.

**(xi) Complaints about failure by the investigating officer to record a cross-version of the accused party.**--While dealing with a complaint of this nature an ex-officio Justice of the Peace should call for comments of the investigating officer explaining as to why he has not recorded the version of the accused party and if such comments confirm the complaint that despite having been approached in that regard by the accused party the investigating officer has not recorded the version of the accused party and there is no valid or justifiable reason for such default on his part then a direction may be issued by the ex-officio Justice of the Peace to the investigating officer to do the needful or in the alternative the Superintendent of Police (Investigation) of the relevant District may be directed by the ex-officio Justice of the Peace to attend to this aspect of the matter and to ensure that the needful is done by the investigating officer without further ado.

**(xii) Complaints regarding failure by the police to arrest an accused person.**--A general impression entertained by some quarters that an arrest of a suspect or an accused person is necessary or sine qua non for investigation of a crime is misconceived. A suspect is not to be arrested straightaway upon registration of an F.I.R. or as a matter of course and, unless the situation on the grounds so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegation levelled by the complainant party against such suspect or regarding his involvement in the crime in issue. The law requires an investigating officer to be generally slow in depriving a person of his liberty on the basis unsubstantiated allegations and, thus, insistence by the interest complainant party regarding his immediate arrest should not persuade the investigating officer to abdicate his discretion and jurisdiction in the matter before the whims or wishes of the complainant party. An ex officio Justice of the Peace should not ordinarily force an investigating officer in that regard where the investigating officer has not so far felt the necessity, of an arrest or has not yet formed a tentative opinion about correctness of the allegation against the suspect. However, in an appropriate case, after obtaining comments from the investigating officer, an ex-officio Justice of the Peace seized of a complaint in this regard may issue a direction to the Superintendent of Police (investigation) of the relevant District to attend to this aspect of the matter. It must always be remembered that delaying the arrest till after formation of an opinion regarding prima facie correctness of the allegation against a suspect goes a long way in deterring false, frivolous and motivated complaints and also that there may not be any adequate recompense or reparation for an unjustified arrest. It would be preposterous and a mockery of justice if a person may be deprived of his liberty first and later on the allegation against him may be found by the arresting agency itself to be bogus; trumped up or false. Such an approach would amount to putting the cart before the horse.

**(xiii) Complaints seeking transfer of investigation of criminal cases.**--The job of an investigating officer is not to satisfy the parties to the case or to render any opinion about guilt or innocence of an accused person but his duty is only to collect all the relevant evidence. In the reports to be submitted by the police in connection with investigation of a criminal case it can comment about sufficiency or otherwise of the evidence available against an accused person but it cannot comment upon believability or otherwise of the evidence becoming available on the record against such accused person. The question of

believability or otherwise of such evidence is to be attended to by the relevant Magistrate or the trial Court. The trend of getting a fresh investigation of a criminal case conducted after submission of a Challan and after taking of cognizance by the trial Court is not to be encouraged. By virtue of the provisions of Article 18(5) of the Police Order, 2002 a District Police Officer cannot interfere with the process of investigation and, thus, an ex-officio Justice of the Peace cannot direct a District Police Officer to attend to the complaining person's grievance regarding an investigation. Article 18(6) of the Police Order, 2002 specifies the only manner in which investigation of a criminal case can be changed. There is no other law authorizing or empowering any other police officer or authority to change the investigation of a criminal case. Any change or transfer of investigation of a criminal case by any officer or authority other than those mentioned in Article 18(6) of the Police Order, 2002 is to be void and a nullity. `Verification' of investigation, if necessary, must be confined to verification of the record of investigation and such an exercise cannot be allowed to be conducted in a manner giving it a colour of fresh investigation with fresh conclusions. The verifying officer has to confine himself, to the record of investigation already conducted and cannot substitute his own conclusions for those of the investigating officer and if he finds any serious fault with the investigation already conducted then the verifying officer can bring such fault to the notice of the Superintendent of Police (Investigation) of the concerned District who can then initiate the process contemplated by the provisions of Article 18(6) of the Police Order, 2002 for change of investigation. An ex-officio Justice of the Peace cannot step into the shoes of a competent police authority so as to himself pass an order transferring investigation of a criminal case and his role in this regard is confined only to getting the process under Article 18(6) of the Police Order, 2002 activated if the complaint before him establishes that the complaining person's recourse under section 18(6) of the Police Order, 2002 has remained unattended to so far. If the complaining person has not yet even applied before the competent authorities under Article 18(6) of the Police Order, 2002 seeking change of investigation then his complaint under section 22-A(6), Cr.P.C. is not to be entertained by an ex-officio Justice of the Peace as no occasion has so far arisen for interference in the matter by an ex-officio Justice of the Peace. If the competent authorities under Article 18(6) of the Police Order, 2002 have already attended to the request of the complaining person regarding transfer of investigation and have not found the case to be a fit case for transfer of investigation then too an ex-officio Justice of the Peace cannot interfere in the matter as the competent authorities have already consciously attended to the matter and there is nothing left for the ex-officio Justice of the Peace to get activated or initiated. An ex officio Justice of the peace is not to assume the role of an appellate, revisional or supervisory authority in that respect. An ex-officio Justice of the Peace, like any judicial or other authority outside the police hierarchy, should be extremely slow in directly interfering with the matter of transfer of investigation and in an appropriate case he may interfere only where the authorities mentioned in Article 18(6) of the Police Order, 2002 have already been approached by the complaining person but such authorities have failed to attend to his grievance and the application of the complaining person is lying unattended to. Even in such a case an Justice of the Peace may refuse to interfere in the matter unless it is established to his satisfaction that some specific and particular material pieces of evidence had been missed out by the investigating officer and the same remain to be collected by the police. An ex-officio

Justice of the Peace may not interfere in such a matter unless he feels satisfied that the required evidence had either not been collected or that further evidence is required to be collected in a given case and the recourse of the complaining person to the authorities mentioned in Article 18(6) of the Police Order, 2002 in that regard has so far remained unattended to. In such, a case an ex-officio Justice of the Peace may issue a direction to the concerned police authority to get the process under. Article 18(6) of the Police Order, 2002 activated so that an appropriate and suitable decision on the complaining person's grievance can be made by the competent authorities under Article 18(6) of the Police Order, 2002 one way or the other. While attending to such a complaint an ex-officio Justice of the Peace cannot issue a direction changing the investigation of a criminal case on his own. Any attempt by a party to get the investigation changed only to obtain a favourable opinion from an investigating officer regarding guilt or innocence of an accused person is to be nipped in the bud.

(xiv) **Complaints about failure of the police to finalize investigation of a criminal case and to submit a Challan in time.**--An ex-officio Justice of the Peace seized of a complaint regarding failure of the police to finalize investigation' of a criminal case and to submit a Challan within the stipulated period should require the investigating officer of the relevant case to explain the reason for the delay in that regard and he may also require him to explain as to why a recommendation may not be made to the concerned quarters for appropriate action in terms of the action taken by the Supreme Court of Pakistan in the case of Hakim Mumtaz Ahmed and another v. The State (PLD 2002 Supreme Court 590). If the explanation submitted by the investigating officer is found by the ex-officio Justice of the Peace to be unsatisfactory then he may issue a direction to the Superintendent of Police (Investigation) of the relevant District to ensure finalization of investigation and submission of Challan at the earliest possible and may also, depending upon the circumstances of the case, either warn the relevant investigating officer to be careful in that regard in future or issue a direction to the relevant higher police, authority or the relevant Public Safety and Police Complaints Commission to consider the complaint and to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002 or under any other law applicable to such misconduct.

(xv) An ex-officio Justice of the Peace in Pakistan does not perform or discharge any judicial function and, therefore, the law relating to Contempt of Court is inapplicable to an alleged non-compliance of any direction issued by him under section 22-A(6), Cr.P.C. However, a direction issued by him under section 22-A(6), Cr.P.C. is grounded in lawful authority conferred upon him by the said legal provision and by virtue of the provisions of Article 4(1)(m) of the Police Order, 2002 every police officer is under a duty to obey and promptly execute all lawful orders. There are, therefore, threefold remedies available against non-compliance of directions issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C., i.e. firstly, upon a complaint received by him regarding non-compliance of his earlier direction an ex-officio Justice of the Peace can issue a direction to the relevant police authority to register a criminal case against the delinquent police officer under Article 155(c) of the Police Order, 2002 or, secondly, he can issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to take appropriate action against the delinquent police officer

under the relevant provisions of the Police Order, 2002 or under any other law relevant to such misconduct and, thirdly, the complaining person can approach this Court under Article 199 of the Constitution seeking issuance of an appropriate writ directing the defaulting police officer to do what the law requires him to do.

(xvi) It needs to be clarified that a petition filed under section 22-A(6), Cr.P.C. before an ex-officio Justice of the Peace is to be termed only a 'petition' and such a petition cannot be branded, dubbed or called a 'Writ Petition'. It must be borne in mind that jurisdiction to issue a 'writ' is traditionally a high prerogative jurisdiction of a High Court which dates back to antiquity and is now recognized by the Constitution. Thus, the writ jurisdiction of a High Court must not be confused with a statutory jurisdiction of an ex-officio Justice of the Peace which is exercised by Sessions Judges and Additional Sessions Judges.

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and another v. The State PLD 1975 SC 506; Mst. Asho and 3 others v. The State 1987 PCr.LJ 538; Riaz Hussain and others v. The State 1986 SCMR 1934; Hakim Mumtaz Ahmed and another v. The State PLD 2002 SC 590; Muhammad Yousaf v. Inspector-General of Police and 4 others PLD 1997 Lah. 135; Muhammad Arif v. Inspector-General of Police, Punjab, Lahore and 3 others 2000 YLR 1960; Muhammad Younas and others v. I.-G. Police and others 1999 PCr.LJ 163; Muhammad Alain and another v. Additional Secretary to Government of N.-W.F.P., Home & Tribal Affairs Department and 4 others PLD 1987 SC 103.; Nasira Surriya v. Muhammad Aslam and 7 others 1990 SCMR 12; Syed Waqar Hussain Shah v. The State PLD 1988 Lah. 666; Mst. Kausar Bibi v. The Deputy Inspector-General of Police, Crimes Branch, Punjab; Lahore and 2 others 1996 PCr.LJ 124; Ali Muhammad v. Inspector-General of Police, Punjab, Lahore and another 2001 PCr.LJ 1054 and Mehr Allah Bakhsh v. D.I.G., Multan and five others 2001 PCr.LJ 801 ref.

**(f) Criminal Procedure Code (V of 1898)---**

---Ss. 22-A(6)---Complaint about unjustified harassment by the Police in the absence of any criminal case having been registered against the aggrieved person---Kind of "directions" can/should an ex-officio Justice of Peace issue in respect of such complaint while exercising his jurisdiction under S.22-A(6), Cr.P.C. elaborated.

As regards the jurisdiction of an ex-officio Justice of the Peace regarding complaints about unjustified harassment by the police in the absence of any criminal case having been registered against the aggrieved person more often than' not such complaints are couched in vague, unspecific and generalized terms and sometimes such complaints are motivated with considerations other than bona fide. An ex-officio Justice of the Peace must remain watchful, alert and vigilant in this respect while handling all such complaints. It goes without saying that an allegation of fact levelled in such a complaint must contain all the necessary factual details regarding the date, time and place of the alleged harassment as well as full particulars of the concerned police officer who is being complained against. In the absence of such precision and exactitude in the complaint the relevant police officer, when required by the ex-officio Justice of the Peace to submit his comments, can remain contented with a bare and bald denial of the allegations leaving the ex-officio Justice of the Peace with no other option but to dismiss such a complaint as having remained unsubstantiated. However, if the complaint contains the necessary factual details. and through his comments the relevant police officer fails to satisfy the ex-officio Justice of the Peace regarding falsity of the allegations levelled against him then the ex-officio Justice of the Peace may, depending upon the circumstances of the case, either warn the relevant police officer not to transgress the limits of, the law in future or may issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to consider the complaint and to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002. In an extreme case of highhandedness and totally unjustified harassment the ex-officio Justice of the Peace may issue a direction to the relevant police authority to register a criminal case against the delinquent police officer if he had seemingly committed some cognizable offence during the harassment perpetrated by him.

**(g) Criminal Procedure Code (V of 1898)---**

---S. 22-A(6)---Complaint regarding failure of the police to register a criminal case despite commission of a cognizable offence having been reported to, it---Kind of "directions" can/should an ex-officio Justice of the Peace issue in respect of such complaint while exercising his jurisdiction under S.22-A(6), Cr.P.C. elaborated.

As regards the complaints regarding failure of the police to register a criminal case despite commission of a cognizable offence having been reported to it there is no gainsaying the fact that the provisions of section 154, Cr.P.C. in that respect are quite explicit and the duty of the officer in charge of the local Police Station in that regard is mandatory in nature. However, the officer in charge of the relevant Police Station may be under a statutory obligation to register an F.I.R. whenever information disclosing commission of a cognizable offence is provided to him but the provisions of section 22-A(6), Cr.P.C. do not make it obligatory for an ex-officio Justice of the Peace to necessarily or blind-foldedly issue a direction regarding registration of a criminal case whenever a complaint is filed before him in that regard. The use of the word "may" in section 22-A(6), Cr.P.C. clearly shows that the jurisdiction of an ex-officio Justice of the Peace in that regard is discretionary in nature, and understandably so. It is unfortunate that concepts and notions of truth and justice are becoming more and more subjective in the society and the machinery of criminal law with its coercive process is increasingly being utilized by motivated persons or parties for achieving objectives which are self-serving. Thus, there is a pressing need on the part of the ex-officio Justices of the Peace to exercise caution and restraint before issuing a direction regarding registration of a criminal case. It is prudent and advisable for an ex-officio Justice of the Peace to call for comments of the officer in charge of the relevant Police Station in respect of complaints of this nature before taking any decision of his own in that regard so that he may be apprised of the reasons why the local police has not registered a criminal case in respect of the complainant's allegations. It may well be that the complainant has been economizing with the truth and the comments of the local police may help in completing the picture and making the situation clearer for the ex-officio Justice of the Peace facilitating him in issuing a just and correct direction, if any. If, however, the comments furnished by the officer in charge of the relevant Police Station disclose no justifiable reason for not registering a criminal case on the basis of the information supplied by the complaining person then an ex-officio Justice of the Peace would be entirely justified in issuing a direction that a criminal case be registered and investigated. It is clarified that it is not obligatory for the officer in charge of a Police Station or for an ex-officio Justice of the Peace to afford an opportunity of hearing to the accused party before registration of a criminal case or before issuing a direction in that regard. In an appropriate case, depending upon the circumstances thereof, an ex-officio Justice of the Peace may refuse to issue a direction regarding registration of a criminal case and may dismiss the complaint under section 22-A(6), Cr.P.C. reminding the complaining person of his alternate statutory remedies under sections 156(3) and 190, Cr.P.C. Experience shows that there are cases where the complainant party may be better off in pressing its allegations and remaining in control of its case by filing a private complaint rather than forcing the police to register a criminal case and to investigate when the police is itself not convinced of the complainant party's allegations being correct. The impression entertained by a large section of the legal community in Pakistan that in case of filing of a private complaint the accused person cannot be arrested and recovery cannot be effected

from him is nothing but erroneous and fallacious. By virtue of the provisions of section 202(1), Cr.P.C. a Court seized of a private complaint can "direct an inquiry or investigation to be made by any Justice of the Peace or, by a police officer or by such other person as it thinks fit". The powers available during an investigation, enumerated in Part V, Chapter XIV of the Code of Criminal Procedure, 1898 read with section 4(1)(1) of the same Code, include the powers to arrest an accused person and to effect recovery from his possession or at his instance. Such powers of the investigating officer or the investigating person recognize no distinction between an investigation in a State case' and an investigation in a complaint case. That section 91, Cr.P.C. deals only with procuring attendance of a person before the Court and after his availability before the Court the matter of his admission to bail or not rests in the hands of the Court and that the impression about automatic admission of an accused person to bail in a case of a private complaint is erroneous. Thus, in appropriate cases the ex-officio Justices of the Peace would be serving the interests of justice well by dispelling wrong impressions about inadequacy of the remedy of filing a private complaint and by encouraging the complaining persons to take charge of their allegations against the accused party by filing a private complaint rather than forcing an unwilling or unconvinced police officer to be in control of their cases.

#### **(h) Criminal Procedure Code (V of 1898)---**

---S.22-A(6)---Complaint pertaining to failure by the Investigating Officer to add appropriate penal provisions to an F.I.R. or a cross-version of the accused party---Kind of "directions" can/should an ex-officio Justice of the Peace issue in respect of such complaint while exercising his jurisdiction under S.22-A(6), Cr.P.C., elaborated.

The complaints about failure by an investigating officer to add appropriate penal provisions to an F.I.R. or a cross-version of the accused party are not uncommon but they are normally not worthy of being taken with any degree of seriousness by an ex-officio Justice of the Peace. The stands taken by the complaining persons in this regard normally touch the merits of the allegations and an ex-officio Justice of the Peace would be well advised to refrain from entering into any such controversy at a premature stage and to consider, by, appreciating the factual aspects of a given case, as to which offences are or are not disclosed by the allegations contained in an F.I.R. or a cross-version. It goes without saying that the overall incharge of a criminal case is the Area Magistrate who, even during the progress of an investigation, gets many opportunities to go through the record of investigation conducted by the police and in an appropriate case and at an appropriate stage he can. require the investigating officer to consider addition or deletion of any penal provision. Be that as it may, after submission of a report under section 173, Cr.P.C./Challan the Magistrate taking cognizance of the offence or the trial Court taking cognizance of the case can take cognizance of any offence disclosed by the material available on the record of investigation even if the police have not invoked the relevant penal provision. Even at the time of framing of the charge a trial Court can frame a charge in respect of an offence disclosed by the record even if the same finds no mention in the report submitted under section 173, Cr.P.C./Challan. With so many opportunities being available with the Magistrate and the trial Court regarding rectification of a mistake, deliberate or otherwise, committed by the police in this connection it would be

unwise for an ex-officio Justice of the Peace to interfere with such a matter at an inappropriate and premature stage.

An ex-officio Justice of the Peace may follow suit while dealing with complaints of the like nature, In case of receipt of such a complaint an ex-officio Justice of the Peace may advise the complaining person to approach the Area Magistrate or the trial Court, as the case may be, rather than entertaining such a complaint himself.

**(i) Criminal Procedure Code (V of 1898)---**

---S. 22-A(6)---Complaint about failure by the Investigating Officer to record a cross version of the accused party---Kind of "directions" can/should an ex-officio Justice of the Peace issue in respect of such complaint while exercising his jurisdiction under S.22-A(6), Cr.P.C. elaborated.

While dealing with a complaint of this nature an ex-officio Justice of the Peace should call for comments of the investigating officer explaining as to why he has not recorded the version of the accused party and if such comments confirm the complaint that despite having been approached in that regard by the accused party the investigating officer has not recorded the version of the accused party and there is no valid or justifiable reason for such default on his part then a direction may be issued by the ex-officio Justice of the Peace to the investigating officer to do the needful or in the alternative the Superintendent of Police (Investigation) of the relevant District may be directed by the ex-officio Justice of the Peace to attend to this aspect of the matter and to ensure that the needful is done by the investigating officer without further ado.

**(j) Criminal Procedure Code (V of 1898)---**

---S. 22-A(6)---Complaint regarding failure to arrest an accused person nominated in the F.I.R. or in the cross-version of the accused party--Kind of "directions" can/should an ex-officio Justice of the Peace issue in respect of such complaint while exercising his jurisdiction under S.22-A(6), Cr.P.C. elaborated.

The complaints filed before ex-officio Justices of the Peace regarding failure by the police to arrest an accused person nominated in an F.I.R. or implicated through a cross-version of the accused party are quite frequent and it has been observed that more often than not such complaints stem from a basic misconception about the circumstances in which an accused person is allowed by the law to be arrested in a criminal case. For the purpose of removal of such misinterpretation and misconstruction of the relevant legal provisions the legal position in this regard in some detail is restated hereunder.

Under section 22-A(1), Cr.P.C. a Justice of the Peace has the jurisdiction to exercise all those powers of arrest in the relevant local area which powers are available to a police officer referred to in section 54, Cr.P.C. and to an officer in charge of a Police Station referred to in section 55, Cr.P.C. The powers of arrest in both the said sections are the same but they relate to different situations.

An arrest of a person in connection with a criminal case is not to be a matter of course and the power to arrest is conditional upon fulfilment of the requisite legal requirements.

One of the cardinal principles of criminal law and jurisprudence is that an accused person is presumed to be innocent until proved guilty before a Court of law. However, of late a growing tendency has been noticed on the part of the complainant party to insist upon arrest of an accused person nominated by it in the F.I.R. and an increasing willingness, nay eagerness, on the part of the investigating officer of a criminal case to effect arrest of the accused person even before initiating or launching a proper investigation of the allegations levelled in the F.I.R. Such an approach has been found to be absolutely against the spirit of the relevant law, to be wrought with inherent dangers to cherished liberty of citizens who may ultimately be found to be innocent and to amount to putting the cart before the horse.

A general impression entertained by some quarters that an arrest of a suspect or an accused person is necessary or sine qua non for investigation of a crime is misconceived and the same portrays scant knowledge of the relevant statutory provisions. Section 46, Cr.P.C. provides as to how an arrest is to be made, section 54, Cr.P.C. deals with arrest by a police officer without a warrant, section 55, Cr.P.C. pertains to arrest of vagabonds, etc. by an officer in charge of a Police Station, section 59, Cr.P.C. caters for a situation where a private person may effect an arrest and section 151, Cr.P.C. authorizes a police officer to arrest a person in order to prevent commission of a cognizable offence. Section 169, Cr.P.C. visualizes a situation where a suspect may be released if the investigating officer finds no sufficient evidence or reasonable ground for suspicion against him. According to Article 4(1)(j) of the Police Order, 2002 it is a duty of every police officer to "apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient grounds exist". Rules 24.1, 24.4 and 24.7 of the Police Rules, 1934 (which are still in vogue due to the provisions of Article 185 of the Police Order, 2002) clearly contemplate situations where an information received by the police regarding commission of a cognizable offence may be doubted or even found false. Rule 25.2(1) of the Police Rules authorizes an investigating officer to associate "any person" with the investigation and Rule 25.2(2) categorically provides that "No avoidable trouble shall be given to any person from whom enquiries are made and no person shall be unnecessarily detained". Rule 25.2(3) clinches the issue by clarifying that "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person. As if this were not enough, Rule 26.1 emphasizes that "Section 54, Code of Criminal Procedure, authorizes any police officer to arrest without a warrant any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned. The authority given under this section to the police to arrest without a warrant is, however, permissive and not obligatory. Whenever escape from justice or inconvenient delay is likely to result from the police failing to arrest, they are bound to do so; but in no other cases. The law allows a police officer to apply to a Magistrate for a warrant or a summons instead of making the arrest immediately, and this discretion shall be exercised whenever possible and expedient. The law also allows a police officer in any bailable case to take security under section 170, Criminal Procedure Code from an accused person to appear before a Magistrate without first arresting him" (emphasis has been supplied by us). Rules 26.2 and 26.9

provide further guidelines to the police officers involved in investigation of crimes requiring. them not to unnecessarily interfere with the liberty of suspects "until the investigation is sufficiently complete" and "the facts justify arrest". According to Rule 26.1 the facts justifying an immediate arrest may include a possibility of the suspect escaping from justice or inconvenient delay likely to result from the police failing to arrest.

All the statutory provisions And the precedent cases manifestly point towards the intention of the law that a suspect is not to be arrested straightaway upon registration of an F.I.R. or as a matter of course and that, unless the situation on the grounds so warrants, the arrest is to be deferred till such . time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled by the complainant party against such suspect or regarding his involvement in the crime in issue. If the law itself requires an investigating officer to be generally slow in depriving a person of his liberty on the basis of unsubstantiated allegations then insistence by the interested complainant party regarding his immediate ,arrest should not persuade the investigating officer to abdicate his discretion and jurisdiction in the matter before the whims or wishes of the complainant party. It, therefore, follows that an ex-officio Justice of the Peace should not ordinarily force an investigating officer in that regard where the investigating officer has not so far felt the necessity of an arrest or has not yet formed a tentative opinion about correctness of the allegation against the suspect. However; in an appropriate case, after obtaining comments from the investigating officer, an ex-officio Justice of the Peace seized of a complaint in this regard may issue a direction to the Superintendent of Police (Investigation) of the relevant District to attend to this aspect of the matter. It must always be remembered that delaying the arrest till after formation of an opinion regarding prima facie correctness of the allegation against a suspect goes a long way in deterring false, frivolous and motivated complaints and also that there may not be any adequate recompense or reparation for an unjustified arrest. It would be preposterous and a mockery of justice if a person may be deprived of his liberty first and later on the allegations against him may be found by the arresting agency itself to be bogus, trumped up or false. That surely would be, as observed above, putting the cart before the horse.

#### **(k) Criminal Procedure Code (V of 1898)---**

---S. 22-A(6)---Complaint pertaining to unfair, biased and improper investigation and thus, seeking transfer of the investigation---Said issue engaged the High Court's serious, particular and detailed consideration-Kind of "directions" can/should an ex-officio Justice of the Peace issue in respect of such complaint while exercising his jurisdiction under S.22-A(6), Cr.P.C. elaborated.

The complaints about unfair, biased and improper investigation and, thus, seeking transfer of investigation of the relevant criminal case are generally the most frequent complaints that are filed before the exofficio Justices of the Peace under section 22-A(6), Cr.P.C. and are often subject-matter of writ petitions filed before High Court and, therefore, this area has also engaged Court's serious, particular and detailed consideration. Filing of such complaints is generally grounded in a basic misunderstanding that the parties to a criminal case must feel satisfied with the

investigation thereof. Unfortunately the concepts of truth and justice are becoming more and more subjective in the society and the machinery of criminal law with its coercive process is increasingly being utilized by motivated persons or parties for achieving objectives which are self-serving.. Left to the parties to a criminal case they would never be satisfied with the investigation unless their version is accepted by the police as correct. The term `investigation' has been defined by section 4(1)(1) of the Code of Criminal Procedure, 1898 as "--- all proceedings under this Code for the collection of evidence by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf". The job of an investigating officer is, thus, only to collect all the relevant evidence pertaining to the allegation levelled regarding the crime in issue so as to dig out the truth enabling and facilitating the relevant Court to administer justice between the parties. His job is not to satisfy the parties to the case or to arrogate to himself the role of an adjudicator rendering an opinion regarding guilt or innocence of any person. In the reports to be submitted by the police in connection with investigation of a criminal case it can comment about sufficiency or otherwise of the evidence available against an accused person but it cannot comment upon believability or otherwise of the evidence becoming available on the record against such accused person. The question 'of believability or otherwise of such evidence is to be attended to by the relevant Magistrate or the trial Court. It is very rare that a complaint of the nature under discussion points out that any particular evidence is available in the case and the same is not being collected by the investigating officer but the bids of the parties seeking transfer of investigation are by far, directed mainly to obtain a favourable opinion from the investigating officer supporting a party's version. An investigating officer of a criminal case is not to render any opinion regarding guilt or innocence of an accused person and under the relevant statutory provisions contained in the Code of Criminal Procedure, 1898, the Police Order, 2002 and the Police Rules, 1934 he is only to collect all the relevant evidence and to submit his report and the collected evidence and material before the relevant Magistrate so that the Magistrate or the trial Court can then form their own independent opinions regarding sufficiency or otherwise of the evidence and material in order to decide whether to take cognizance of the offence and of the case or not, to summon any person to face a trial or pot and to frame a charge against a person or not. Column No. 2 of the Challan submitted in a criminal case is generally misunderstood and the same is erroneously being construed as meant for those accused persons who are found by the police to be innocent. It is generally being ignored that the said column of the Challan is to contain the names of the absconding accused persons against whom Challan is not being submitted because they could not be associated with the investigation and is also to contain the details of the accused persons being forwarded in custody or released on bond with or without sureties. Such details have absolutely no relevance to the question of innocence or otherwise of the accused persons. Section 172,(1), Cr.P.C. requires that "Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation". There is no mention in section 172(1), Cr.P.C. of any opinion of the investigating officer about guilt or innocence of an accused person. Likewise, in section 173, Cr.P.C., under. which the. police is required to submit its final

or interim report about the investigation before a Magistrate which report is also called a Challan, there is absolutely no mention of any opinion of the police regarding guilt or innocence of an accused person. There is No. 1 law or legal instrument in existence in this country requiring an investigating officer of a criminal case or any police officer to record his opinion about guilt or innocence of an accused person. Be that as it may, the law is firmly settled on the point to the extent of being trite that an opinion of the police regarding guilt or innocence of an accused person is inadmissible in evidence being irrelevant and that an accused person whose name has been placed in column No. 2 of the Challan or an accused person not even mentioned in any column of the Challan can also be summoned by a trial Court to face a trial if, in the opinion of the Court, sufficient material is available on the record to proceed against him. A misconceived competition and race between the parties to obtain a favourable opinion from the investigating officer, despite such opinion being inadmissible in evidence being, irrelevant, has been found to be the real reason for most of the bids made by the parties to a criminal case to get the investigation of such case transferred. Such trends and tendencies have to be curbed with all the firmness that is required as they are playing havoc with investigations, breeding corruption amongst the police, introducing extraneous influences in the working of the police, delaying finalization of investigations and trials and choking the exofficio Justices of the Peace as well High Court with unwarranted complaints and writ petitions.

No law or regulation gives a complainant a vested right, which can be enforced by a writ to have his complaint investigated by a particular branch of the Police.

The necessity for making a direction can only arise in a case where no investigation has started. The power to issue a direction cannot be invoked where investigation has already commenced in accordance with law by authorities competent to investigate under the Criminal Procedure Code nor does the power to "direct" include the power to "transfer" from one competent investigating agency to another. This would be unwanted interference with the investigation.

The system of re-investigation in criminal cases is a recent innovation which is always taken up at the instance of influential people and favourable reports obtained. This in no way assists the Courts in coming to a correct conclusion, it rather creates more complications to the Court administering justice.

Delay in filing police report/challan is being caused for another reason namely that on the behest of the accused/complainant/State investigations in the cases are transferred from one police agency to another under section 158, Cr.P.C. on account of showing non-confidence by one for the other party in the Investigating Agencies particularly in the Province of Punjab. Such device is followed invariably in every case and this reason independently also causes delay in submission of challan or commencement of trial of accused persons.

The purpose of investigation of a criminal case, as is evident from section 4(1)(1) of Cr.P.C. is mere collection of evidence and nothing more. The duty of the officer investigating a criminal case is to collect all such evidence and then to submit the same before a Court of competent jurisdiction which Court alone then has the powers to determine the guilt or innocence of the person accused of the commission of such an

offence. It is true that section 169 of the Cr.P.C. authorizes an Investigating Officer or the officer in charge of the police station to release an accused person on his executing a bond, with or without a surety, if in the opinion of such a police officer sufficient evidence or reasonable grounds of suspicion justifying the forwarding of an accused to a Magistrate were not available. This however, cannot be equated with a power of final determination of the guilt or innocence of the accused persons which power, as has been mentioned above, stands reserved exclusively for the Magistrates and the trial Courts. These very provisions of section 169 of the Cr.P.C. are a clear indicator to the said effect because release of an accused person under this section is subject to the orders of a Magistrate, who may refuse to take cognizance of the case in terms of the report of the concerned police officer or may still take cognizance and try an accused person or send him for trial. It may be added that the provisions of section 63 of the Cr.P.C. which provide that an accused person could be discharged only under the special order of a Magistrate and the provisions of Rule 24.7 of the Police Rules, 1934 which provides that an F.I.R. can be cancelled only by a Magistrate, even if the Investigating Officer or the S.H.O. were of the opinion that such an F.I.R. deserved to be cancelled, are further evidence of the fact that the final word in respect of the fate of an accused person is either of a Magistrate or of the learned trial Court and the S.H.O. or the investigating Officer were mere instruments to assist such Magistrates or Courts of law in reaching a final conclusion.

It will, therefore, be noticed that while the Investigating Officers have powers to investigate cases and while the officers in charge of police stations including the superior police officers, who are also S.H.Os. by virtue of section 551 of the Cr.P.C. have powers to withdraw investigations from one police officer and to entrust the same to another police officer and also to order further investigations in a matter, the sole purposes of such-like transfer of investigations and directing of further investigations is to be the collection of evidence and nothing more. These powers vesting in the S.H.Os. and the superior police officers can, therefore, be exercised only and only where it is found that the required evidence had either not been collected or that further evidence was required to be collected in a given case.

Of late, frequent situations have started coming to the notice of the Courts where repeated investigations are ordered and where investigations are repeatedly transferred from one police officer to another without disclosing any reason for such orders which leads to an inference that such-like orders were passed not for the purposes for which the requisite powers had been conferred on the police officers but for purposes other than legal and bona fide. Needless to add that suchlike repeated investigations and such like transfers of investigations do not only complicate issues making the task of the Courts of law more arduous but also result in wastage of time and inordinate delays towards the final conclusion of cases.

This evil can be, successfully, combated by making it incumbent upon the authority transferring the investigation or ordering reinvestigation should comment upon the quality of the investigation and pinpoint the shortcomings or lapses made by the Investigating Officer. The authority if convinced after going through the record that either the Investigating Officer is inefficient, incapable or mixed up with one of the

parties for any reason and only then investigation may be transferred and that too after recording reasons in writing. It shall propose action against Investigating Officer for misconduct, inefficiency and corruption as the case may be. That would be effective measures to check the illegal tendency of transferring the investigation or ordering re-investigation without any study of the 'Zimnis' and appreciating the efforts made by the Investigating Officer.

Trend of getting a fresh investigation of a criminal case conducted after submission of a challan and taking of cognizance by the trial Court cannot be approved. In the absence of any particular material piece of evidence shown to have been missed out by the investigating officer and yet to be collected by the police there can hardly be any occasion for holding a fresh investigation at such a stage. If such fresh investigation is meant only to obtain a fresh opinion of an investigating officer regarding guilt or innocence of an accused person then, apart from the reasons mentioned above, such fresh investigation is likely to be legally inconsequential because an F.I.R. cannot be cancelled or an accused person discharged at such a stage for the reason that after taking of cognizance of the case by a trial Court the question of guilt or innocence of an accused person or the matter of his release can be determined only by the Court and none else.

By virtue of the provisions of Article 18(5) of the Police Order, 2002 a District Police Officer cannot interfere with the process of investigation. According to Article 18(6) of the Police Order, 2002 the first change of investigation can, in areas other than the Capital City District, be ordered only by the Additional Inspector-General of Police (Investigation Branch) and that too only after deliberations and recommendations by a Board headed by an officer not below the rank of Senior Superintendent of Police and including two Superintendents of Police, one being in charge of the investigation in the concerned District. According to the same Article second change of investigation may only be allowed with the approval of the Provincial Police Officer (Inspector-General of the Police in a Province) or the Capital City Police Officer, as the case may be. There is no other law authorizing or empowering any other police officer or authority to change the investigation of a criminal case. Any change or transfer of investigation of a criminal case by any officer or authority other than those mentioned in Article 18(6) of the Police Order, 2002 is to be void and a nullity. In some cases police officers other than those mentioned in Article 18(6) of the Police Order, 2002 have been changing investigation of criminal cases in the name of 'verification' of investigation. The law is quite settled on the point that where the law requires a thing to be done in a particular manner then that thing must be done in that manner alone or not at all. In any case if an investigation by an investigating officer is to be verified by some other officer then such verification must be confined to verification of the record of investigation and such an exercise cannot be allowed to be conducted in a manner giving it a colour of fresh investigation with fresh conclusions. The verifying officer has to confine himself to the record of investigation already conducted and cannot substitute his own conclusions for those of the investigating officer and if he finds any serious fault with the investigation already conducted then the verifying officer can bring such fault to the notice of the Superintendent of Police (Investigation) of the concerned District who can then initiate the process contemplated by the provisions of Article 18(6) of the Police Order, 2002 for change of investigation. In some cases an impression is being entertained among some

senior police officers that the provisions of Article 18(6) of the Police Order, 2002 pertain to `vertical' change of investigation and not to `horizontal' transfer of investigation, the former standing for change of investigation by authorities outside and above the relevant District and the latter denoting transfer of investigation by officers performing duties within the relevant District. Such a distinction is innovative but totally artificial and self-created and a distinction motivated to defeat the very purposes of Article 18(6) of the Police Order, 2002 so as to perpetuate the maladies for the removal of which the said Article had been introduced. High Court categorically rejected all notions regarding such a distinction.

An ex-officio Justice of the Peace cannot step into the shoes of a competent police authority so as to himself pass an order transferring investigation of a criminal case and that his role in this regard is confined only to get the process under Article 18(6) of the Police Order, 2002 activated if the complaint before him establishes that the complaining person's recourse under section 18(6) of the Police Order, 2002 has remained unattended to so far. It, thus, follows that if the complaining person has not yet even applied before the competent authorities under Article 18(6) of the Police Order, 2002 seeking change of investigation then his complaint under section 22-A(6), Cr.P.C. is not to be entertained by an ex-officio Justice of the Peace as no occasion has so far arisen for interference in the matter by an ex-officio Justice of the Peace. The same principle has consistently been followed by High Court while dealing with writ petitions seeking transfer of investigations.

If the competent authorities under Article 18(6) of the Police Order, 2002 have already attended to the request of the complaining person regarding transfer of investigation and have not found the case to be a fit case for transfer of investigation then too an ex-officio Justice of the Peace cannot interfere in the matter as the competent authorities have already consciously attended to the matter and there is nothing left for the ex-officio Justice of the Peace to get activated or initiated. An ex-officio Justice of the Peace is not to assume the role of an appellate, revisional or supervisory authority in that respect.

An ex-officio Justice of the Peace, like any judicial or other authority outside the police hierarchy, should be extremely slow in directly interfering with the matter of transfer of investigation and in an appropriate case he may interfere only where the authorities mentioned in Article 18(6) of the Police Order, 2002 have already been approached by the complaining person but such authorities have failed to attend to his grievance and the application of the complaining person is lying unattended to. Even in such a case an ex-officio Justice of the Peace may refuse to interfere in the matter unless it is established to his satisfaction that some specific and particular material pieces of evidence had been missed out by the investigating officer and the same remain to be collected by the police. An ex-officio Justice of the Peace may not interfere in such a matter unless he feels satisfied that the required evidence had either not been collected or that further evidence is required to be collected in a given case. In such a case an ex-officio Justice of the Peace may issue a direction to the concerned police authority to get the process under Article 18(6) of the Police Order, 2002 activated so that an appropriate and suitable decision on the complaining person's grievance can be made by the competent authorities under Article 18(6) of the Police Order, 2002 one way or the other. While attending to

such a complaint an ex-officio Justice of the Peace cannot issue a direction changing the investigation of a criminal case on his own.

**(l) Criminal Procedure Code (V of 1898)---**

---S. 22-A(6)---Complaint about failure to finalize investigation of a criminal case and to submit a challan within a reasonable time---Kind of "directions" can/should an ex-officio Justice of the Peace issue in respect of such complaint while exercising his jurisdiction under S.22-A(6), Cr.P.C. elaborated.

An ex-officio Justice of the Peace seized of a complaint regarding failure of the Police to finalize investigation of a criminal case and to submit a challan, within the stipulated time should require the investigating officer of the relevant case to explain the reason for the delay in that regard and also to explain as to why a recommendation may not be made by him to the concerned quarters for appropriate action in terms of the action taken by the Hon'ble Supreme Court of Pakistan in the above mentioned case. If the explanation submitted by the investigating officer is found by the ex-officio Justice of the Peace to be unsatisfactory then he may issue a direction to the Superintendent of Police (Investigation) of the relevant District to ensure finalization of investigation and submission of Challan at the earliest possible time and may also, depending upon the circumstances of the case, either warn the relevant investigating officer to be careful in that regard in future or issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to consider the complaint and to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002 or under any other law applicable to such misconduct.

**(m) Criminal Procedure Code (V of 1898)---**

---S. 22-A(6)---Remedies against non-compliance of directions issued by an ex officio Justice of the Peace enumerated.

An ex-officio Justice of the Peace in Pakistan does not perform or discharge any judicial function and, therefore, the law relating to Contempt of Court is inapplicable to an alleged non-compliance of any direction issued by him under section 22-A(6), Cr.P.C. However, a direction issued by him under section 22-A(6), Cr.P.C. is grounded in lawful authority conferred upon him by the said legal provision and by virtue of the provisions of Article 4(1)(m) of the Police Order, 2002 "every police officer" is under a "duty" to "obey and promptly execute all lawful orders". There are, therefore, threefold remedies available against non-compliance of directions issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C., i.e. firstly, upon a complaint received by him regarding non-compliance of his earlier direction an ex-officio Justice of the Peace can issue a direction to the relevant police authority to register a criminal case against the delinquent police officer under Article 155(c) of the Police Order, 2002 or, secondly, he can issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002 or under any other, law relevant to such misconduct and, thirdly; the complaining person can approach this

Court under Article 199 of the Constitution seeking issuance of an appropriate writ directing the defaulting police officer to do what the law requires him to do.

**(n) Criminal Procedure Code (V of 1898)---**

---S. 22-A(6)---Unsustainability or otherwise of the impugned orders passed by different ex-officio Justices of the Peace mentioned.

Nemo for Petitioner (in Writ Petition No. 11862 of 2004)

Nemo for Petitioner (in Writ Petition No. 14415 of 2004).

Erum Sajjad Gul for Petitioner (in Writ Petition No. 17169 of 2004).

Tanvir Ahmad Sheikh for Petitioner (in Writ Petition No. 16453 of 2004).

Muhammad Hanif Khatana, Additional Advocate-General, Punjab with Tahir Mahmood Gondal, Assistant Advocate-General for Respondents No. 1 to 6 and 8 (in Writ Petition No. 11862 of 2004), Respondents No. 1 to 4 (in Writ Petition No. 14415 of 2004), Respondent No. 1 (in Writ Petition No. 17169 of 2004) and Respondents Nos. 1 to 4 (in Writ Petition No. 16453 of 2004).

Muhammad Javed Kasuri for Respondent No. 5 (in Writ Petition No. 14415 of 2004).

Zaheer-ud-Din Babar for Respondent No. 5 (in Writ Petition No. 16453 of 2004).

Nemo for the Remaining Respondents (in all the Writ Petitions).

Dates of hearing: 11th, 18th, 24th February and 3rd March, 2005.

**JUDGMENT**

**ASIF SAEED KHAN KHOSA, J.**---The question involved in these writ petitions is not quis custodiet ipsos custodies, i.e. who will watch the watchmen but the issue is how the watchmen are to be watched. The watchmen in this case are the police and those who have been assigned the duty to watch such watchmen, in the context of the present case, are the ex-officio Justices of the Peace who have recently been entrusted by the legislature the jurisdiction to entertain complaints against conduct of the police and to issue appropriate directions in that regard to the police authorities concerned. Justice of the Peace, as the name itself suggests, was an institution conceived and conjured up centuries ago mainly to assist the police and the other law enforcing agencies in maintaining peace in the society but over the last many centuries this concept has witnessed many developments and variations in different parts of the world. In some countries the role of a Justice of the Peace is still restricted to an administrative function and relevant only till a stage when a crime is not yet committed or where it has been committed and not yet reported to the police and not beyond that stage but in others the role of a Justice of the Peace has been enlarged and extended to exercise of some judicial and other powers including trial of petty offences and trifling civil disputes as well. In the case in hand we have been called upon to determine the nature, scope and extent of the functions and jurisdiction of a Justice of the Peace or an ex-officio Justice of the Peace

vis-a-vis the working of the police in our country.

2. The facts giving rise to Writ Petition No. 11862 of 2004 are that the petitioner therein is the complainant and respondent No. 7 therein is an accused person in case F.I.R. No. 388 registered at Police Station Sadar Kamalia, District Toba Tek Singh on 20.12.2003 in respect of offences under sections 395, 353, 324, 186, 148, 149, 337-F(iv), 337-F(v) and 337-L(2), PPC and section 7 of the Anti-Terrorism Act, 1997. It was alleged in the FIR that the accused party had launched an assault upon a police party performing its lawful duty. The investigation of that case was taken in hand by the Investigation Wing of Toba Tek Singh police but respondent No. 7 felt dissatisfied with the same and he moved an application before the Deputy Inspector-General of Police, Faisalabad Range, Faisalabad seeking transfer of the investigation. The said application was referred to the Standing Board as contemplated by the Police Order, 2002 and Circular No. 1/2002 issued by the Provincial Police Officer (Inspector-General of Police), Punjab. After due deliberations the Standing Board recommended transfer of the investigation of that case to Range Crime, Faisalabad. The Deputy Inspector-General of Police; Faisalabad Range, Faisalabad agreed with the recommendation of the Standing Board and thereafter the Additional Inspector-General of Police, Investigation Branch, Punjab, Lahore passed an order on 14-4-2004 transferring investigation of that case and entrusting the same to the Regional Investigation Branch, Faisalabad. On 22-5-2004 respondent No. 7 submitted an application under section 22-A(6), Cr.P.C. before the learned Sessions Judge, Toba Tek Singh in his capacity as an ex-officio Justice of the Peace complaining therein that in the cross-version of the same incident advanced by the accused party the investigating agency had failed to add section 354-A, P.P.C. and had also failed to arrest the accused persons mentioned in the cross-version. Labouring under a mistaken impression that the investigation of the above mentioned criminal case had been transferred by the Deputy Inspector-General of Police, Faisalabad Range, Faisalabad and not by the Additional Inspector-General of Police, Investigation Branch, Punjab, Lahore as contemplated by the provisions of the Police Order, 2002 and Circular No. 1/2002 issued by the Provincial Police Officer, Punjab the learned Sessions Judge, Toba Tek Singh, instead of attending to the grievances actually voiced by respondent No. 7 against respondent No. 6, passed an order on 27-5-2004 withdrawing investigation of the relevant criminal case from the Regional Investigation Branch, Faisalabad and entrusting the same to the District Police Officer, Toba Tek Singh in person. The operative part of the said order passed by the learned Sessions Judge, Toba Tek Singh reads as follows:

"Under the Police Order, 2002, DIG could not transfer the investigation of the relevant case from one police official to the other and, thus, Mohammad Hanif, DSP Crime Branch Faisalabad, respondent No. 3 has been entrusted with the investigation of the relevant case illegally and without lawful authority. It has been submitted by counsel for the petitioner that investigation of the relevant case be made over to DPO, T.T. Singh with a direction to investigate the relevant case independently and honestly. In these circumstances I withdraw the investigation of the relevant case from Muhammad Hanif, DSP Crime Branch, Faisalabad respondent No. 3 and make over the same to District Police Officer, Toba Tek Singh and he is directed to carry out the investigation of this case by himself independently, honestly and fairly. The I.O./Muhammad Hanif, DSP Crime Branch, Faisalabad respondent No. 3 is directed to hand over the police file to

DPO, T. T. Singh. "

After receipt of that order the District Police Officer, Toba Tek Singh, instead of conducting the investigation personally, required respondent No.6 to do the needful and this prompted respondent No. 7 to file an application before the learned Sessions Judge, Toba Tek Singh on 28-6-2004 seeking implementation of the earlier order passed by the learned Sessions Judge, Toba Tek Singh on 27-5-2004. On 5-7-2004 the learned Sessions Judge, Toba Tek Singh disposed of that application of respondent No.7 with a direction to the District Police Officer, Toba Tek Singh. The operative part of the said order reads as follows:

"The grievance of the petitioner is that DPO T.T. Singh has not been investigating the relevant case by himself and has made over the investigation of this case to DSP Investigation respondent No. 2. It has been submitted by DSP respondent No.2 that he has already brought it to the notice of DPO, T.T. Singh that relevant case is to be investigated by him (DPO T.T. Singh). DPO T.T. Singh is directed to carry out the investigation of the relevant case in compliance with the order of this court dated 27-5-2004, otherwise legal action may be taken against him."

The orders dated 27-5-2004 and 5-7-2004 passed by the learned Sessions Judge, Toba Tek Singh have been assailed by the petitioner before this Court through the above mentioned writ petition. In the connected Writ Petition No. 14415 of 2004 the order dated 9-8-2004 passed by the learned Sessions Judge, Toba Tek Singh, in Writ Petition No. 17169 of 2004 the order dated 13-9-2004 passed by the learned Additional Sessions Judge, Lahore and in Writ Petition No. 16453 of 2004 the order dated 15-9-2004 passed by the learned Sessions Judge, Hafizabad have been challenged before this Court. Through the said impugned orders different ex-officio Justices of the Peace had transferred investigation of the relevant criminal cases themselves when one party, or the other had felt dissatisfied with investigation of such cases. All these petitions have been clubbed together for a consolidated hearing and we propose to decide the same together through the present consolidated judgment. In view of some jurisprudential and legal issues of public importance involved in these petitions the present Full Bench has been constituted to render an authoritative pronouncement on all such issues and the related subjects so as to remove the prevalent confusion in such respects and to provide guidance to all concerned in these regards.

3. During the course of hearing of these writ petitions on 11-2-2005 we had framed the following questions and had required the learned counsel, for the parties to address arguments in respect of the same .so as to assist us in arriving at an appropriate decision of these petitions:

(a) Looked at in historical and global perspective what is the role of a Justice of the Peace in keeping the peace in the society, in maintenance of law and order and in the criminal justice system, if any?.

(b) Whether in Pakistan a Justice of the Peace or an ex-officio Justice of the Peace exercises judicial powers or his functions are merely administrative and ministerial in nature and character?

(c) What, in the context of his jurisdiction under section 22-A(6), Cr.P.C., is the extent and scope of direct interference by an ex officio Justice of the Peace in Pakistan with investigation of a criminal case by the police?

(d) What, in the framework of criminal justice, are the general complaints against the working of the police in the Province of the Punjab and what kind of "directions" can/should an ex-officio Justice of the Peace issue in respect of such complaints while exercising his jurisdiction under section 22-A(6), Cr.P.C.?

(e) What are the remedies against non-compliance of directions issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C.?

(f) Whether the orders passed by different ex-officio Justices of the Peace impugned through the present and the connected writ petitions are legally sustainable or not?

4. Elaborate arguments have been addressed before us by the learned counsel for the parties and the learned Additional Advocate-General, Punjab on these questions and some supporting material has been produced by them in elucidation of their respective submissions and contentions.

5. It has been argued by the learned counsel for the petitioners that in our country a Justice of the Peace is only to assist the police in maintaining peace in the locality and under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace can only get the process and procedure of the relevant law activated but he cannot supervise or superintend the police by issuing binding commands to it in respect of investigation of a criminal case. They have maintained in unison that an ex-officio Justice of the Peace cannot transfer investigation of a criminal case on his own and he can only require the relevant police authority to initiate or finalize the procedure provided for the purpose by Article 18(6) of the Police Order, 2002. They have further argued that while issuing a direction to the police in his capacity as an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. a Sessions Judge or an Additional Sessions Judge does not function as a Court and that the said jurisdiction is only administrative and ministerial in nature and character. They have gone on to submit that after the recent introduction of section 22-A(6) in the Code of Criminal Procedure, 1898 there is a lot of confusion prevailing among the legal community as well as the ex-officio Justices of the Peace themselves regarding the true nature and scope of the newly conferred jurisdiction under section 22-A(6), Cr.P.C. and such confusion ought to be removed by this Court for the guidance of all concerned.

6. The learned counsel for the private respondents have maintained that the investigations being conducted in the relevant criminal cases were unfair and partial and in that backdrop the relevant ex-officio Justices of the Peace had felt persuaded to transfer the investigations so as to ensure fairness of the same. They have submitted that the impugned orders passed by the relevant ex-officio Justices of the Peace fostered the ends of justice and, therefore, they are not liable to be interfered with by this Court. They have claimed that under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace is well within his jurisdiction to ensure that the course of investigation of a criminal case remains fair and correct.

7. The learned Additional Advocate-General, Punjab has argued before us that by virtue of his jurisdiction under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace can issue appropriate directions to the police authorities concerned on the basis of complaints regarding non-registration of a criminal case, transfer of investigation from one police officer to another and neglect, failure or excess committed by a police authority in relation to its functions and duties. He has, however, taken a categorical stand before us that the directions to be issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. are to be directions to the concerned police authorities to attend to the grievance of the complaining person in accordance with the relevant law, and through his jurisdiction under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace cannot arrogate to himself the power of, redressing of the actual grievance itself. According to the learned Additional Advocate-General, under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace is to perform the role of a facilitator and that of a bridge between the complaining persons and the police authorities concerned and the jurisdiction under section 22-A(6), Cr.P.C. does not allow an ex-officio Justice of the Peace to put on the mantle of a higher police authority himself and to start exercising all those executive powers himself which the relevant law has vested in the concerned police authorities. He has also maintained that the jurisdiction of an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. is an administrative jurisdiction and the directions issued in exercise of such jurisdiction are not judicial in nature or character. With these submissions the learned Additional Advocate-General has maintained that through the orders impugned through the present writ petitions the learned Sessions Judges and Additional Sessions Judges had issued directions which were beyond the pale of their authority under section 22-A(6), Cr.P.C. and, therefore, the impugned orders are not sustainable in law.

8. We have attended to the facts of these cases as well as the submissions made by the learned counsel -for the parties and have also gone through the material referred to before us with due scrutiny and consideration. In respect of question number (a) regarding the historical and global perspective in respect of the role of a Justice of the Peace in keeping the peace in the society, in maintenance of law and order and in the criminal justice system, if any, we have been able to lay our hands on the following information and material and, despite a lot of overlapping and repetition therein, we deem it advantageous to reproduce the same here for facility of reference and consolidation of information:

**Halsbury's Laws of England** (Fourth Edition, Volume 29, published in 1979 by Butterworths, London, UK):

"The name "Justice of the peace" was first given to the office of magistrate by the Justices of the Peace Act, 1361.---

In ancient times the duty of conserving the peace lay primarily upon the holders of certain offices, some of which were held by royal appointment and some by election. Examples of the former were the Lord Chancellor, the Lord Steward, the Lord Marshall, and the justices of the King's Bench, who had jurisdiction throughout the kingdom. Justices of the Common Pleas and barons of the Exchequer were conservators within the limits of their courts and justices of assize and goal delivery within the limits of their commissions. Sheriffs and coroners were examples of elected officers who were peace

conservators within their counties and constables within their townships or hundreds.

There were also persons elected by the general body of freeholders of each county to act as peace conservators for the county. Furthermore, there were conservators of the peace by prescription and by tenure of land.

The process by which the ancient keepers of the peace with executive functions were transformed into justices with judicial powers can be traced in the history of the fourteenth century. In 1327 the King, who is "by his office and dignity royal the principal conservator of the peace within his dominions", assumed the right of appointing all conservators.

In 1344 it was enacted that "two or three of the best of reputation in the counties shall be assigned keepers of the peace by the King's commission; and at what time need shall be, the same, with other wise and learned in the law, shall be assigned by the King's commission to hear and determine felonies and trespasses done against the peace in the same counties, and to inflict punishment reasonably according to [law and reason, and] the manner of the deed".

After the transformation of keepers of the peace into justices with judicial powers, other statutes followed by which the number and authority of justices were regulated. By the Jurisdiction in Liberties Act, 1535 it was again enacted that no person or persons, of what estate, degree or condition so-ever they be, should have any power or authority to make justices of the peace, but that all such officers should be made by letters patent under the King's Great Seal in the name and by the authority of the King and his heirs. The Act contained a saving for the County Palatine of Lancaster, where the right of appointment is vested in the Sovereign in right of the Duchy. This right, which has thug been vested in the Crown, may not, without legislation to that end, be delegated to any other authority.

At the beginning of the twentieth century the law concerning justices of the peace was derived from a number of statutes, some of them centuries old. The effect of legislation in the middle years of this century was to simplify and consolidate this branch of the law and subsequently to reform it notably by extending the powers of magistrates sitting in magistrates' courts.

The appointment and instruction of justices, and the keeping of the supplemental list, are regulated by the Administration of Justice Act, 1973, as are the appointment, retirement and superannuation of stipendiary magistrates.

The Justices of the Peace Acts, 1949 and 1968 govern the residence qualification of justices, disqualification, the size and chairmanship of benches and the administration of magistrates' courts. The Administration of Justice Act, 1964 deals with the indemnification of justices out of local funds. ---

Justices of the peace for any commission area, other than stipendiary magistrates and ex officio justices, are appointed on behalf and in the name of Her Majesty under the hand of the Lord Chancellor or, in greater Manchester, Merseyside or Lancaster, the Chancellor of the Duchy of Lancaster. ---

The commission of the peace is the authority under which justices exercise their jurisdiction. It is the commission which gives justices the ancient common law powers of conservators of the peace in addition to the statutory powers more recently conferred. ---"

**Jowitt's Dictionary of English Law** (Second Edition, Volume 1, published in 1977 by Sweet & Maxwell Limited, London, UK):

"Justices of the Peace. Justices of the peace were first appointed by the statute 1327, 1 Edw. 3, st. 2, : c. 16. In England and Wales a commission of the peace is issued under the Great Seal addressed generally, and not by name, to all such persons as may from time to time hold office as justices of the peace for the commission area. The commission areas are the metropolitan and non-metropolitan counties, the London commission areas and the City of London. --- The form of the commission of the peace was settled by all the judges in 1590 and continues with little alteration. Justices for any commission area (other than stipendiary magistrates) are appointed on behalf of the Crown and in the name of Her Majesty by instrument under the hand of the Lord Chancellor.---. In the counties of Greater Manchester, Merseyside and Lancashire the appointments are made by the Chancellor of the Duchy of Lancaster ---. The Lord Mayor and aldermen continue to be ex-officio justices in the City of London---

The authority of justices of the peace is either ministerial or judicial. They are said to act ministerially when, in the case of indictable offences, they merely initiate the proceedings by issuing a warrant of apprehension, taking the depositions and committing for trial. They act judicially when they exercise their summary jurisdiction, whether criminal or civil. ---

By virtue of their commission, justices of the, peace have jurisdiction in all matters relating to the preservation of the public peace; and in case of an actual or apprehended breach of the peace within their own view, they may commit the offender without warrant or information. Most commonly, however, their jurisdiction is exercised by binding over persons to keep the peace. ---

Before a justice who has been appointed is at liberty to act he must take the oath of allegiance and judicial oath in the form respectively prescribed.---

The property qualification of a justice of the peace required by the Justices Qualification Acts, 1744 and 1785 was abolished by the Justices of the Peace Act, 1906. A clergyman is not as a rule appointed if a layman is available.

Except under a direction by the Lord Chancellor a justice of the peace must reside in or within fifteen miles of the area for which he is appointed. ---

The Justices of the Peace Act, 1968 abolished ex officio justices of the peace, lowered the retiring age of justices and provided for the payment to justices of a financial loss allowance: Apart from that justices of the peace act gratuitously, receiving no salary or fee. ---

Women may be appointed justices of the peace. ---

The office of justice of the peace subsists during the pleasure of the Crown. A justice may be removed from office by instrument under the hand of the Lord Chancellor. The office is also determinable (1) by express writ under the Great Seal; (2) by writ of supersedeas (q.v.); (3) by accession to the office of sheriff during the year of shrievalty.

The duties of a justice of the peace are of a varied character. They are of four principal kinds: (1) To commit offenders to trial before a judge and jury, upon being satisfied that there is a prima facie case against them; (2) To try and punish summarily; (3) To sit with the judge of the Crown Court on the hearing of appeals from magistrates' courts, on proceedings on committal for sentence and in other cases on the direction of the Lord Chancellor ---; (4) To deal with the licensing of places for the sale of intoxicating liquor, and of persons to deal in game, etc. ---

The management of such administrative business as the licensing of theatres and the levying of county rates, was transferred from the justices to county councils by the Local Government Act, 1888, s. 3, as amended by the Local Government Act, 1933."

**Encyclopaedia Britannica** (Volume 13, published, in 1966 by Encyclopaedia Britannica Inc., Chicago, USA):

"Justice of the Peace, in England, 'a magistrate appointed by special commission under the great seal to keep the peace within the jurisdiction for which he is appointed. Justices for counties are appointed by the crown on the advice of the lord chancellor, with the recommendation of the lord lieutenant of the county. Justices for boroughs having municipal corporations and separate commissions of the peace are appointed by the crown, the lord chancellor adopting the recommendation of the town council, the local advisory committee, or acting independently.

Apart from a small body of professional (stipendiary) magistrates, mainly in London and large towns, J.Ps. are unpaid and have no professional legal qualification. For guidance on law and on the rules of evidence, they rely on their salaried clerk. The latter must be either a barrister of not less than 14 years' standing, or a solicitor of the supreme court, or have served for not less than seven years as clerk to a metropolitan or stipendiary magistrate, or have been attached to a metropolitan magistrate's court.

The jurisdiction of the petty sessional courts, in which the J.Ps. sit, is wide and multifarious, embracing both criminal and civil work, and a number of matters, such as licensing, which are administrative rather than strictly judicial and derive from the period when the justices were often the only properly constituted local authority. The criminal jurisdiction is of two types: (1) committing persons accused of the more serious offences to trial at higher courts where there is a prima facie case for the prosecution; (2) hearing and determining summarily the less serious charges. Magistrates may not impose a sentence of more than six months' imprisonment. Selected magistrates sit in juvenile courts to deal with matters, by no means exclusively criminal charges, involving young persons under the age of 17, and these courts have special rules. Of the civil jurisdiction, other than that affecting children and young persons, that in matrimonial cases is the most important.

In the United States, justices of the peace usually are elected, although sometimes they are appointed by executive authority. They constitute the lowest of the state courts, and their maximum award in civil cases is generally limited to about \$300; in criminal matters they may try only misdemeanours. Ordinarily they may not impose a jail sentence in criminal case if the person tried prefers to pay the fine imposed. Other duties and powers commonly include the performance of marriage services, the issuance of warrants for arrest, and the holding of inquests."

**The New Encyclopaedia Britannica** (15th Edition, Volume 6, published in 1994 by Encyclopaedia Britannica, Inc., Chicago, USA):

"justice of the peace, in Anglo-American legal systems, a local magistrate empowered chiefly to administer criminal or civil justice in minor cases. A justice of the peace may, in some jurisdictions, also administer oaths and perform marriages.

In England and Wales a magistrate is appointed by the lord chancellor, on behalf of the crown, to keep the peace within a specified district. The duties of the modern-day justices of the peace, who preside in the magistrates' courts of England and Wales, evolved from those first bestowed upon them under the Justice of the Peace Act of 1361. In essence, the justices continue to deal mostly with minor criminal matters and continue to send more serious cases to a higher court for disposition --- since 1971, to the Crown Court or any of the courts that make up the High Court of Justice.

The modern justice of the peace in England and Wales, as formerly, is usually a lay person. But each appointee now undergoes a training course in basic law and in the administrative duties of the magistrates' court. On matters of law, advice is provided by a clerk to the justice. Lay magistrates must number at least two to hear a case. Paid, full-time magistrates may hear cases alone. In some less serious criminal matters, a justice of the peace may sit with a judge of the Crown Court.

In England and Wales there are some 28,500 justices of the peace, one-third of whom are women. The rising case load of juvenile matters now takes a larger proportion of magistrates' Court time. The justices who hear these cases, or rule on the care of children, also take special courses in juvenile law.

In Australia the main function of the justice of the peace is to authenticate the execution of documents.

United States,. justices of the peace are elected or appointed and sit on the lowest of the state courts hearing minor civil matters and petty criminal cases, usually misdemeanours. They officiate at weddings, issue arrest warrants, deal with traffic offences, and hold inquests."

**Corpus Juris Secundum** (Volume 51, published in 1967 by The American Law Book Company, Brooklyn, N.Y., USA):

"A justice of the peace has been defined as a judicial officer of inferior rank, holding a court not of record, and usually having civil jurisdiction of limited nature, for the trial of minor cases, to an extent prescribed by statute, and for the conservation of the peace and

the preliminary hearing of criminal complaints and the commitment of offenders.---

The office of justice of the peace is one of great antiquity, and his jurisdiction has varied from time to time, depending either on the terms of commission or particular statutes. In England prior to the act of I Edward III, there were no justices, *ex officio*, but there existed a class of officers known as conservators or wardens of the peace, in addition to which were certain other common-law officers, such as sheriffs, constables and coroners, who by virtue of their office had the powers of conservators. The act of I Edward III chapter 16 directed the certain persons be assigned or appointed in each county ; conservators or wardens of the peace; and from this time peace officers were appointed and commissioned by the King. However, neither the officers designated by this act nor those exercising the same powers prior thereto had any judicial functions, their powers being purely ministerial. Subsequent statutes enacted during the reign of Edward III conferred judicial powers on persons appointed as conservators, and the appellation of "justices of the peace" was given them. Gradually their powers were still further enlarged, and they came to constitute a very important agency in the administration of local Government. It does not appear, however, that they had any civil jurisdiction.--

In the United States the powers and duties of such officers have been so enlarged and so fully defined by the statute of the various states that they are in effect wholly statutory; and especially this is true as to the jurisdiction of justices in civil causes, which is of purely statutory origin. So, the office of justice of the peace is subject to limitations in its scope and perquisites, and to the imposition of conditions."

**The Encyclopaedia Americana** (International Edition published in 1997 by Grolier Incorporated, International Headquarters, Danbury, Connecticut, USA):

"Justice of the Peace, an official who has jurisdiction over the trial of small civil suits and of criminal cases involving minor offences. His or her judicial power extends to actions based on contract or on the taking, detaining, or injuring of personal property, provided in both types of cases that the amount involved is within a defined limit. In general, justices of the peace are prohibited from trying cases where the title to land is involved. Their jurisdiction over criminal cases is similarly limited, being determined by the maximum punishment that can be imposed in a particular case. In addition to their authority to try cases, justices of the peace have other powers and duties, including the preliminary examination of persons' accused of crime, the holding of inquests, the issuing of search warrants, and the solemnization of marriages.

The primary functions of justices of the peace are judicial, but holders of the office also frequently act in an administrative capacity. The number of justices for a given territory, such as a town or precinct, is determined by constitutional or - statutory provisions. Justices are generally elected by the vote of the people but they are sometimes appointed.

The origin of the office can be traced back to England in the 13th century. At that time officials now known as justices of the peace were called keepers, or conservators, of the peace, and statutory provision was made for their appointment by the crown in each county. In the 14th century they became known as justices of the peace, in recognition of their increased judicial powers. Thereafter their police, judicial, and administrative duties

were considerably enlarged by the legislature. During the 16th, 17th, and 18th centuries justices of the peace became virtual rulers of the counties. Toward the end of the 19th century, however, most of their administrative powers were transferred by statute to elected councils, although they retained their judicial powers.

In what is now the United States the office of justice of the peace existed from earliest colonial times. In the 20th century this office, which is provided for by state constitutions and statutes, is connected with the judicial departments of state governments. "

**American Jurisprudence** (Second Edition, Volume 47, published in 1969 by The Lawyers Co-operative Publishing Company, Rochester, USA):

"In the early judicial system of England, justices of the peace were mere conservators of the peace, as the name implies, exercising no judicial functions. Eventually, however, they were invested with judicial powers, and the office of justice of the peace was a part of the legal system brought here by the English colonists. In most states, the office is provided for by the Constitution and general laws, and is regarded as of importance to the people at large, since it opens the door of justice near their homes; and not only affords an inexpensive and speedy remedy for minor grievances as to rights of property, but also renders substantial aid in prevention and punishment of crime.

Today, the office of justice of the peace is a public office connected with the judicial department of the state government, and a justice of the peace is, to a certain extent, a judicial officer. Most of his powers and duties are of a judicial nature, although he also acts in many instances in an administrative capacity.---

Justices of the peace are generally elected by the people although provision is also made, in some instances, for their selection by appointment.---

Justices of the peace --- are not in a strict sense judges, since their duties are administrative as well as judicial.---

It is sometimes provided that the incumbent of some other public office shall be ex officio a justice of the peace.

The jurisdiction of justices of the peace as judicial officers is the result of constitutional or statutory provision. The governing provision usually limits not only the class of cases that justices may hear and determine, but also the procedure they must observe.

Although a liberal construction should be given to provisions that relate to the jurisdiction of justices of the peace, with a view aimed at the promotion of justice, the justices have and can exercise no powers except those conferred. Accordingly, their acts in a case over which they do not have jurisdiction are, in general, void, notwithstanding that the attempted exercise of jurisdiction was made in good faith.---

It has been broadly stated that a justice of the peace has no jurisdiction of any action unknown at common law and not authorized by statute. And, as a rule, a court of a justice of the peace does not have equitable jurisdiction.---

A writ of certiorari has been held a proper remedy to review the judgment of a justice of the peace.---

The powers and duties of justices --- (of the peace in the United States of America at present include) the preliminary examination of persons accused of crime, the holding of inquests, the appointment of special constables, the issuance of search warrants, the imposition of punishment for contempt, the taking of acknowledgments and solemnization of marriages.---

In civil matters a justice of the peace has been conferred the jurisdiction in matters involving actions based upon contracts, tort, recovery of exemplary damages, attachment and garnishment but in most of such matters the jurisdiction has been limited to a maximum dollar value.

The jurisdiction of justices of the peace in criminal proceedings is generally prescribed and regulated by constitutional and statutory provisions. The authority of justices of the peace to try criminal matters is often limited to minor offences, notwithstanding that their criminal jurisdiction as committing magistrates may extend to crimes of higher grades."

**Words and Phrases** (Permanent Edition, published in 1967 by West Publishing Company, Minn., USA):

"The true conception indicated by the term "justice of the peace", as disclosed by our Constitution and statutes, is that of an officer having both judicial and political functions --- judicial, in that he holds a court and decides matters of litigation arising between parties; political, in that he is a member of the quarterly county court, which is the governing agency or legislative body of the county. ---

A "justice of the peace" is defined to be a public officer invested with judicial powers for the purpose of preventing breaches of the peace and bringing to punishment those who have violated the law. Their common-law powers relate exclusively to matters affecting the public peace, and to the arrest and punishment of wrongdoers. ---

The origin of the office of justice of the peace is stated by' Blackstone in 1 Comm. 349: "The common law hath ever had a special care and regard for the conservation of the peace, for peace is the very end and foundation of civil society; and therefore, before the present constitution of justices was invented, there were peculiar officers appointed by the common law for the maintenance of the public peace. Of these some had and still have this power annexed to other offices which they hold; others had it merely by itself, and were thence named 'keepers of the peace'. Those that were so virtue officer, still continue; but the latter sort are superseded by the modern justices." ---

At common law 'justices of the peace' were merely conservators or keepers of the peace. ---

The original understanding of the official designation "justices of the peace" seems to have been that they were conservators of the peace. Before they had justices of the peace in England there was a class of officers known as "conservators of the peace". In the reign of Edward the Third an act of Parliament ordained "that every shire of the realm

good men and lawful, which were no, maintainers of evil nor barrators on the county, should be assigned to keep the peace, to repress all intention of uproar and force even in the first seed thereof and before it should grow up to any offer of danger"--- The statute referred to gave to justices of the peace the common-law. powers which conservators had exercised, and subsequent acts greatly enlarged them, but they have not, as is held in the English books, any jurisdiction save that which statutes give them. ---

Justices of the peace have been 'known to the common law of England for a century and a half before America was discovered. They were in their original institution mere conservators of the peace, exercising no judicial function. It is said in 3 Burn, J.P., 19th Edn., p. 4, that by the statute of 1 Edw. III, which is the first statute that ordains the assignment of justices of the peace by the King's. commission, they had no other power but only to keep the peace. But from time to time their powers were enlarged,, and they came to constitute a very important agency in the administration of local government in England. They discharged a great variety of duties connected with the support of the poor, the reparation of the highways, the imposition and levying of parochial rates, and other local affairs. They were invested with judicial powers for the first time, it seems, by the statute of 34 Edw. III, c. 1, which gave them power to try felonies, but then only when two or more acted together, and not singly; and it is said by Blackstone (Volume 1, p. 349) they then acquired the more honourable appellation of `justices'. In England justices of the peace had never exercised jurisdiction over civil cases. The office of justices of peace was brought to America by the English colonists. From the earliest colonial period it has existed in America. Justices of the peace in America, as in England, have been invested with various and important functions connected with local administration, quite independent of their judicial authority. It is important to notice that the judicial function exercised by justices of the peace was a graft upon their original authority, and that the enlargement of their powers has not been in this direction alone, but that by gradual accretion they have come to constitute a most important factor in the corporate administrative life in towns and counties."

**Grolier Encyclopaedia of Knowledge** (published in 1993 by Grolier Incorporated, Danbury, Connecticut, USA):

"A justice of the peace is a local magistrate with limited judicial power. Justices of the peace are usually elected officials in the United States, although in some states they are appointed. They usually have the power to try minor criminal cases and civil cases involving small amounts of money. Their other duties include issuing arrest and search warrants, holding preliminary hearings in criminal cases, holding inquests, and performing marriage ceremonies. The office was created in 14<sup>th</sup> century England, where subsequent justices of the peace were powerful agents of. the King, responsible for keeping the peace in each county. By the end of the 19th century they had lost their administrative (but not judicial) authority."

**Collier's Encyclopaedia** (Volume 13, published in 1993 by P. F. Collier, New York, N.Y., USA):

"**JUSTICE OF THE PEACE**, a local judicial tribunal of limited jurisdiction which stands at the bottom of the U.S. system of state courts. Developed as a court of first

instance in medieval England, this office has had a rich and varied history. Transplanted to North America in colonial days, it has been widely used, particularly during the simpler, agricultural phase of development, when limited transportation facilities made quite clear the need for a court close to every man's door that could settle disputes expeditiously, economically, and effectively. With increasing industrialization and concentration of population in cities, the office has tended to be supplemented by the mayor's court, the police court, and the municipal courts. Originally organized to conform to a theory of local self-government, which required the popular election of all offices and provided compensation for them by a fee system, the office has frequently been held by a man of the neighborhood without formal legal training who served during his spare time. While this system met the needs of pioneer days, it is not viewed as satisfactory for an urban society. But the office is still employed as a court of limited and inferior jurisdiction in civil and criminal cases. In criminal cases its jurisdiction is usually limited to misdemeanours and to preliminary hearings for more serious offences. In civil cases its jurisdiction is confined to disputes involving very small amounts. Its jurisdiction in all cases is usually limited by statute, and it does not constitute a court of record."

**The Law Lexicon of British India** (published in 1940 by The Madras Law Journal office, Mylapore, India): '

"A justice of the peace is a judicial officer of inferior rank, holding a court, and having usually civil jurisdiction of a limited nature, for the trial of minor cases, to an extent prescribed by special or general statutes, and for the conservation of the peace and the preliminary hearing of criminal complaints and the commitment of offenders; a judicial officer of special and limited jurisdiction, both civil and criminal. In English law justices of the peace are judges of record appointed by the crown to the justices within a certain district for the conservation of the peace, and for the execution of the divers things, comprehended within their commission and within divers statutes, committed to their charge.

Justice of the peace is an inferior magistrate appointed by special commission under the Great Seal to keep the peace within the county, borough, or liberty for which he is appointed. "The whole Christian world", says Lord Coke, "hath not the like office as justice of the peace, if duly executed".

A 'justice of the peace' is defined to be a public officer invested with judicial powers for the purpose of preventing breaches of the peace and bringing to punishment those who have violated the law."

**Venkataramaiya's Law Lexicon with Legal Maxims** (Second Edition, published in 1996 by Law Publishers (India) Private Limited, Allahabad, India)

"**Justice of the Peace**. Person who by appointment is a justice within a certain district for the conservation of the peace and for the execution of other prescribed duties; he may act ministerially (e.g. by issuing a warrant, or in the preliminary investigation of indictable offences), and in civil summary proceedings."

**K. J. Aiyar's Judicial Dictionary** (Eleventh Edition, published in 1997 by The Law

Book Company (Private) Limited, Allahabad, India):

**"Justice of the Peace.** High placed officials by virtue of their offices or private men appointed by special commission from the State Government for keeping the peace and to inquire into and determine felonies and other misdemeanours."

**Law Terms & Phrases Judicially Interpreted with Legal Maxims and Legal Words and Phrases in ordinary usage** (by Sardar Muhammad Iqbal Khan Mokal, published in 1996 by PLD Publishers, Lahore, Pakistan):

**"Justice of the peace.** High placed officials by virtue of their offices or private men appointed by special commission from the state Government for keeping the peace and to inquire into and determine felonies and other misdemeanours."

**Hand Book of Legal Terms & Phrases** (by M. Ilyas Khan, published by PLD Publishers, Lahore in 1994):

**"Justice of peace.**-- Generally abbreviated as J.P., it is a person appointed by the State within a certain district for the conservation of peace and for certain other duties especially empowered to perform. "

**Words and Phrases Legally Defined** (Second Edition, published in 1969 by Butterworths, London, UK):

"The name "justice of the peace" was first given to the office of magistrate by the Justices of the Peace Act, 1361. -----"

9. From the information and material referred to above it emerges that the concept of a Justice of the Peace has evolved and developed over the last many centuries; it had originated in England and had been introduced by the British colonists in some of their colonies; the original role of a Justice of the Peace was conservation of the peace within the area of his jurisdiction through administrative and ministerial measures but. gradually his role was enlarged in some countries to include a minor judicial role qua summary trial of petty civil and criminal cases; and every enlargement of his role had been achieved through express legislation. It is quite clear that beyond the express authority, both administrative and judicial, conferred upon him by a statute a Justice of the Peace does not possess any implied or inherent jurisdiction to dispense justice among the people in his local area.

10. During its rule over the Indo-Pak sub-continent the British colonists had also introduced the concept of Justices of the Peace in the local system of governance and conservation of the peace. However, with almost simultaneous introduction of an elaborate system of hierarchy of Magistrates the role of Justices of the Peace never assumed any significant importance in the Indo-Pak sub-continent and Justices of the Peace were never conferred any judicial power. Although since their original induction in the system some additional powers have been bestowed upon Justices of the Peace from time to time yet their role essentially remains restricted so far to conservation of the peace and in case of breach of the peace their role ends by apprehending the culprit, if possible, and by reporting the breach of the peace to the police. It can, thus, be observed

without any fear of contradiction that at least in the context of Pakistan the role of a Justice of the Peace at the present juncture in our history is primarily of rendering assistance to the police in the matters of keeping the peace and, in case of breach of the peace, apprehending the culprit and rendering assistance to the police in investigation of the crime. On November 21, 2002 ex-officio Justices of the Peace in Pakistan were conferred an additional role through promulgation of the Criminal Procedure (Third Amendment) Ordinance (Federal Ordinance No. CXXXI) of 2002 and this role was in respect of entertaining complaints and issuance of appropriate directions to the police authorities concerned regarding registration of criminal cases, transfer of investigation of criminal cases and in respect of neglect, failure or excess committed by a police authority in relation to its functions and duties. These and other roles of a Justice of the Peace and an ex-officio Justice of the Peace in our country are evident from the following provisions of the Code of Criminal Procedure, 1898 (commonly abbreviated as Cr.P.C.):

**Section 22, Cr.P.C.:**

"A Provincial Government so far as regards the territories subject to its administration may by notification in the official Gazette, appoint such persons resident within Pakistan and not being the subjects of any foreign State as it thinks fit to be Justices of the Peace within and for the local area mentioned in such notification."

**Section 22, Cr.P.C. (Punjab amendment):**

"**Appointment of Justices of the Peace.** The Provincial Government may, by notification in the official Gazette, appoint for such period as may be specified in the notification, and subject to such rules as may be made by it any person who is a citizen of Pakistan and as to whose integrity and suitability it is satisfied, to be a Justice of the Peace for a local area to be specified in the notification, and more than one Justice of the Peace may be appointed for the same local area."

**Section 22-A, Cr.P.C.:**

"**Powers of Justice of the Peace.** (1) A Justice of the Peace for any local area shall, for the purpose of making an arrest, have within such area all the powers of a police officer referred to in section 54 and an officer in charge of a police station referred to in section 55.

(2) A Justice of the Peace making an arrest in exercise of any powers under subsection (1) shall, forthwith, take or cause to be taken the person arrested before the officer in charge of the, nearest police station and furnish such officer with a report as to the circumstances of the arrest and such officer shall thereupon re-arrest the person.

(3) A Justice of the Peace for any local area shall have powers, within such area, to call upon any member of the police force on duty to aid him:

(a) in taking or preventing the escape of any person who has participated in the commission of any cognizable offence of against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having so participated; and

(b) in the prevention of crime in general and, in particular, in the prevention of a breach of the peace or a disturbance of the public tranquility.

(4) Where a member of the police force on duty has been called upon to render aid under subsection (3), such call shall be deemed to have been made by a competent authority.

(5) A Justice of the Peace for any local area may, in accordance with such rules as may be made by the Provincial Government:

(a) issue a certificate as to the identity of any person residing within such area, or

(b) verify any document brought before him by any such person, or

(c) attest any such document required by or under any law for the time being in force to be attested by a Magistrate, and until the contrary is proved, any certificate so issued shall be presumed to be correct and any document so verified shall be deemed to be duly verified, and any document so attested shall be deemed to have been as fully attested as if he had been a Magistrate.

(6) An ex-officio Justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding:

(i) non-registration of criminal case;

(ii) transfer of investigation from one police officer to another; and

(iii) neglect, failure or excess committed by a police authority in relation to its functions and duties."

### **Section 22-B, Cr.P.C.:**

**"Duties of Justices of the peace.** Subject to such rules as may be made by the Provincial Government, every Justice of the Peace for any local area shall,

(a) on receipt of information of the occurrence of any incident involving a breach of the peace, or of the commission of any offence within such local area, forthwith make inquiries into the matter and report in writing the result of his inquiries to the nearest Magistrate and to officer in charge of the nearest police station;

(b) if the offence referred to in clause (a) is a cognizable offence, also prevent the removal of any thing from, or the interference in any way with, the place of occurrence of the offence;

(c) when so required in writing by a police officer making an investigation under Chapter XIV in respect of any offence committed within such local area:

(i) render all assistance to the police officer making such an investigation;

(ii) record any statement made under expectation of death by a person in respect of whom a crime is believed to have been committed."

## **Section 25 Cr.P.C.:**

**"Ex-officio justice of the Peace.** By virtue of their respective offices, the Sessions Judges and on nomination by them, the Additional Sessions Judges, are Justices of the Peace within and for the whole of the District of the Province in which they are serving."

11. The above mentioned provisions of the Code of Criminal Procedure, 1898 show that the roles statutorily defined in Pakistan for a Justice of the Peace are, by and large, as follows:

A Justice of the Peace in Pakistan has the powers

(a) to make an arrest in circumstances enumerated in sections 54 and 55, Cr.P.C. and to hand over custody of the arrested person to the officer in charge of the nearest Police Station;

(b) to call upon any member of the police force an duty to aid him in arresting or preventing the escape of a person involved in commission of a cognizable offence;

(c) to call upon any member of the police force on duty to aid him in the prevention of crime, breach of the peace or disturbance of the public tranquility; and

(d) to issue a certificate of identification of a person, to verify any document and to attest any document.

An ex-officio Justice of the Peace in Pakistan. (i.e., Sessions Judges and nominated Additional Sessions Judges in the relevant Districts under section 25, Cr.P.C.) has the power to issue appropriate directions to the police authorities concerned on a complaint regarding non-registration of criminal case, transfer of investigation from one police officer to another and neglect, failure or excess committed by a police authority in relation to its functions and duties.

The duties of a Justice of the Peace in Pakistan are

(a) to make inquiries and to report in writing to the nearest Magistrate and to the officer in charge of the nearest police station whenever he receives information of an occurrence opt any incident involving a breach of the peace or of commission of any offence within his local area;

(b) if the information received by him is in respect of commission of a cognizable offence then to also prevent any interference with the place of occurrence or removal of anything therefrom;

(c) to render assistance to a police officer, if so required in writing by him, making an investigation in respect of any offence within the relevant local area; and

(d) to record any statement, if so required in writing by a police officer making an investigation in respect of any offence within the relevant local area, made under expectation of death by a person in respect of whom a crime is believed to have been committed.

The learned Additional Advocate-General, Punjab as well as the learned counsel for the parties in the present writ petitions have not been able to refer to any other material before us showing that a Justice of the Peace or an ex-officio Justice of the Peace in Pakistan has any other power or duty besides those alluded to by us above.

12. Adverting now to question number (b) framed by us as to whether in Pakistan a Justice of the Peace or an. ex-officio Justice of the Peace exercises judicial powers or his functions are merely administrative and ministerial in nature and character we have already observed above in our discussion in respect of question number (a) that the powers and duties of a Justice of the Peace or an ex-officio Justice of the Peace in Pakistan as provided in sections 22-A and 22-B, Cr.P.C. do not involve any jurisdiction which can be termed as judicial in nature or character. In this context the role of a Justice of the Peace or an ex-officio Justice of the Peace in Pakistan is sharply different from that now enjoyed by their counterparts in the United Kingdom and the United States of America where some judicial role regarding summary trial of petty civil and criminal cases has been conferred upon the Justices of the Peace through legislative intervention. That surely is not the case in Pakistan where no statute confers any judicial power upon a Justice of the Peace or an ex-officio Justice of the Peace. We can, therefore, safely hold that functions to be performed by a Justice of the Peace or an ex officio Justice of the Peace in Pakistan are merely administrative and ministerial in nature and character. We feel fortified in so holding by the provisions of section 6, Cr.P.C. which categorizes the classes of criminal courts and Magistrates in Pakistan and a Justice of the Peace or an ex-officio Justice of the Peace is not included in any such class of courts or Magistrates. Apart from that sections 28. and 29, Cr.P.C. specify as to which courts are .to try which offences and in those sections too a Justice of the Peace or an ex-officio Justice of the Peace does not figure at all. In the case of Pir Abdul Qayyum Shah v. S.H.O. and four others [2005 PCr.LJ 357] a learned Judge-in-Chamber of this Court has already held that a revision petition is not competent against an order, passed by an ex-officio Justice of the Peace under section 22-A(6), Cr. P.C. because the jurisdiction conferred under the said provision of law is administrative in nature and not judicial and, thus, not amenable to revisional jurisdiction of this Court.

13. Through question number (c) mentioned above we wanted to explore the extent and scope of direct interference by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. with investigation of a criminal case by the police. We have already concluded above that a Justice of the Peace or an ex-officio Justice of the Peace in Pakistan performs functions which are administrative and ministerial in nature and not judicial in character. The case-law referred to by us hereinbelow would show that even the superior courts of Pakistan having constitutional, legal, supervisory and inherent judicial jurisdiction have consistently and consciously refrained from directly interfering with investigation of a criminal case by the police and, therefore, it is but obvious that Justices of the Peace or ex-officio Justices of the Peace possessing only administrative and ministerial powers should be twice shy of such direct interference. The following precedent cases may advantageously be referred to in this context:

Emperor v. Khwaja Nazir Ahmad [AIR (32) 1945 Privy Council 18]:

"In their Lordships' opinion however; the more serious aspect of the case is to be found in

the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of justice so that he may be duly acquitted if found not guilty of the offence with which he has been charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under S.491, Criminal P.C., to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then."

Federation of Pakistan v. Shah Muhammad Khan and others [PLD 1960 Supreme Court (Pak.) 85]:

"No law or regulation gives a complainant a vested right, which can be enforced by a writ to have his complaint investigated by a particular branch of the Police, and the law gives powers to the Central Government by a general or special order to take away the jurisdiction and powers of investigation and arrest of the Special Police Establishment by the Proviso to section 2(2) of the Ordinance referred to above [Pakistan Special Police Establishment Ordinance (VIII of 1948)]. The respondent No. 1, therefore, had no right to maintain a petition for writ and the High Court was in error in issuing a direction on such a petition. The order of the High Court is, therefore, set aside and this appeal is allowed."

Shahnaz Begum v The Hon'ble Judges of the High Court of Sind and Baluchistan and another [PLD 1971 Supreme Court 677]:

"We are in respectful agreement with this view and have no difficulty at all in holding that the word "direct" in clause 22 [of the Letters Patent of the High Courts of West Pakistan] also bears the same sense and, therefore, the necessity for snaking a direction can only arise in a case where no investigation has started. The power to issue a direction cannot be invoked where investigation has already commenced in accordance with law by authorities competent to investigate under the Criminal Procedure Code nor does the power to "direct" include the power to "transfer" from one competent investigating agency to another. This would be unwanted interference with the investigation which has been disapproved of by the Judicial Committee of the Privy Council in the case of *Emperor v. Kh. Nazir Ahmad*. "

Muhammad Saeed Azhar v. Martial Law Administrator, Punjab and others [1979 SCMR 484]:

"The learned Judge in the High Court also appears to us to be right in taking the view that

the question of the alleged mala fide on the part of the local police also requires factual investigation, which could not be undertaken by the High Court in the exercise of its writ jurisdiction."

Malik Shaukat Ali Dogar and 12 others v. Ghulam Qasim Khan Khakwani and others [PLD 1994 Supreme Court 281]:

"As regards the abiding control over the investigation which was sought to be exercised by mandating periodical reports to be submitted on the progress of investigation, we were in doubt in view of the precedent law laid down by this Court. To that limited extent, we had directed notice to issue to the respondents "whether such supervision and control over investigation and directions pertaining to it is permissible in view of the observations made by this Court in Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan and another PLD 1971 SC 677".

In response to our notice, Syed Niaz Ali Shah, Additional Advocate-General has appeared and submitted that though the registration of the case on the directions of the High Court could not be seriously objected to, the continued control over investigation before challan was submitted was something which the law and the, precedent of this Court do not permit. We have converted these petitions into appeals.---

As regards the nature of the continued control exercised by the Court over the investigation---

We consider that the t continued control over the investigation exercised by the Court as in this case was prejudicial to the accused and detrimental to the fairness of the procedure apart from being without jurisdiction."

Brig. (Retd.) Imtiaz Ahmad v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others [1994 SCMR 2142]:

"The significance of the above-quoted observations lies in the fact that one of the declarations sought by the petitioner was to direct the Government "to place all incriminating material before the High Court to enable it to exercise judicial review to ensure that the criminal proceedings are not being initiated for reasons and purposes extraneous to statute". In other words what the petitioner wanted the High Court to do was to assume the role of Investigator. This could obviously not be done, for the authority to register and investigate a criminal case in law vests in the police and not in Court. We must hold, therefore, that the learned judges in the High Court were entirely justified in not assuming that role."

Anwar Ahmad Khan v. The State and another [1996 SCMR 24]:

"The orders sought to be quashed are nothing but an effort on the part of the learned Judges to obtain information and ensure that inquiry is held and report is submitted by the inquiry officers in proper time. It. has been observed that in cases involving offences of serious and sensational nature, often inquiry officers are appointed leading to no result at all. The proceedings suffer from delays, laches and unnecessary adjournments and non-cooperation by the officers. and public alike. When the case under investigations is under

judicial scrutiny by a superior Court, it can direct concerned authorities to finalize their reports within a reasonable time. The High Court in passing the impugned order did not interfere with the investigation. It merely required the concerned officer to be more alert, vigilant, prompt and dutiful. There had been complaint of harassment by the police of the relations of the deceased forcing them to compound. If the matter had been allowed to be delayed, such tactics may have succeeded.

The learned counsel's contention that the High Court has been supervising the inquiry is completely misconceived. The High Court had given time to the Advocate-General to get information about the progress made by the inquiry officer appointed by the Government. It also noted how far the Investigating Officer was at variance with the opinion of the judicial inquiries and whether any action was taken in pursuance of the judicial inquiry, if not, for what reason. The learned counsel has referred to *Shahnaz Begum v. The Honourable Judges of High Court of Sindh and Baluchistan* PLD 1971 Supreme Court 677. The facts of that case were completely different and the principles laid down there do not apply in the present case. ---

It is well-settled principle that where investigation is mala fide or without jurisdiction, the High Court in exercise of its Constitution jurisdiction under Article 199 is competent to correct such proceedings and pass necessary order to ensure justice and fairplay. The investigating authorities do not have the entire and total authority of running investigation according to their whims.

The contention that the High Court has been directing to register criminal case against Anwar Ahmad; S.H.O., is not correct. There is no such direction in any of the orders passed by the learned Judges.---Such query made by the Court cannot tantamount to be a direction to arrest and prosecute the petitioner.---"

In the case of Muhammad Latif v. Sharifan Bibi and another [1998 SCMR 666] a direction was issued by this Court to the Senior Superintendent of Police, Sheikhpura to register a criminal case against a police officer for falsely involving a citizen in an entirely cooked up criminal case and to get such a case investigated by a gazetted police officer. The Hon'ble Supreme Court, of Pakistan upheld the said order of this Court while observing that:

"The apprehensions expressed on behalf 'of the petitioner are unfounded. It is true that it is not appropriate for the High Court to start parallel enquiry at investigation stage. Here; the impugned order passed by the High Court for investigation of the. case by a gazetted Police Officer did not amount to interference with the investigation. The High. Court in exercise of its Constitutional jurisdiction was right in issuing the aforesaid directions in order to ensure justice and fairplay, particularly, in view of the subsequent statement made by the D.S.P. that a false case was registered against the detenu Amjad with ulterior motive."

Muhammad Ali and 12 others v. District Magistrate, Faisalabad, and 3 others [PLD 1978 Lahore 1325]:

"It has often been stressed by superior Courts that the police investigation in the crime

would not be interfered with or stifled by superior Courts in extraordinary jurisdiction, either under section 561-A; Cr.P.C.; or under writ jurisdiction. --- Repeated interference through orders of various types in writ jurisdiction would, on the one hand, bring the investigating agencies and trial agencies to a grinding halt; on the other, would also choke the normal relief giving channels of the superior Courts. A simple exercise of a visualization of accused and complainants, in all types of cases, coming to the High Court for correction in writ jurisdiction, at almost all conceivable stages (a discriminatory reaction of shutting out cases of other sections of society, involving violence, property, etc., as examples, would not then be possible) would present a colossal problem to tackle with, which could not be the intention of the law-maker. Fourthly, the machinery for tracing and collection of evidence in crimes available with superior Courts cannot be a safe substitution for mass of ordinary laws/rules in this behalf applied at the regular investigation and trial of crimes. And lastly, without the necessary machinery and requisite time for holding detailed enquiries, it would be hazardous exercise for a superior Court to take upon itself the duty to investigate such like matters in the world of crime and criminals. Without doing so, it would be almost impossible to interfere with the police actions and investigations in writ jurisdiction. That is why after giving due caution, their Lordships of the Supreme Court used extremely guarded language in imagining a possibility and that too, only very rare, for such an action, in Shahnaz Begum's case (PLD 1971 SC 677)."

Nasir Ali v. Inspector-General of Police, Punjab, Lahore and 8 others [PLJ 2000 Lahore 865)

"I cannot help observing that this petition is diabolically misconceived. It is not the function of this Court to sit in judgment over the findings or conclusions of the Investigating Officers of criminal cases. It had been settled over half a century ago that while investigating a crime reported to it the police performs a statutory duty and its operational and investigational independence in that respect is worthy of as much sanctity and respect as the independence of the judiciary in its adjudicatory domain. A reference in this respect may be made to the case of Emperor v. Khawaja Nazir Ahmad (AIR (32) 1945 Privy Council 18). In pursuance of that principle this Court is generally slow in interfering with the police investigation. No exceptional circumstance has been pointed out in this case so as to warrant a departure from the said beaten track."

Thus, if despite possessing constitutional, legal, supervisory and inherent judicial powers the superior courts of this country have generally considered it imprudent and ill-advised to directly interfere with investigation of a crime by the police then it appears to be nothing but stating the obvious that a Justice of the Peace or an ex-officio Justice of the Peace possessing merely administrative and ministerial powers should all the more be reluctant and hesitant in issuing directions to the police as to how and by whom a criminal case is to be investigated. It must not be lost sight of that a Justice of the Peace in Pakistan has no judicial powers and an ex-officio Justice of the Peace is a Justice of the Peace only by virtue of the office that he already holds and his powers as such do not become judicial simply because the other office already held by him happens to be a judicial office. In this view of the matter the learned Additional Advocate-General, Punjab has appeared to us to be entirely justified in maintaining that by virtue of his

jurisdiction under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace can issue appropriate directions to the police authorities concerned on the basis of complaints regarding non-registration of a criminal case, transfer of investigation from one police officer to another and neglect, failure or excess committed by a police authority in relation to its functions and duties but the directions to be issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. are to be directions to the concerned police authorities to attend to the grievance of the complaining person in accordance with the relevant law and through the jurisdiction under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace cannot arrogate to himself the power of redressing the actual grievance itself. An exception to this can be visualized by us in cases of a clear legal obligation on the part of a police officer to act in a particular manner in which situation a direction may be issued by an ex-officio Justice of the Peace to the concerned police officer to do the needful. The learned Additional Advocate-General has also been found by us to be quite correct in maintaining that under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace is to perform the role of a facilitator and that of a bridge or a conduit between the complaining persons and the police authorities concerned and the jurisdiction under section 22-A(6), Cr.P.C. does not allow an ex-officio Justice of the Peace to put on the mantle of a higher police authority himself, and to start exercising all those executive powers himself which the relevant law has vested in the concerned police authorities. This interpretation appears to us to be a correct statement of the law as the same is in accord with the ratio decidendi of the above mentioned precedent cases besides being a safe and prudent approach vis-a-vis the well entrenched constitutional doctrine of separation of powers. We may add that if in their capacity as ex-officio Justices of the Peace Judicial officers like Sessions Judges and Additional Sessions Judges are allowed to play a proactive, hands-on and upbeat role of direct interference in the administrative working of the police then such executive role of judicial officers may militate against the constitutional mandate of separation of the Judiciary from the Executive enshrined in Article 175(3) of the Constitution of the Islamic Republic of Pakistan, 1973. In that eventuality the provisions of section 22-A(6), Cr.P.C. may themselves become vulnerable to a serious challenge on the touchstone of the Constitution.

14. This brings us to question number (d) as to what, in the context of criminal justice, are the general complaints against the working of the police in the Province of the Punjab and what kind of "directions" can/should an ex-officio Justice of the Peace issue in respect of such complaints while exercising his jurisdiction under section 22-A(6), Cr.P.C. Our experience at the Bench of this Court shows that generally the public at large brings the following kinds of complaints against the police before this Court while invoking writ jurisdiction of this Court under Article 199 of the Constitution and now similar complaints are being brought before ex-officio Justices of the Peace by filing petitions under section 22-A(6), Cr.P.C.:

- (i) complaints about unjustified harassment by the police in the absence of any criminal case having been registered against the aggrieved person;
- (ii) complaints regarding failure of the police to register a criminal case despite commission of a cognizable offence having been reported to it;
- (iii) complaints pertaining to failure by the investigating officer to add appropriate penal

provisions to an FIR or a cross-version of the accused party;

(iv) complaints about failure by the investigating officer to record a cross-version of the accused party;

(v) complaints regarding failure to arrest an accused person nominated in the FIR or in the cross-version of the accused party;

(vi) complaints pertaining to unfair, biased and improper investigation and, thus, seeking transfer of the investigation; and

(vii) complaints about failure to finalize investigation of a criminal case and to submit a Challan within a reasonable time.

We intend to advert to each one of such complaints one by one so as to examine what kind of directions can/should be issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. in respect of such complaints. But before that we may observe with emphasis that it is by slow a settled proposition of law that while exercising its constitutional jurisdiction regarding judicial review of administrative action a High Court is not to substitute its own decision for that of the competent authority and that, after stating the correct legal position, the High Court is to issue a direction to the competent authority to pass an appropriate order in terms of the legal position so declared. Likewise, except in cases of a clear legal obligation on the part of a police officer to act in a particular manner in which situation a direction may be issued by an ex-officio Justice of the Peace to the concerned police officer to do the needful, it would be inappropriate to the verge of being illegal for an ex-officio Justice of the Peace to issue directions to the police arrogating to himself the role of a supervisor or superintendent of the police in the matter of actual investigation of a crime. We have already observed above that while exercising his jurisdiction under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace is only to activate the available legal remedy or procedure so that the grievance of the complaining person can be attended to and redressed, if found genuine, by the competent authority of the police. In this view of the matter if an ex officio Justice of the Peace can issue the desired direction under section 22-A(6); Cr.P.C. activating the available legal remedy or procedure which the High Court would also have done if seized of a writ petition filed in that regard under Article 199 of the Constitution then the remedy before an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. can ordinarily be termed and accepted as an adequate alternate statutory remedy ousting a direct recourse by an aggrieved person to the High Court by invoking its extraordinary jurisdiction under Article 199 of the Constitution. A similar view in this regard has already been expressed by a learned Judge-in-Chamber of the Hon'ble Sindh High Court in the case of Muhammad Yousaf v. Dr. Madad Ali alias Gulab Laskani and 8 others [PLD 2002 Karachi 328] and also by another learned Judge-in-Chamber of the same Court in the case of Shahnawaz v. Raja Tanveer and seven others [2005 PCr.LJ 487] and we respectfully endorse the said view. It is, therefore, declared that in the matters of complaints against the working of the police covered by the provisions of section 22-A(6), Cr.P.C. an aggrieved person, except where the High Court feels satisfied that it is an exceptional case arising out of extraordinary circumstances warranting direct interference by the High Court and rendering the remedy under section 22-A(6), Cr.P.C.

inadequate, cannot file a writ petition before this Court under Article 199 of the Constitution before availing of the normally adequate alternate statutory remedy before an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C.

15. As regards the jurisdiction of an ex-officio Justice of the Peace regarding complaints about unjustified harassment by the police in the absence of any criminal case having been registered against the aggrieved person we may observe on the basis of our experience that more often than not such complaints are couched in vague, unspecific and generalized terms and sometimes such complaints are motivated with considerations other than bona fide. An ex-officio Justice of the Peace must remain watchful, alert and vigilant in this respect while handling all such complaints. It goes without saying that an allegation of fact levelled in such a complaint must contain all the necessary factual details regarding the date, time and place of the alleged harassment as well as full particulars of the concerned police officer who is being complained against. In the absence of such precision and exactitude in the complaint the relevant police officer, when required by the ex-officio Justice of the Peace to submit his comments, can remain contented with a bare and bald denial of the allegations leaving the ex-officio Justice of the Peace with no other option but to dismiss such a complaint as having remained unsubstantiated. However, if the complaint contains the necessary factual details and through his comments the relevant police officer fails to satisfy the ex-officio Justice of the Peace regarding falsity of the allegations levelled against him then the ex-officio Justice of the Peace may, depending upon the circumstances of the case, either warn the relevant police officer not to transgress the limits of the law in future or may issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to consider the complaint and to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002. In an extreme case of highhandedness and totally unjustified harassment the ex-officio Justice of the Peace may issue a direction to the relevant police authority to register a criminal case against the delinquent police officer if he had seemingly committed some cognizable offence during the harassment perpetrated by him.

16. As regards the complaints regarding failure of the police to register a criminal case despite commission of a cognizable offence having been reported to it there is no gainsaying the fact that the provisions of section 154, Cr.P.C. in that respect are quite explicit and the duty of the officer in charge of the local Police Station in that regard is mandatory in nature. However, we may hasten to add that the officer in charge of the relevant Police Station may be under a statutory obligation to register an F.I.R. whenever information disclosing commission of a cognizable offence is provided to him but the provisions of section 22-A(6), Cr.P.C. do not make it obligatory for an ex-officio Justice of the Peace to necessarily or blind-foldedly issue a direction regarding registration of a criminal case whenever a complaint is filed before him in that regard. The use of the word "may" in section 22-A(6), Cr.P.C. clearly shows that the jurisdiction of an ex-officio Justice of the Peace in that regard is discretionary in nature, and understandably so. It is unfortunate that concepts and notions of truth and justice are becoming more and more subjective in our society and the machinery of criminal law with its coercive process is increasingly being utilized by motivated persons or parties for achieving objectives which are self-serving. Thus, there is a pressing need on the part of the ex-

officio Justices of the Peace to exercise caution and restraint before issuing a direction regarding registration of a criminal case. We, therefore, deem it prudent and advisable for an ex-officio Justice of the Peace to call for comments of the officer in charge of the relevant Police Station in respect of complaints of This nature before taking any decision of his own in that regard so that he may be apprised of the reasons why the local police have not registered a criminal case in respect of the complainant's allegations. It may well be that the complainant has been economizing with the truth and the comments of the local police may help in completing the picture and making the situation clearer for the ex-officio Justice of the Peace facilitating him in issuing a just and correct direction, if any. If, however, the comments furnished by the officer in charge of the relevant Police Station disclose no justifiable reason for not registering a criminal case on the basis of the information supplied by the complaining person then an ex-officio Justice of the Peace would be entirely justified in issuing a direction that a criminal case be registered and investigated. We may clarify that it is not obligatory for the officer in charge of a Police Station or for an ex-officio Justice of the Peace to afford an opportunity of hearing to the accused party before registration of a criminal case or before issuing a direction in that regard. The law in this respect stands settled and we may refer in this context to the cases of Saeed Ahmad and others v. Naseer Ahmad and others [PLD 2000 Lahore 208 (DB)] and Muhammad Aslam v. Additional Sessions Judge and others [2004 PCr.LJ 1214]. Even the Hon'ble Supreme Court of India has expressed the same view in the case of Union of India and another v. W. N. Chadha [ 1993 SCMR 285). We may also add that in an appropriate case, depending upon the circumstances thereof, an ex-officio Justice of the Peace may refuse to issue a direction regarding registration of a criminal case and ,may dismiss the complaint under section 22-A(6), Cr.P.C. reminding the complaining person of his alternate statutory remedies under sections 156(3) and 190, Cr.P.C. Experience shows that there are cases where the complainant party may be better of in pressing its allegations and remaining in control of its case by filing a private complaint rather than forcing the police to register a criminal case and to investigate when the police is itself not convinced of the complainant party's allegations being correct. The case of Hazoor Bakhsh v. Senior Superintendent of Police, Rahimyar Khan and 12 others [PLD 1999 Lahore 417 (DB)] elaborately deals with the question of adequacy of the remedy of a private complaint in such situations. We may also clarify that the impression entertained by a large section of the legal community in our country that in case of filing of a private complaint the accused person cannot be arrested and recovery cannot be effected from him is nothing but erroneous and fallacious. By virtue of the provisions of section 202(1), Cr.P.C. a Court seized of a private complaint can "direct an inquiry or investigation to be made by any Justice of the Peace or by a police officer or by such other person as it thinks fit". The powers available during an investigation, enumerated in Part V, Chapter XIV of the Code of Criminal Procedure, 1898 read with section 4(1)(1) of the same Code, include the powers to arrest an accused person and to effect recovery from his possession or at his instance. Such powers of the investigating officer or the investigating person recognize no distinction between an investigation in a State case and an investigation in a complaint case. In the case of Noor Nabi and three others v. The State [2005 PCr.LJ 505] a learned Judge-in-Chamber of the Hon'ble Sindh High Court has already clarified that section 91, Cr.P.C. deals only with procuring attendance of a person before the Court and after his availability before the Court the matter of his

admission to bail or not rests in the hands of the Court and that the impression about automatic admission of an accused person to bail in a case of a private complaint is erroneous. Thus, in appropriate cases the ex-officio Justices of the Peace would be serving the interests of justice well by dispelling wrong impressions about inadequacy of the remedy of filing a private complaint and by encouraging the complaining persons to take charge of their allegations against the accused party by filing a private complaint rather than forcing an unwilling or unconvinced police to be in control of their cases.

17. The complaints about failure by an investigating officer to add appropriate penal provisions to an F.I.R. or a cross-version of the accused, party are not uncommon but they are normally not worthy of being taken with any degree of seriousness by an ex-officio Justice of the Peace. The stands taken by the complaining persons in this regard normally touch the merits of the allegations and an ex-officio Justice of the Peace would be well advised to refrain from entering into any such controversy at a premature stage and to consider, by appreciating the factual aspects of a given case, as to which offences are or are not disclosed by the allegations contained in an F.I.R. or a cross-version. It goes without saying that the overall incharge of a criminal case is the Area Magistrate who, even during the progress of an investigation, gets many opportunities to go through the record of investigation conducted by the police and in an appropriate case and at an appropriate stage he can require the investigating officer to consider addition or deletion of any penal provision. Be that it may, after submission of a report under section 173, Cr.P.C./Challan the Magistrate taking cognizance of the offence or the trial court taking cognizance of the case can take cognizance of any offence disclosed by the material available on the record of investigation even if the police have not invoked the relevant penal provision. Even at the time of framing of the charge a trial Court can frame a charge in respect of an offence disclosed by the record even if the same finds no mention in the report submitted under section 173, Cr.P.C./Challan. With so many opportunities being available with the Magistrate and the trial Court regarding rectification of a mistake, deliberate or otherwise, committed by the police in this connection it would be unwise for an ex-officio Justice of the Peace to interfere with such a matter at an inappropriate and premature stage. In the case of Nadeem Sarwar v. Station House Officer, Police Station Sadar, Hafizabad and 2 others [2000 YLR 756] this Court had handled a similar complaint in the following manner:

"The petitioner is an accused person in case F.I.R. No.466 registered at Police Station Sadar, Hafizabad on 14-12-1999 for offences under sections 322/279, PPC. It has been prayed by the petitioner through the present petition that section 322, P.P.C. may be ordered to be deleted from the said F. I. R. as the same is not attracted to the facts alleged in the F.I.R. At the outset I must observe that this petition is diabolically misconceived to this extent. Controlling the insertion or deletion of a section of a penal statute in Column No. 3 of an F.I.R. is surely not a function of this Court while exercising its writ jurisdiction under Article 199 of the Constitution. All that is required in a situation and at the stage like the, one in the present case is that the petitioner is to convince the Investigating Officer of the case that a certain provision invoked in the F.I.R. may not be pressed against him as the same is not attracted to the allegations contained in the narrative part of the F.I.R.. The real F.I.R. is the narrative part of the F.I.R. and not Columns Nos. 1 to 5 thereof which are to be filled in by a Moharrir or other police

official. A similar objection can, surely be raised by the petitioner not only before the Investigating Officer but also before the Court dealing with his bail application or holding his trial. This petition calls for no occasion by this Court to interfere in the matter at such a stage."

An ex-officio Justice of the Peace may follow suit while dealing with complaints of the like nature. In case of receipt of such a complaint an ex-officio Justice of the Peace may advise the complaining person to approach the Area Magistrate or the trial Court, as the case may be, rather than entertaining such a complaint himself.

18. As far as the complaints received by an ex-officio Justice of the Peace about failure by the investigating officer to record a cross-version of the accused party are concerned suffice it to observe that the following observations made by this Court in the above mentioned case of Nadeem Sarwar v. Station House Officer Police Station Sadar Hafizabad and 2 others [2000 YLR 756] show the way as to how such complaints are to be dealt with by the ex-officio Justices of the Peace:

"Another grievance voiced by the petitioner in the present petition is that the Investigating Officer of the above mentioned criminal case, respondent No. 1 herein, is not associating the petitioner with the investigation of the said case. Although I have remained unconvinced of such an assertion by the petitioner but for the benefit of all concerned it is hereby observed that it is a statutory duty of every Investigating Officer of a criminal case to associate the accused person with the investigation and also to record his version of the incident in question. I have no doubt in my mind that if the petitioner approaches respondent No.1 in this regard then respondent No.1 shall associate him with the investigation of the above mentioned criminal case and shall also record his version of the incident."

While dealing with a complaint of this nature an ex-officio Justice of the Peace should call for comments of the investigating officer explaining as to why he has not recorded the version of the accused party and if such comments confirm the complaint that despite having been approached in that regard by the accused party the investigating officer has not recorded the version of the accused party and there is no valid or justifiable reason for such default on his part then a direction may be issued by the ex-officio Justice of the Peace to the investigating officer to do the needful or in the alternative the Superintendent of Police (Investigation) of the relevant District may be directed by the ex-officio Justice of the Peace to attend to this aspect of the matter and to ensure that the needful is done by the investigating officer without further ado.

19. The complaints filed before ex-officio Justices of the Peace regarding failure by the police to arrest an accused person nominated in an F.I.R. or implicated through a cross-version of the accused party are quite frequent and we have observed that more often than not such complaints stem from a basic misconception about the circumstances in which an accused person is allowed by the law to be arrested in a criminal case. For the purpose of removal of such misinterpretation and misconstruction of the relevant legal provisions we have decided to restate the legal position in this regard in some detail.

20. Under section 22-A(1), Cr.P.C. a Justice of the Peace has the jurisdiction to exercise

all those powers of arrest in the relevant local area which powers are available to a police officer referred to in section 54, Cr.P.C. and to an officer in charge of a Police Station referred to in section 55, Cr.P.C. The powers of arrest in both the said sections are the same but they relate to different situations. In the case of Abdul Qayyum v. S.H.O. Police Station Shalimar, Lahore [1993 PCr.LJ 91] this Court had an opportunity to attend to the requirements of section 54, Cr.P.C. and it was observed by this Court as follows:

"Under the provisions of clause first of section 54, Cr.P.C., the Police Officer can arrest a person in the following four conditions:-

- (a) The accused is involved in a cognizable offence;
- (b) Against the accused a reasonable complaint has been made for the said offence;
- (e) A credible information is received by the Police Officer that he is involved in a cognizable offence; and
- (d) Reasonable suspicion exists that the said person is involved in the cognizable offence.

The expression 'credible information' is not a technical legal expression importing that the information must be given upon oath or affirmation. It includes any information which in the judgment of the officer to whom it is given appears entitled to credit in the particular instance and which he believes. The credible information mentioned therein need not be in writing.--

The object of section 54, Cr.P.C. is to give the widest powers to the Police Officers to arrest the persons who are involved in cognizable cases and the only limitation placed upon their power is the necessary requirement of reasonability and credibility to prevent the misuse of the powers by the Police Officers.

As the powers mentioned above given to the Police Officers under section 54, Cr.P.C. encroaches upon the liberty of a person, this wide power has to be construed, interpreted and defined strictly. A general definition of what constitutes reasonableness in a complaint or suspicion and credibility of information cannot be given. Both must depend upon the existence of tangible legal evidence within the cognizance of the Police Officer and, he must judge whether the evidence is sufficient to establish the reasonableness and credibility of the charge, information or suspicion. It has been laid down by this Court in 1992 PCr.LJ 131: An arrest which is beyond the provisions of section 54, Cr.P.C. would be illegal and void per se'."

Prior to that in the case of Muhammad Shafi v. Muhammad Boota and another [PLD 1975 Lahore 729] this Court had observed that

"The words "reasonable suspicion" (in section 54, Cr.P.C.) do not mean a mere vague surmise, but a bona fide belief on the part of the Police Officer that an offence has been committed or is about to be committed. Such belief has to be founded on some definite averments tending to show suspicion on the person arrested.--- The action of a police Officer under section 54, Cr.P.C. must be guarded inasmuch as he should first satisfy himself about the credibility of the information which, as stated already, should relate to

definite facts. It was not at all the intention of the law-giver that the Police Officer should at his own sweet will arrest anybody he likes, although he may be a peace loving citizen of the country."

The Hon'ble Sindh High Court had also observed in the case of Muhammad Siddiq v. Province of Sindh through Home Secretary, Karachi and 2 others [PLD 1992 Karachi 358 (DB)] that

"It will thus be seen that the first sub-clause of section 54(1), Cr.P.C. a person can be arrested without a warrant in the following circumstances:-

- (a) If he be concerned in any cognizable offence.
- (b) Against whom a reasonable complaint has been made.
- (c) Against whom credible information has been received that he is concerned with commission of such offence.
- (d) If reasonable suspicion exists about him being so concerned.

It is true that a Police Officer has been conferred sufficient powers to arrest a person in the investigation of a cognizable offence if he be concerned with commission of such offence. But such a power can be exercised only in those cases where a Police Officer is possessed of some evidence indicating involvement of a person under the four situations mentioned in section 54(1), Criminal Procedure Code."

In the case of Mst. Razia Pervez and another v. The Senior Superintendent of Police, Multan and 5 others [1992 P.Cr.L.J. 131] this Court had observed as follows:

"No doubt, the Police Officer can arrest a person where a reasonable suspicion exists of his having been concerned in any cognizable offence but power given to the Police Officer under this section (section 54, Cr.P.C.) being an encroachment on the liberty of a citizen is not unlimited. It is subject to the condition stated therein. An arrest purporting to be under this section would be illegal unless the circumstances specified in the various clauses of the section exist. This section does not give free licence to a Police Officer to arrest anybody he may like. In order to act under this section, there must be a reasonable suspicion of the person to be arrested having been concerned in a cognizable offence. An arrest of a citizen in a reckless disregard of the conditions imposed in this section would make the arrest and detention of the subject illegal and the Police Officer arresting or detaining the subject would be exposed to prosecution under the Pakistan Penal Code and also for departmental action under the relevant rules."

The above mentioned precedent cases clearly show that an arrest of a person in connection with a criminal case is not to be a matter of course and the power to arrest is conditional upon fulfilment of the requisite legal requirements.

21. One of the cardinal principles of criminal law and jurisprudence is that an accused person is presumed to be innocent until proved guilty before a Court of law. However, of late we have noticed a growing tendency on the part of the complainant party to insist

upon arrest of an accused person nominated by it in the F.I.R. and an increasing willingness, nay eagerness, on the part of the investigating officer of a criminal case to effect arrest of the accused person even before initiating or launching a proper investigation of the allegations 'levelled in the F. I. R. Such an approach has been found by us to be absolutely against the spirit of the relevant law, to be wrought with inherent dangers to cherished liberty of citizens who may ultimately be found to be innocent and to amount to putting the cart before the horse! It had been observed by the Hon'ble Supreme Court of Pakistan in the case of Brig. (Retd.), F.B. Ali and another v. The State [PLD 1975 Supreme Court 506] that

"In my view the mere lodging of an information does not make a person an accused nor does a person against whom an investigation is being conducted by the police can strictly be called an accused. Such a person may or may not be sent up for trial. The information may be found to be false: An accused is, therefore, a person charged in a trial. The Oxford English Dictionary defines an "accused" as a person "charged with a crime" and an "accusation" as an "indictment". Aiyer in his Manual of Law Terms also gives the same meaning. I am of view, therefore, that a person becomes an accused only when charged with an offence. The Criminal Procedure Code also uses the word "accused" in the same sense, namely; a person over whom a Court is exercising jurisdiction."

Even the Hon'ble Federal Shariat Court had remarked in the case of Mst. Asho and 3 others v. The State [1987 PCr.LJ 538] that

"Mere levelling accusations against a person in F.I.R. does not make him. an accused person unless and until some evidence implicating such person in the commission of the offence is available."

We may add in this context that a general impression entertained by some quarters that an arrest of a suspect or an accused person is necessary or sine qua non for investigation, of a crime is misconceived and the same portrays scant knowledge of the relevant statutory provisions. We may briefly allude to such statutory provisions here. Section 46, Cr.P.C. provides as to how an arrest is to be made, section 54, Cr.P.C. deals with arrest by a police officer without a warrant, section 55, Cr.P.C. pertains to arrest of vagabonds, etc. by an officer in charge of a Police Station, section 59, Cr.P.C. caters for a situation where a private person may effect an arrest and section 151, Cr.P.C. authorizes a police officer to arrest a person in order to prevent commission of a cognizable offence. Section 169, Cr.P.C. visualizes a situation where a suspect may be released if the investigating officer finds no sufficient evidence or reasonable ground for suspicion against him. The parameters of such arrests are essentially those already discussed in the above mentioned precedent cases. According to Article 4(1)(j) of the Police Order, 2002 it is a duty of every police officer to "apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient grounds exist". Rules 24.1, 24.4 and 24.7 of the Police Rules, 1934 (which are still in vogue due to the provisions of Article 185 of the Police Order, 2002) clearly contemplate situations where an information received by the police regarding commission of a cognizable offence may be doubted or even found false. Rule 25.2(1) of the Police Rules authorizes an investigating officer to associate "any person with the investigation and Rule 215-2(2) categorically provides that "No avoidable trouble shall be given to any whom enquiries are made and no person shall be,

unnecessarily detained". Rule 25.2(3) clinches the issue by clarifying that "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person" (emphasis has been supplied by us). As if this were not enough, Rule 26.1 emphasizes that "Section 54, Code of Criminal Procedure, authorizes any police officer to arrest without a warrant any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned. The authority given under this section to the police to arrest without a warrant is, however, permissive and not obligatory. Whenever escape from justice or inconvenient delay is likely to result from the police failing to arrest, they are bound to do so; but in no other cases. The law allows a police officer to apply to a Magistrate for a warrant or a summons instead of making the arrest immediately, and this discretion shall be exercised whenever possible and expedient. The law also allows a police officer in any bailable case to take security under section 170, Criminal Procedure Code from an accused person to appear before a Magistrate without first arresting him" (emphasis has been supplied by us). Rules 26.2 and 26.9 provide further guidelines to the police officers involved in investigation of crimes requiring them not to unnecessarily interfere with the liberty of suspects "until the investigation is sufficiently complete" and "the facts justify arrest". According to Rule 26.1 the facts justifying an immediate arrest may include a possibility of the suspect escaping from justice or inconvenient delay likely to result from the police failing to arrest.

22. All the statutory provisions and the precedent cases mentioned above manifestly point towards the intention of the law that a suspect is not to be arrested straightaway upon registration of an F.I.R. or as a matter of course and that, unless the situation on the grounds so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled by the complainant party against such suspect or regarding his involvement in the crime in issue. If the law itself requires an investigating officer to be generally slow in depriving a person of his liberty on the basis of unsubstantiated allegations then insistence by the interested complainant party regarding his immediate arrest should not persuade the investigating officer to abdicate his discretion and jurisdiction in the matter before the whims or wishes of the complainant party. It, therefore, follows that an ex-officio Justice of the Peace should not ordinarily force an investigating officer in that regard where the investigating officer has not so far felt the necessity of an arrest or has not yet formed a tentative opinion about correctness of the allegation against the suspect. However, in an appropriate case, after obtaining comments from the investigating officer, an ex-officio Justice of the Peace seized of a complaint in this regard may issue a direction to the Superintendent of Police (Investigation) of the relevant District to attend to this aspect of the matter. It must always be remembered that delaying the arrest till after formation of an opinion regarding prima facie correctness of the allegation against a suspect goes a long way in deterring false, frivolous and motivated complaints and also that there may not be any adequate recompense or reparation for an unjustified arrest. It would be preposterous and a mockery of justice if a person may be deprived of his liberty first and

later on the allegations against him may be found by the arresting agency itself to be bogus, trumped up or false. That surely would be, as observed above, putting the cart before the horse.

23. The complaints about unfair, biased and improper investigation and, thus, seeking transfer of investigation of the relevant criminal case are generally the most frequent complaints that are filed before the exofficio Justices of the Peace under section 22-A(6), Cr.P.C. and are often subject matter of writ petitions filed before this Court and, therefore, this area has also engaged our serious, particular and detailed consideration. We may straightaway observe in this context that filing of such complaints is generally grounded in a basic misunderstanding that the parties to a criminal case must feel satisfied with the investigation thereof. We have already observed above that unfortunately the concepts of truth and justice are becoming more and more subjective in our society and the machinery of criminal law with its coercive process is increasingly being utilized by motivated persons or parties for achieving objectives which are self-serving. Left to the parties to a criminal case they would never be satisfied with the investigation unless their version is accepted by the police as correct. The term 'investigation' has been defined by section 4(1)(1) of the Code of Criminal Procedure, 1898 as "--- all proceedings under this Code for the collection of evidence by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf". The job of an investigating officer is, thus, only to collect all the relevant evidence pertaining to the allegation levelled regarding the crime in issue so as to dig out the truth enabling and facilitating the relevant Court to administer justice between the parties. His job is not to satisfy the parties to the case or to arrogate to himself the role of an adjudicator rendering an opinion regarding guilt or innocence of any person. In the reports to be submitted by the police in connection with investigation of a criminal case it can comment about sufficiency or otherwise of the evidence available against an accused person but it cannot comment upon believability or otherwise of the evidence becoming available on the record against such accused person. The question of believability or otherwise of such evidence is to be attended to by the relevant Magistrate or the trial Court. It is very rare that a complaint of the nature under discussion points out that any particular evidence is available in the case and the same is not being collected by the investigating officer but the bids of the parties seeking transfer of investigation are by far, as already noticed by the Hon'ble supreme Court of Pakistan and this Court in the cases referred to below, directed mainly to obtain a favourable opinion from the investigating officer supporting a party's version. We may clarify here for the benefit of all concerned that an investigating officer of a criminal case is not to render any opinion regarding guilt or innocence of an accused person and under the relevant statutory provisions contained in the Code of Criminal Procedure, 1898, the Police Order, 2002 and the Police Rules, 1934 he is only to collect all the relevant evidence and to submit his report and the collected evidence and material before the relevant Magistrate so that the Magistrate or the trial Court can then form their own independent opinions regarding sufficiency or otherwise of the evidence and material in order to decide whether to take cognizance of the offence and of the case or not, to summon any person to face a trial or not and to frame a charge against a person or not. We may further clarify that column No. 2 of the Challan submitted in a criminal case is generally misunderstood and the same is erroneously being construed as meant for those accused persons who are found by the

police to be innocent. It is generally being ignored that the said column of the Challan is to contain the names of the absconding accused persons against whom Challan is not being submitted because they could not be associated with the investigation and is also to contain the details of the accused persons being forwarded in custody or released on bond with or without sureties. Such details have absolutely no relevance to the question of innocence or otherwise of the accused persons. Section 172(1), Cr.P.C. requires that "Every, police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation". There is no mention in section 172(1), Cr.P.C. of any opinion of the investigating Officer about guilt or innocence of an accused person. Likewise, in section 173, Cr.P.C., under which the police is required to submit its final or interim report about the investigation before a Magistrate which report is also called a Challan, there is absolutely no mention of any opinion of the police regarding guilt or innocence of an accused person. As a matter of fact the learned counsel for the parties to this case as well as the learned Additional Advocate-General, Punjab have conceded before us that there is no law or legal instrument in existence in this country requiring an investigating officer of a criminal case or any police officer to record his opinion about guilt or innocence of the accused person. Be that as it may, the law is firmly settled on the point to the extent of being trite that an opinion of the police regarding guilt or innocence of an accused person is inadmissible in evidence being irrelevant and that an accused person whose name has been placed in column No. 2 of the Challan or an accused person not even mentioned in any column of the Challan can also be summoned by a trial Court to face trial if, in the opinion of the Court, sufficient material is available on the record to proceed against him. A misconceived competition and race between the parties to obtain a favourable opinion from the investigating officer, despite such opinion being inadmissible in evidence being irrelevant has been found by us to be the real reason for most of the bids made by the parties to a criminal case to get the investigation of such case transferred. Such trends and tendencies have to be curbed with all the firmness that is required as they are playing havoc with investigations, breeding corruption amongst the police, introducing extraneous influences in the working of the police, delaying finalization of investigations and trials and choking the ex-officio Justices of the Peace as well this Court with unwarranted complaints and writ petitions.

24. We may mention here that as back as almost half a century ago the Hon'ble Supreme Court of Pakistan had categorically declared in the case of Federation of Pakistan v. Shah Muhammad Khan and others [PLD 1960 Supreme Court (Pak.) 85] that

"No law or regulation gives a complainant a vested right, which can be enforced by a writ to have his complaint investigated by a particular branch of the Police---The respondent No. 1, therefore, had no right to maintain a petition for writ and the High Court was in error in issuing a direction on such a petition. The order of the High Court is, therefore, set aside and this appeal is allowed."

We may also again refer to the above mentioned case of Shahnaz Begum v. The Hon'ble Judges of the High Court of Sind and Baluchistan and another [PLD 1971 Supreme Court

6771 wherein the Hon'ble Supreme Court of Pakistan had clearly observed that

"We are in respectful agreement with this view and have 'no difficulty at all in holding that the word "direct" in clause 22 [of the Letters Patent of the High Courts of West Pakistan] also bears the same sense and, therefore, the necessity for making a direction can only arise in a case where no investigation has started. The power to issue a direction cannot be invoked where investigation has already commenced in accordance with law by authorities competent to investigate under the Criminal Procedure Code nor does the power to "direct" include the power to "transfer" from one competent investigating agency to another. This would be unwanted interference with the investigation ---."

In the case of Riaz Hussain and others v. The State [1986 SCMR 1934] the Hon'ble Supreme Court of Pakistan had strongly deprecated and disapproved the trend of holding multiple investigations of a criminal case by observing as follows:

"So far as the innocence of Ghulam Abbas, Riaz Hussain and Zahid Hussain appellants during re-investigation is concerned, this was urged before the learned trial Court and repelled by it after due consideration .and there exists no reason with us to come to a different conclusion. The occurrence in this case had taken place in September 1974 and the final report of the reinvestigation was submitted in April 1977, i.e., after a lapse of about three years. How on earth any significance can be attached to a report compiled and submitted after such a long time, especially when there was every possibility of fabrication of evidence. The system of re-investigation in criminal cases is a recent innovation which is always taken up at the instance of influential people and favourable reports' obtained. This in no way assists the Courts in coming to a correct conclusion, it rather creates more complications to the Court administering justice. We, therefore, disapprove this . system altogether. "

This aspect of the matter was again commented upon by the Hon'ble Supreme Court of Pakistan in the case of Hakim Mumtaz Ahmed and another v. The State [PLD 2002 Supreme Court 590] and the following observations were made in this respect:

"Before taking up other points involved in this case we consider it appropriate to note that delay in filing police report/challan is being caused for another reason namely that on the behest of the accused/complainant/State investigations in the cases are transferred from one police agency to another under section 158, Cr.P.C. on account of showing non-confidence by one or the other party in the Investigating Agencies particularly in the Province of Punjab. Such device is followed invariably in every case and this reason independently also causes delay in submission of challan or commencement of trial of accused persons."

In the case of Muhammad Yousaf v. Inspector-General of Police and 4 others [PLD 1997 Lahore 1351] this Court had reiterated the same position by observing that

"As regards re-opening of investigation, I may refer to a Supreme Court judgment titled Riaz Hussain v. The State (1986 SCMR 1934), wherein the Court observed that the system of re-investigation in criminal cases, is a recent innovation always taken up at the instance of influential people to obtain favourable reports which in no way assists the

Courts in coming to a correct conclusion, it rather creates more complications to the Courts administering justice."

In the case of Muhammad Arif v. Inspector-General of Police, Punjab, Lahore and 3 others [2000 YLR 1960] this Court had reaffirmed the said position and had elaborated that

"The purpose of investigation of a criminal case, as is evident from section 4(1)(1) of Cr.P.C. is mere collection of evidence and nothing more. The duty of the officer investigating a criminal case is to collect all such evidence and then to submit the same before a Court of competent jurisdiction which Court alone then has the powers to determine the guilt or innocence of the person accused of the commission of such an offence. It is true that section 169 of the Cr.P.C. authorizes an Investigating Officer or the officer incharge of the police station to release an accused person on his executing a bond, with or without a surety, if in the opinion of such a police officer sufficient evidence or reasonable grounds of suspicion justifying the forwarding of an accused to a Magistrate were not available. This however, cannot be equated with a power of final determination of the guilt or innocence of the accused persons which power, as has been mentioned above, stands reserved exclusively for the Magistrates and the trial Courts. These very provisions of section 169 of the Cr.P.C. are a clear indicator to the said effect because release of an accused person under this section is subject to the orders of a Magistrate, who may refuse to take cognizance of the case in terms of the report of the concerned police officer or may still take cognizance and try an accused person or send him for trial. It may be added that the provisions of section 63 of the Cr.P.C. which provide that an accused person could be discharged only under the special order of Magistrate and the provisions of Rule 24.7 of the Police Rules, 1934 which provides that an F.I.R. can be cancelled only by a Magistrate, even if the Investigating Officer or the S.H.O. were of the opinion that such an F.I.R. deserved to be cancelled, are further evidence of the fact that the final word in respect of the fate of an accused person is either of a Magistrate or of the warned trial Court and the S.H.O. or the Investigating Officer were mere instruments to assist such Magistrates or Courts of law in reaching a final conclusion.

It will, therefore, be noticed that while the Investigating Officers have powers to investigate cases and while the officers incharge of police stations including the superior police officers, who are also S.H.Os. by virtue of section 551 of the Cr.P.C. have powers to withdraw investigations from one police officer and to entrust the same to another police officer and also to order further investigations in a matter, the sole purposes of such-like transfer of investigations and directing of further investigations is to be the collection of evidence and nothing more. These powers vesting in the S.H.Os. and the superior police officers can, therefore, be exercised only and only where it is found that the required evidence had either not been collected or that further evidence was required to be collected in a given case.

Of late, frequent situations have started coming to the notice of the Courts where repeated investigations are ordered and where investigations are repeatedly transferred from one police officer to another without disclosing any reason for such orders which leads to an inference that such-like orders were passed not for the purposes for which the requisite

powers had been conferred on the police officers but for purposes other than legal and bona fide. Needless to add that such-like repeated investigations and such-like transfers of investigations do not only complicate issues making the task of the Courts of law more arduous but also result in wastage of time and inordinate delays towards the final conclusion of cases.

My Lords in the Supreme Court declared in Riaz Hussain and others v. The State (1986 SCMR 1934 at 1942) that system of reinvestigation in criminal cases was a recent innovation which was always taken at the instance of influential people for favourable reports obtained and this was in no way assisting the Courts in coming to correct conclusions and rather created more complications for the Courts administering justice. Their lordships of the Supreme Court went on to add that such a system was disapproved altogether."

In an earlier case of Muhammad Younas and others v. I.G. Police and others [1999 PCr.LJ 163 at 165] it was observed by this Court that:

"--- The investigation was transferred from one agency to the

other and from one officer to the other in a mechanical manner, arbitrarily, capriciously and above all without application of mind. It is interesting to note that it has not been brought to the notice of this Court in spite of query that did the high-ups including Respondent No. 1 take any action against any of the Investigating Officer for faulty investigation or for mixing up with either party or for failure to conclude the investigation efficiently. There was none. This fact alone proved it beyond any shadow of doubt that there was no purpose to transfer the investigation except to please someone, may be the then Chief Minister. "

It was consequently directed by this Court in that case that:

"This evil can be, successfully; combated by making it incumbent upon the authority transferring the investigation or ordering reinvestigation should comment upon the quality of the investigation and pinpoint the shortcomings or lapses made by the Investigating Officer. The authority if convinced after going through the record that either the Investigating Officer is inefficient, incapable or mixed up with one of the parties for any reason and only then investigation may be transferred and that too after recording reasons in writing. It shall propose action against Investigating Officer for misconduct, inefficiency and corruption as the case may be. That would be effective measures to check the illegal tendency of transferring the investigation or ordering reinvestigation without any study of the 'Zimnis' and for appreciating the efforts made by the Investigating Officer."

We respectfully reiterate the observations made in the above mentioned cases and emphasize compliance of the same by all concerned.

25. We may add in this context that we cannot appreciate or approve the trend of getting a fresh investigation of a criminal case conducted after submission of a Challan and taking of cognizance by the trial Court. In the absence of any particular material piece of evidence shown to have been missed out by the investigating officer and yet to be

collected by the police there can hardly be any occasion for holding a 'fresh investigation at such a stage. If such fresh investigation is meant only to obtain a fresh opinion of an investigating officer regarding guilt or innocence of: an accused person then, apart from the reasons mentioned above, such fresh investigation is likely to be legally inconsequential because an F.I.R. cannot be cancelled or ,an accused person discharged at such a stage for the reason that after taking of cognizance of the case by a trial Court the question of guilt or innocence of an accused person or the matter of his release can be determined only by the Court and none else. A reference in this respect may be made to the cases of Muhammad Alam and another v. Additional Secretary to Government of N-W F.P. Home & Tribal Affairs Department and 4 others [PLD 1987 Supreme Court 103], Nasira Surriya v. Muhammad Aslam and 7 others [1990 SCMR 12], Syed Waqar Hussain Shah v. The State [PLD 1988 Lahore 666] and Mst. Kausar Bibi v. The Deputy Inspector-General of Police Cringes Branch, Punjab, Lahore and 2 others, [1996 PCr.LJ 124].

26. By virtue of the provisions of Article 18(5) of the Police Order, 2002 a District Police Officer cannot interfere with the process of investigation. According to Article 18(6) of the. Police Order, 2002 the, first change of investigation can, in areas other than the Capital City District, be ordered only by the Additional Inspector-General of Police (Investigation Branch) and that too only after deliberations and recommendations by a Board headed by an officer not below the rank of Senior Superintendent of Police and including two Superintendents of Police, one being in charge of the investigation in the concerned District. According to the same Article second change of investigation may only be allowed with the approval of the Provincial Police Officer (Inspector-General of the Police in a Province) or the Capital City Police Officer, as the case may be. There is no other law authorizing for empowering any other police officer or authority to change the investigation of a criminal case. We can, therefore, safely hold that any .change or transfer of investigation of a criminal case by any officer or authority other than those mentioned in Article 18(6) of the Police Order, 2002 is to be void and a nullity. It has come to our notice in some other cases that police officers other than those' mentioned in Article 18(6) of the Police Order, 2002 have been changing investigation of criminal cases in the name of `verification' of investigation. It may he clarified 'by us that the law is quite settled on the point that where the law requires a thing to be done in a particular manner then that thing must be done in that manner alone or not at all. In any case if an investigation by an investigating officer 'is to be verified by some other officer then such verification must be confined to verification of the record of investigation and such an exercise cannot be allowed to be conducted in. a manner giving it a colour of fresh investigation with fresh conclusions. The verifying officer has to confine himself to the record of investigation already, conducted and cannot substitute his own conclusions for those of the investigating officer and if he finds any serious fault with the investigation already conducted then the verifying officer can bring such fault to the notice of the Superintendent of Police (Investigation) of the' concerned District who can then initiate impression is being entertained among some senior police officers that the provisions of Article 18(6) of the Police Order, 2002 pertain to `vertical' change of investigation and not to `horizontal' transfer of investigation, the former standing for change of investigation by authorities outside and above the relevant District and 'the latter denoting transfer of investigation by officers performing duties within the relevant District. We

have found such a distinction to be innovative but totally artificial and self-created and a distinction motivated to defeat the very purposes of Article 18(6) of the Police Order, 2002 so as to perpetuate the maladies for the removal of which the said Article had been introduced. We, therefore, categorically reject all notions regarding such a distinction.

27. We have already observed above that an ex-officio Justice of the Peace cannot step into the shoes of a competent police authority so as to himself pass an order transferring investigation of a criminal case and that his role in this regard is confined only to get the process under Article 18(6) of the Police Order, 2002 activated if the complaint before him establishes that the complaining person's recourse under section 18(6) of the Police Order, 2002 has remained unattended to so far. It, thus, follows that if the complaining person has not yet even applied before the competent authorities under Article 18(6) of the Police Order, 2002 seeking change of investigation then his complaint under section 22-A(6), Cr.P.C. is not to be entertained by an ex-officio Justice of the Peace as no occasion has so far arisen for interference in the matter by an ex-officio Justice of the Peace. The same principle has consistently been followed by this Court while dealing with writ petitions seeking transfer of investigations. This is evident from the following observations made by this Court in the case of Ali Muhammad v. Inspector-General of Police, Punjab, Lahore and another [2001 PCr.LJ 1054]

"Since almost a century, the mechanism and methodology for carrying out an investigation by the police has been clearly laid down with great detail. It is for this reason that the superior Courts have been holding time and again that investigation regarding the commission of offences is both the duty as well as the prerogative of the police and is a matter which is not within the domain of the Courts. ---

An essential ingredient for the assumption of jurisdiction under 'Article 199 of the Constitution of the Islamic Republic of Pakistan of 1973, is that this Court must be satisfied that there is no other adequate remedy provided by law. This is the sine qua non. In the absence of this essential ingredient, the High Court does not assume muchless exercise its extraordinary discretionary Constitutional jurisdiction to issue writ in the nature of direction, declaration and habeas corpus or quo warranto.

If a citizen is not satisfied with the method or manner in which an investigation is being carried out by a Police Officer an immediate and adequate remedy is available by making a representation to the next higher police officer. The police are a statutory organization set up under the Police Act and Rules having its own hierarchy to look after its own affairs including matters pertaining to law and order and investigation into the commission of offences which must culminate in the final report of the Investigating Officer to be submitted to a Competent Court for trial without inordinate delay. Interference in this process by the Courts would be like throwing a hammer in the spokes of the wheel and dragging the whole process to a grinding halt which is not the intention of the Constitution and the law."

28. It also goes without saying that if the competent authorities under Article 18(6) of the Police Order, 2002 have already attended to the request of the complaining person regarding transfer of investigation and have not found the case to be a fit case for transfer of investigation then too an ex-officio Justice of the Peace cannot interfere in the matter

as the competent authorities have already consciously attended to the matter and there is nothing left for the ex-officio Justice of the Peace to get activated or initiated. An ex-officio Justice of the Peace is not to assume the role of an appellate, revisional or supervisory authority in that respect. A similar approach was adopted by this Court in the case of Mehr Allah Bakhsh v. D.I.G. Multan and five others [2001 PCr.LJ 801] while dealing with a writ petition seeking transfer of investigation of a criminal case and it was observed as follows:

"The petitioner is the complainant of case F.I.R. No. 361 of 2000 registered at Police Station Sarai Sadhu, District Khanewal and through the present petition he has sought transfer of investigation of the said criminal case.

The contents of this writ petition show that three investigations have already been held in this case and in the last such investigation conducted by respondent No. 2 the accused persons were found to be innocent and the case set up by the petitioner in the F.I.R. was opined to be false. It is also mentioned in the memorandum of the present writ petition that the present petitioner had approached the Superintendent of Police, Khanewal and the Deputy Inspector-General of Police, Multan the process contemplated by the provisions of Article 18(6) of the Police Order, 2002 for change of investigation. It has also come to our notice in some other cases that an Range, Multan for transfer of investigation of the said criminal case but they had refused to transfer investigation of the case.

This Court is generally slow in interfering with investigation of a criminal case which function lies exclusively within the domain of the police. Holding of multiple and repeated investigations of a criminal case has been deprecated by the Honourable Supreme Court of Pakistan and by this Court in the cases of Riaz Hussain and others v. The State 1986 SCMR 1934 and Muhammad Arif v. Inspector-General of Police, Punjab, Lahore and 3 others 2000 YLR 1960. The Superintendent of Police, Khanewal and the Deputy Inspector-General of Police, Multan Range, Multan have already attended to the grievances of the petitioner and they have decided not to transfer investigation of this case. This Court is not to supervise or control investigation of a criminal case and to interfere in the matter where the highest functionaries of the police in the area have already applied their conscious minds to the matters involved. A reference in this regard may be made to the cases of Emperor v. Khawaja Nazir Ahmad AIR (32) 1945 PC 18, Shahnaz Begum v. The Honourable Judges of the High Court of Sindh and Balochistan and another PLD 1971 SC 677 and Malik Shaukat Ali Dogar and 12 others v. Ghulam Qasim Khan Khakwani and others PLD 1994 SC 281. A writ of mandamus can be issued by this Court when there is a legal duty cast upon a public functionary to act in a particular manner and it is shown to the satisfaction of this Court that such a public functionary is not performing the said legal duty. For the purposes of the present petition it may be observed that there was no legal duty cast upon the Superintendent of Police, Khanewal and the Deputy Inspector-General of Police, Multan Range, Multan to necessarily transfer investigation of the above mentioned criminal case upon a request made by the petitioner in that regard. In these circumstances the prayer regarding issuance of a writ of mandamus against them in this respect is clearly misconceived. For all these reasons this petition is hereby dismissed in limine."

29. It follows from the discussion made above that an ex-officio Justice of the Peace; like any judicial or other authority outside the police hierarchy, should be extremely slow in directly interfering with the matter of transfer of investigation and in an appropriate case he may interfere only where the authorities mentioned in Article 18(6) of the Police Order, 2002 have already been approached by the complaining person but such authorities have failed to attend to his grievance and the application of the complaining person is lying unattended to. Even in such a case an ex-officio Justice of the Peace may refuse to interfere in the matter unless it is established to his satisfaction that some specific and particular material pieces of evidence had been missed out by the investigating officer and the same remain to be collected by the police. We may emphasize that an ex-officio Justice of the Peace may not interfere in such a matter unless he feels satisfied that the required evidence had either not been collected or that further evidence is required to be collected in a given case. In such a case an ex-officio Justice of the Peace may issue a direction to the concerned police authority to get the process under Article 18(6) of the Police Order, 2002 activated so that an appropriate and suitable decision on the complaining person's grievance can be made by the competent authorities under Article 18(6) of the Police Order, 2002 one way or the other. We may, however, once again clarify that while attending to such a complaint an ex-officio Justice of the Peace cannot issue a direction changing, the investigation of a criminal case on his own.

30. As regards the complaints about failure of the police to finalize investigation of a criminal case and to submit a Challan within a reasonable time we find that sufficient guidance is already available in this respect in the shape of an elaborate judgment handed down by the Hon'ble Supreme Court of Pakistan in the case of Hakim Mumtaz Ahmed and another v. The State [PLD 2002 Supreme Court 590] wherein it had been concluded as follows:

"However, our emphasis is that notwithstanding the fact that before or after completion of investigation period prescribed under section 167, Cr.P.C. if it is not possible to submit final report, the Investigating Agency should strictly adhere to the provisions of section 173(3), Cr.P.C. and must submit interim challan through Public Prosecutor for trial and the accused arrested in the case should not be kept in custody for indefinite period without any legal justification. "

In that case the Hon'ble Supreme Court was pleased to direct the Inspector-General of Police, Punjab to take action against the Senior Superintendent of Police, Mandi Bahauddin for failing to supervise the investigation of that case effectively as a result whereof submission of Challan was delayed. A similar action was also ordered to be taken against the Station House Officer of the relevant Police Station as well as the investigating officer of the said criminal case. The Law Secretary, Government of the Punjab was also directed by the Hon'ble Supreme Court to take action against the District Attorney, Mandi Bahauddin for not submitting a Challan in the Court having jurisdiction within the stipulated period. The Registrar of this Court was also directed by the Hon'ble Supreme Court to bring the matter to the notice of the Hon'ble Chief Justice of this Court for initiating action against the Magistrate who had failed to insist upon submission of a Challan within the period stipulated by the law. Apart from that the Hon'ble Supreme Court was pleased to direct as under:

"Copies of this judgment shall also be sent to the Home Secretaries and Inspectors-General of Police of all the Provinces including Commissioner and Inspector-General of Police, Islamabad Capital Territory and Registrars of all the High Courts, for ensuring strict compliance of section 173(1) read with section 344, Cr.P.C. respectively so in future challans of criminal cases are submitted within the stipulated period of 14 days as provided under section 173(1), Cr.P.C. failing which action should be taken against the concerned officers for noncompliance of these directions."

In view of the above mentioned observations made and directions issued by the Hon'ble Supreme Court of Pakistan an ex-officio Justice of the Peace seized of a complaint regarding failure of the police to finalize investigation of a criminal case and to submit a Challan within the stipulated time should require the investigating officer of the relevant case to explain the reason for the delay in that regard and also to explain as to why a recommendation may not be made by him to the concerned quarters for appropriate action in terms of the action taken by the Hon'ble Supreme Court of Pakistan in the above mentioned case. If the explanation submitted by the investigating officer is found by the ex-officio Justice of the Peace to be unsatisfactory then he may issue a direction to the Superintendent of Police (Investigation) of the relevant District to ensure finalization of investigation and submission of Challan at the earliest possible and may also, depending upon the circumstances of the case, either warn the relevant investigating officer to be careful in that regard in future or issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to consider the complaint and to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002 or under any other law applicable to such misconduct.

31. Adverting now to question number (e) posed above regarding the remedies, against non-compliance of directions issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. we may restate the legal position discussed above that an ex-officio Justice of the Peace in Pakistan does not perform or discharge any judicial function and, therefore, the law relating to Contempt of Court is inapplicable to an alleged non-compliance of any direction issued by him under section 22-A(6), Cr.P.C. However, a direction issued by him under section 22-A(6), Cr.P.C. is grounded in lawful authority conferred upon him by the said legal provision and by virtue of the provisions of Article 4(1)(m) of the Police Order, 2002 "every police officer" is under a "duty" to "obey and promptly execute all lawful orders". There are, therefore, threefold remedies available against non-compliance of directions issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C., i.e. firstly, upon a complaint received by him regarding non-compliance of his earlier direction an ex-officio Justice of the Peace can issue a direction to the relevant police authority to register a criminal case against the delinquent police officer under Article 155(c) of the Police Order, 2002 or, secondly, he can issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002 or under any other law relevant to such misconduct and, thirdly, the complaining person can approach this Court under Article 199 of the Constitution seeking issuance of an appropriate writ directing the defaulting police officer to do what the law requires him to do.

32. Finally, attending to question number (t) mentioned above regarding legal sustainability or otherwise of the impugned orders passed by different ex-officio Justices of the Peace we have found that as far as Writ Petition No. 11862 of 2004 is concerned both the impugned orders dated 27-5-2004 and 5-7-2004 passed by the learned Sessions Judge, Toba Tek Singh suffer from various jurisdictional infirmities and are, therefore, liable to be struck down. Through the original petition filed by respondent No. 7 therein under section 22-A(6), Cr.P.C. on 22-5-2004 he had prayed for issuance of a direction regarding addition of section 354-A, P.P.C. to the cross-version of the accused party and also for issuance of a direction to the investigating officer of the relevant criminal case to arrest the accused party of the cross-version. The learned Sessions Judge had, however, travelled beyond those prayers and was pleased to transfer the investigation of the said criminal case merely upon a verbal request of the learned counsel for respondent No. 7! This is evident from the following part of the impugned order dated 27-5-2004:

"It has been submitted by counsel for the petitioner that investigation of the relevant case be made over to DPO, T. T. Singh with a direction to investigate the relevant case independently and honestly. In these circumstances I withdraw the investigation of the relevant case from Muhammad Hanif. DSP Crime Branch, Faisalabad. respondent No. 3 and make over the same to District Police Officer, Toba Tek -Singh and he is directed to carry out the investigation of this case by himself independently, honestly and fairly. The I.O/Muhammad Hanif, DSP Crime Branch, Faisalabad respondent No. 3 is directed to hand over the police file to DPO, T. T. Singh."

That order surely suffered from multiple legal maladies. Firstly, the learned Sessions Judge had no jurisdiction to pass an order transferring the investigation himself. Secondly, the learned Sessions Judge could not have travelled beyond the prayers made in writing before him by respondent No.7. Thirdly, the learned Sessions Judge ought not to have abdicated his authority in the matter before the verbally expressed wishes of the learned counsel for respondent No.7. And, fourthly, the very premise of the learned Sessions Judge in transferring the investigation was misconceived and against the facts. The learned Sessions Judge laid entertained an impression that the Deputy Inspector-General of Police, Faisalabad Range, Faisalabad had transferred the investigation of the relevant criminal case on his own despite having no jurisdiction in that regard under the Police Order, 2002. It was observed by the learned Sessions Judge in the impugned order dated 27-5-2004 that:

"Under the Police Order .2002, DIG could not transfer the investigation of the relevant case from one police official to the other and, thus, Muhammad Hanif DSP Crime Branch Faisalabad, respondent No. 3 has been entrusted with the investigation of the relevant case illegally and without lawful authority. "

These observations of the learned Sessions Judge were clearly against the factual position as the document appended with Writ Petition No. 11862 of 2004 as Annexure-B shows that originally the investigation of that case was taken in hand by the Investigation Wing of Toba Tek Singh police but respondent No. 7 had felt dissatisfied with the same and he had moved an application before the Deputy Inspector-General of Police, Faisalabad Range, Faisalabad seeking transfer of the investigation. The said application was referred to the Standing Board as contemplated by the Police Order, 2002 and Circular No. 1/2002

issued by the Provincial Police Officer, Punjab. After due deliberations the Standing Board had recommended transfer of the investigation of that case to Range Crime, Faisalabad. The Deputy Inspector-General of Police, Faisalabad Range, Faisalabad had agreed with the recommendation of the Standing Board and thereafter the Additional Inspector-General of Police, Investigation Branch, Punjab, Lahore had passed an order on 14-4-2004 transferring investigation of that case and entrusting the same to the Regional Investigation Branch, Faisalabad. This clearly establishes that all the necessary requirements contemplated by Article 18(6) of the Police Order, 2002 had in fact been fulfilled and the order regarding transfer of investigation had been passed by the competent authority mentioned in the said Article and the learned Sessions Judge had passed the impugned order dated 27-5-2004 upon having been swayed by assumptions which were against the record.

33. As far as the other impugned order passed by the learned Sessions Judge, Toba Tek Singh on 5-7-2004 in Writ Petition No. 11862 of 2004 is concerned we find that the same is also not sustainable as the same required the District Police Officer, Toba Tek Singh to carry out and implement the earlier order passed by the learned Sessions Judge, Toba Tek Singh on 27-5-2004 which order has already been found by us to be unsustainable. A superstructure built upon quicksand or unsound foundation has to crumble and collapse.

34. As regards Writ Petition No. 14415 of 2004, Writ Petition No. 17169 of 2004 and Writ Petition No. 16453 of 2004 it is evident that through the orders impugned therein the relevant ex-officio Justices of the Peace had ventured to transfer the investigations of the relevant criminal cases on their own which, as held by us above, was beyond the pale of their authority and jurisdiction under section 22-A(6), Cr.P.C. Thus, the said impugned orders are also not legally sustainable.

35. For facility of cognition and for guidance of the ex-officio Justices of the Peace in the Province of the Punjab the discussion made above is summed up with the following resume and conclusions:

(i) The powers and duties of a Justice of the Peace or an ex-officio Justice of the Peace in Pakistan stand specified in sections 22-A and 22-B, Cr.P.C. and they possess no other additional power and perform no other additional duty except that which is specifically conferred upon them by a statute.

(ii) The powers and duties of a Justice of the Peace or an ex-officio Justice of the Peace in Pakistan do not involve any jurisdiction which can be termed as judicial and the functions performed by him are merely administrative and ministerial in nature and character.

(iii) The superior courts of Pakistan having constitutional, legal, supervisory and inherent judicial jurisdiction have consistently and consciously refrained from directly interfering with investigation of a criminal case by the police and, therefore, Justices of the Peace or ex-officio Justices of the Peace possessing only administrative and ministerial powers should be twice shy of such direct interference.

(iv) The directions to be issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. are to be directions to the concerned police authorities to attend to the

grievance of the complaining person in accordance with the relevant law and through the jurisdiction under section 22-A(6), Cr.P.C. an ex-officio Justice of the Peace cannot arrogate to himself the power of redressing the actual grievance itself. An exception to this is a case of a clear legal obligation on the part of a police officer to act in a particular manner in which situation a direction may be issued by an ex-officio Justice of the Peace to the concerned police officer to do the needful. Under section 22-A(6), Cr.P.C, an ex-officio Justice of the Peace is to perform the role of a facilitator and that of a bridge or a conduit between the complaining persons and the police authorities concerned and the jurisdiction under section 22-A(6), Cr.P.C. does not allow an ex-officio Justice of the Peace to put on the mantle of a higher police authority himself and. to start exercising all those executive powers himself which the relevant law has vested in the concerned police authorities.

(v) Barring exceptional and extraordinary cases, the remedy before an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. can ordinarily be termed and accepted as an adequate alternate statutory remedy ousting a direct recourse by an aggrieved person to the High Court by invoking its extraordinary jurisdiction under Article 199 of the Constitution.

(vi) The Proceedings before, an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. are essentially summary in character. He is not required to treat such proceedings as regular lis and no elaborate orders having semblance of a judgment are required to be passed.

(vii) In such proceedings notice, if required, may be issued only to the concerned police officer and not to any private party as no direction adverse to any private party is to be issued in such proceedings. A direction to the relevant police officer regarding activating, any legal remedy of the complaining person cannot be termed as a direction adverse to any party. Even a direction to a police officer to comply with a mandatory provision of law cannot be called a direction adverse to any person. Under Articles 4 and 5 of the Constitution it is an inalienable right of every citizen to be treated in accordance with the law and obedience to the law is an inviolable obligation of every citizen.

(viii) Complaints about unjustified harassment by the police. A complaint before an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C. which does not contain all the necessary factual details regarding the date, time and place of the alleged harassment as well as full particulars of the concerned police officer who is being complained against is to be out-rightly dismissed. In an appropriate complaint of this nature the ex-officio Justice of the Peace may require the concerned police officer to submit his comments to the complaint. If through his comments the relevant police officer fails to satisfy the ex-officio Justice of the Peace regarding falsity of the allegations levelled against him then the ex-officio Justice of the Peace may, depending upon the circumstances of the case, either warn the relevant police officer not to transgress the limits of the law in future or may issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to consider the complaint and to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002. In an extreme case of highhandedness and totally unjustified harassment the ex-officio Justice of the Peace may issue a direction to the relevant police authority to

register a criminal case against the delinquent police officer if he had seemingly committed some cognizable offence during the harassment perpetrated by him.

(ix) Complaints regarding failure of the police to register a criminal case: The officer in charge of the relevant Police Station may be under a statutory obligation to register an F.I.R. whenever information disclosing commission of a cognizable offence is provided to him but the provisions of section 22-A(6), Cr.P.C. do not make it obligatory for an ex-officio Justice of the Peace to necessarily or blind-foldedly issue a direction regarding registration of a criminal case whenever a complaint is filed before him in that regard. An ex-officio Justice of the Peace should exercise caution and restraint in this regard and he may call for comments of the officer in charge of the relevant Police Station in respect of complaints of this nature before taking any decision of his own in that regard so that he may be apprised of the reasons why the local police have not registered a criminal case in respect of the complainant's allegations. If the comments furnished by the officer in charge of the relevant Police Station disclose no justifiable reason for not registering a criminal case on the basis of the information supplied by the complaining person then an ex-officio Justice of the Peace would be justified in issuing a direction that a criminal case be registered and investigated. It is not obligatory for the officer in charge of a Police Station or for an ex-officio Justice of the Peace to afford an opportunity of hearing to the accused party before registration of a criminal case or before, issuing a direction in that regard. In an appropriate case, depending upon the circumstances thereof, an ex-officio Justice of the Peace may refuse to issue a direction regarding registration of a criminal case and may dismiss the complaint under section 22-A(6), Cr.P.C. reminding the complaining person of his alternate statutory remedies under sections 156(3) and 190, Cr.P.C. The impression entertained by a large section of the legal community in our country that in case of filing of a private complaint the accused person cannot be arrested and recovery cannot be effected from him is nothing but erroneous and fallacious.

(x) Complaints about failure by an investigating officer to add appropriate penal provisions to an F.I.R. or a cross-version of the accused party: Such complaints are not worthy of being taken with any degree of seriousness by an ex-officio Justice of the Peace. The stands taken by the complaining persons in this regard normally touch the merits of the allegations and an ex-officio Justice of the Peace would be well advised to refrain from entering into any such controversy at a premature stage. The officer in charge of a criminal case is the Area Magistrate who, even during the progress of an investigation, gets many opportunities to go through the record of investigation conducted by the police and in an appropriate case and at an appropriate stage he can require the investigating officer to consider addition or deletion of any penal provision. After submission of a report under section 173, Cr.P.C./Challan the Magistrate taking cognizance of the offence or Court taking cognizance of the case can take cognizance of any offence disclosed by the material available the investigation even if the police have not invoked the relevant penal provision. Even at the time of framing of the charge a trial Court can frame a charge in respect of any offence disclosed by the record even if the same finds no mention in the report submitted under section 173, Cr.P.C./Challan. With so many opportunities being available with the Magistrate and the trial Court regarding rectification of a mistake, deliberate or otherwise, committed by the police in this connection it would be unwise for an ex-officio Justice of the Peace to interfere with such

a matter at an inappropriate and premature stage. In case of receipt of such a complaint an ex officio Justice of the Peace may advise the complaining, person to approach the Area Magistrate or the trial Court, as the case may be, rather than entertaining such a complaint himself.

(xi) Complaints about failure by the investigating officer to record a cross-version of the accused party: While dealing with a complaint of this nature an ex-officio Justice of the Peace should call for comments of the investigating officer explaining as to why he has not recorded the version of the accused party and if such comments confirm the complaint that despite having been approached in that regard by the accused party and if officer has not recorded the version of the accused party and if there is no valid or justifiable reason for such default on his part then a direction may be issued by the ex-officio Justice of the Peace to the investigating officer to do the needful or in the alternative the Superintendent of Police (Investigation) of the relevant District may be directed by the ex-officio Justice of the Peace to attend to this aspect of the matter and to ensure that the needful is done by the investigating officer without further ado.

(xii) Complaints regarding failure by the police to arrest an accused person. A general impression entertained by some quarters that an arrest of a suspect or an accused person is necessary or sine qua non for investigation of a crime is misconceived. A suspect is not to be arrested straightaway upon registration of an F.I.R. or as a matter of course and, unless the situation on the grounds so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegation levelled by the complainant party against' such suspect or regarding his involvement in the crime in issue. The law requires an investigating officer to be generally slow in depriving a person of his liberty on the basis of unsubstantiated allegations .and, thus., insistence by the interested complainant party regarding his immediate arrest should not persuade the investigating officer to abdicate his discretion and jurisdiction in the matter before the whims or wishes of the complainant party. An ex-officio Justice of the Peace should not ordinarily force an investigating officer in that regard where the investigating officer has not so far felt the necessity of an arrest or has not yet formed a tentative opinion about correctness of the allegation against the suspect. However, in an appropriate case, after obtaining comments from the investigating officer, an ex-officio Justice of the Peace seized of a complaint in this regard may issue a direction to the Superintendent of Police (Investigation) of the relevant District to attend to this aspect of the matter. It must always be remembered that delaying .the arrest till after formation of an opinion regarding prima facie correctness of the allegation against a suspect goes a long way in deterring false, frivolous and motivated complaints and also that there may not be any adequate recompense of reparation for an unjustified arrest. It would be preposterous and a mockery of justice if a person may be deprived of his liberty first and later on the allegation against him may be found by the arresting agency itself to be bogus, trumped up or false. Such an approach would amount to putting the cart before the horse.

(xiii) Complaints seeking transfer of investigation of criminal cases: The job of an investigating officer is not to satisfy the parties to the case or to render any opinion about

guilt or innocence of an accused person but his duty is only to collect all the relevant evidence. In the reports to be submitted by the police in connection with investigation of a criminal case it can comment about sufficiency or otherwise of the evidence available against an accused person but it cannot comment upon believability or otherwise of the evidence becoming available on the record against such accused person. The question of believability or otherwise of such evidence is to be attended to by the relevant Magistrate or the trial court. The trend of getting a fresh investigation of a criminal case conducted after submission of a Challan and after taking of cognizance by the trial Court is not to be encouraged. By virtue of the provisions of Article 18(5) of the Police Order, 2002 a District Police Officer cannot interfere with the process of investigation and, thus, an ex-officio Justice of the Peace cannot direct a District Police Officer to attend to the complaining person's grievance regarding an investigation. Article 18(6) of the Police Order, 2002 specifies the only manner in which investigation of a criminal case can be changed. There is no other law authorizing or empowering any other police officer or authority to change the investigation of a criminal case. Any change or transfer of investigation of a criminal case by any officer or authority other than those mentioned in Article 18(6) of the Police Order, 2002 is to be void and a nullity. `Verification' of investigation, if necessary, must be confined to verification of the record of investigation and such an exercise cannot be allowed to be conducted in a manner giving it a colour of fresh investigation with fresh conclusions. The verifying officer has to confine himself to the record of investigation already conducted and cannot substitute his own conclusions for those of the investigating officer and if he finds any serious fault with the investigation already conducted then the verifying officer can bring such fault to the notice of the Superintendent of Police (Investigation) of the concerned District who can then initiate the process contemplated by the provisions of Article 18(6) of the Police Order, 2002 for change of investigation. An ex-officio Justice of the Peace cannot step into the shoes of a competent police authority so as to himself pass an order transferring investigation of a criminal case and his role in this regard is confined only to getting the process under Article 18(6) of the Police Order, 2002 activated if the complaint before him establishes that the complaining person's recourse under section 18(6) of the Police Order, 2002 has remained unattended to so far. If the complaining person has not yet even applied before the competent authorities under Article 18(6) of the Police Order, 2002 seeking change of investigation then his complaint under section 22-A(6), Cr.P.C. is not to be entertained by an ex-officio Justice of the Peace as no occasion has so far arisen for interference in the matter by an ex-officio Justice of the Peace. If the competent authorities under Article 18(6) of the Police Order, 2002 have already attended to the request of the complaining person regarding transfer of investigation and have not found the case to be a fit case for transfer of investigation then too an ex-officio Justice of the Peace-cannot interfere in the matter as the competent authorities have already consciously attended to the matter and there is nothing left for the ex-officio Justice of the Peace to get activated or initiated. An ex-officio Justice of the Peace is not to assume the role of an appellate, revisional or supervisory authority in that respect. An ex-officio Justice of the Peace, like any judicial or other authority outside the police hierarchy, should be extremely slow in directly interfering with the matter of transfer of investigation and in an appropriate case he may interfere only where the authorities mentioned in Article 18(6) of the Police Order, 2002 have already been approached by

the complaining person but such authorities have failed to attend to his grievance and the application of the complaining person is lying unattended to. Even in such a case an ex-officio Justice of the Peace may refuse to interfere in the matter unless it is established to his satisfaction that some specific and particular material pieces of evidence had been missed out by the investigating officer and the same remain to be collected by the police. An ex-officio Justice of the Peace may not interfere in such a matter unless he feels satisfied that the required evidence had either not been collected or that further evidence is required to be collected in a given case and the recourse of the complaining person to the authorities mentioned in Article 18(6) of the Police Order, 2002 in that regard has so far remained unattended to. In such a case an ex-officio Justice of the Peace may issue a direction to the concerned police authority to get the process under Article 18(6) of the Police Order, 2002 activated so that an appropriate and suitable decision on the complaining person's grievance can be made by the competent authorities under Article 18(6) of the Police Order, 2002 one way or the other. While attending to such a complaint an ex-officio Justice of the Peace cannot issue a direction changing the investigation of a criminal case on his own. Any attempt by a party to get the investigation changed only to obtain a favourable opinion from an investigating officer regarding guilt or innocence of an accused person is to be nipped in the bud.

(xiv) Complaints about failure of the police to finalize investigation of a criminal case and to submit a Challan in time. An ex-officio Justice of the Peace seized of a complaint regarding failure of the police to finalize investigation of a criminal case and to submit a Challan within the stipulated period should require the investigating officer of the relevant case to explain the reason for the delay in that regard and he may also require him to explain as to why a recommendation may not be made to the concerned quarters for appropriate action in terms of the action taken by the Hon'ble Supreme Court of Pakistan in the case of Hakim Mumtaz Ahmed and another v. The State [PLD 2002 Supreme Court 590]. If the explanation submitted by the investigating officer is found by the ex-officio Justice of the Peace to be unsatisfactory then he may issue a direction to the Superintendent of Police (Investigation) of the relevant District to ensure finalization of investigation and submission of Challan at the earliest possible and may also, depending upon the circumstances of the case, either warn the relevant investigating officer to be careful in that regard in future or issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to consider the complaint and to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002 or under any other law applicable to such misconduct.

(xv) An ex-officio Justice of the Peace in Pakistan does not perform or discharge any judicial function and, therefore, the law relating to Contempt of Court is inapplicable to an alleged non-compliance of any direction issued by him under section 22-A(6), Cr.P.C. However, a direction issued by him under section 22-A(6), Cr.P.C. is grounded in lawful authority conferred upon him by the said legal provision and by virtue of the provisions of Article 4(1)(m) of the Police Order, 2002 every police officer is under a duty to obey and promptly execute all lawful orders. There are, therefore, threefold remedies available against non-compliance of directions issued by an ex-officio Justice of the Peace under section 22-A(6), Cr.P.C., i.e. firstly, upon a complaint received by him

regarding non-compliance of his earlier direction an ex-officio Justice of the Peace can issue a direction to the relevant police authority to register a criminal case against the delinquent police officer under Article 155(c) of the Police Order, 2002 or, secondly, he can issue a direction to the relevant higher police authority or the relevant Public Safety and Police Complaints Commission to take appropriate action against the delinquent police officer under the relevant provisions of the Police Order, 2002 or under any other law relevant to such misconduct and, thirdly, the complaining person can approach this Court under Article 199 of the Constitution seeking issuance of an appropriate writ directing the defaulting police officer to do what the law requires him to do.

(xvi) It needs to be clarified that a petition filed under section 22-A(6), Cr.P.C. before an ex-officio Justice of the Peace is to be termed only a 'petition' and such a petition cannot be branded, dubbed or called a 'Writ Petition'. It must be borne in mind that jurisdiction to issue a 'writ' is traditionally a high prerogative jurisdiction of a High Court which dates back to antiquity and is now recognized by the Constitution. Thus, the writ jurisdiction of a High Court must not be confused with a statutory jurisdiction of an ex-officio Justice of the Peace which is exercised by Sessions Judges and Additional Sessions Judges.

36. For what has been discussed above Writ Petition No. 11862 of 2004, Writ Petition No. 14415 of 2004, Writ Petition No. 17169 of 2004 and Writ Petition No. 16453 of 2004 are allowed and the impugned orders passed by the Sessions Judge, Toba Tek Singh on 27-5-2004 and 5-7-2004 as well as the impugned order passed by the learned Sessions Judge, Toba Tek Singh on 9-8-2004, the impugner order passed by the learned Additional Sessions Judge, Lahore on 13-9-2004 and the impugned order passed by the learned Sessions Judge, Hafizabad on 15-9-2004 respectively are declared to be without lawful authority and of no legal effect. There shall be no order as to costs.

(Sd.)

(Iftikhar Hussain Chaudhry)

Chief Justice

(Sd.)

(Asif Saeed Khan Khosa)

Judge

(Sd.)

(Sheikh Abdul Rashid)

Judge

M.B.A./K-105/L Order accordingly.