

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

**Ghulam Mustafa Mughal, J.**

Criminal P.L.A. No.12 of 2019  
(Filed on 20.04.2019)

Muhammad Ali Mukhtar s/o Muhammad Ahmed  
Qureshi, r/o Abdurpur, Tehsil and District Mirpur.

....PETITIONER

**VERSUS**

1. Ansar Hussain Butt,
2. Muhammad Ejaz s/o Muhammad Malik,
3. Shahzaib s/o Ansar Hussain, r/o Abdurpur, Tehsil  
and District Mirpur.
4. SSP, District Mirpur, A.K.
5. SHO, Police Station, Afzalpur.
6. Chowki Afsar, Jatlan, Mirpur.
7. The State through Advocate-General.

.... RESPONDENTS

8. Justice of Peace/Sessions Judge Mirpur.

.....PROFORMA-RESPONDENT

(On appeal from the judgment of the High Court dated  
22.03.2019 in Criminal Misc. No.62 of 2018)

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FOR THE PETITIONER: Mr. Rashid Nadeem Butt,  
Advocate.

FOR THE RESPONDENTS: Mr. Nasir Farooq  
Chaudhary, Advocate.

*Date of hearing:* 21.05.2019

**ORDER:**

**Ghulam Mustafa Mughal, J.**— The captioned petition for leave to appeal has been directed against the judgment dated 22.03.2019, passed by the Azad Jammu & Kashmir High Court in Criminal Misc. No.62/2018.

2. The facts forming background of the captioned petition for leave to appeal are that the petitioner, herein, filed an application under section 22-A, Cr.P.C. before the Sessions Judge Mirpur/Justice of Peace on 20.06.2016, stating therein, that he is a permanent resident of Mirpur and is serving in the Department of Highways. It was alleged that on 01.05.2018 at about 10:30 a.m. when the petitioner, herein, was on his duty, Ejaz and Anser sons of Muhammad Maalik and Shazaib

s/o Ansar, accused-respondents, herein, came there and started beating him after a slight altercation. It was further alleged that Ansar, accused/respondent No.1, herein, gave a fist blow which hit the petitioner, herein, at his nose due to which his nose-bone has fractured. It was stated that after the said incident, the petitioner, herein, moved an application at Chowki Police Jatlan but the Police did nothing. It was further stated that nose-bone of the petitioner, herein, was fractured but neither injury from was prepared by the Police nor he was sent to the doctor for examination. It was further stated that the petitioner, herein, went to the Police a number of times for registration of the case against the accused/respondents No.1 to 3, herein, but in vain. It was prayed that while accepting this application, the Police may be ordered to register the case against the accused. The learned Sessions Judge Mirpur/Justice of Peace after necessary proceedings, vide order dated 03.08.2018, accepted the application filed by the petitioner, herein, under section 22-A, Cr.P.C., and directed the Police to register F.I.R.

against the accused/respondents No.1 to 3, herein. The accused/respondents No.1 to 3, herein, felt aggrieved from the order passed by the Session Judge Mirpur/Justice of Peace dated 03.08.2018 and challenged the same before the Azad Jammu & Kashmir High Court by way of application under Section 561-A, Cr.P.C., on 31.08.2018. The learned High Court after hearing the parties through the impugned judgment/order dated 22.03.2019, accepted the application and set-aside the order passed by the Sessions Judge Mirpur/Justice of Peace dated 03.08.2018, however, it was observed that the petitioner, herein, is at liberty to file private complaint before proper forum, if so desire.

3. Mr. Rashid Nadeem Butt, the learned Advocate appearing for the petitioner argued that the impugned judgment/order passed by the learned High Court is illegal, erroneous and arbitrary because the order passed by the learned Sessions Judge Mirpur/Justice of Peace dated 03.08.2018 was a lawful order and no interference was required. The learned Advocate further argued that a

grievous injury was inflicted on the petitioner, herein, therefore, the Police could not refuse to register the case against the accused and the order passed by the learned Sessions Judge Mirpur/Justice of Peace was in accordance with law. The learned Advocate submitted that interference by the learned High Court was not justified at all in the circumstances of the case.

4. Conversely, Mr. Nasir Farooq Chaudhary, the learned Advocate appearing for the accused/respondents No.1 to 3, herein, argued that the incident has allegedly took place on 01.05.2018 and no application made for registration of the case on the same day before the concerned Police has been placed on the record. He added that even no complaint was made to any senior Police Officer regarding non-registration of the case by the concerned Police and for the first time an application under section 22-A was filed before the Sessions Judge Mirpur/Justice of Peace on 20.06.2018 after 1<sup>1/2</sup> month. The learned Advocate further argued that meanwhile a counter case under sections 324, 337-A, 341, 427 and 34,

APC, was registered against the petitioner, herein, and in order to frustrate that F.I.R., a concocted story has been built-up by the petitioner, herein, regarding the incident.

5. I have heard the learned counsel for the parties and have gone through the record of the case made available. It may be stated that the application under section 22-A, Cr.P.C. has been filed after 1<sup>1/2</sup> month and there is no explanation of delay in reporting the matter to the learned Sessions Judge/Justice of Peace. A perusal of the record reveals that the petitioner, herein, was asked by the Police to get examined in the hospital and injury form was also prepared but he refused to go to the hospital. In such state of affairs, interference by the learned High Court is justified. The counter case can only be registered for genuine and lawful reasons. The claim of the accused can be examined by the Police notwithstanding the registration of the second F.I.R., be that as it may, the learned High Court has observed that the petitioner, herein, is at liberty to file private complaint and can avail alternate remedy, if so desire. This observation of the

learned High Court is just and proper in the circumstances of this case.

In view of the afore-stated position, no any legal question of public importance is involved in this case, therefore, leave is refused. The petition stands dismissed.

**JUDGE**

Mirpur.  
22.05.2019