

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

Khawaja Muhammad Nasim, J
Raza Ali Khan, J

CRIMINAL APPEAL NO. 31/ 2025

[Against the judgment dated
23.04.2025, passed by the
High Court in Criminal Misc.
No. 470/ 2023]

Mahasin Aslam w/o Khawaja Muhammad Aslam d/o Abdul
Hameed Karimi Advocate (Late) through Attorney Javaid
Ahmed Wani s/o Sana Ullah Wani r/o Central Plate, Tehsil
& District Muzaffarabad, Azad Jammu & Kashmir.

... Appellant(s)

VERSUS

State through Advocate General of Azad Jammu & Kashmir
Muzaffarabad & 5 others.

... Respondent(s)

Appearances:

For the appellant(s): Mr. Shahid Ali Awan, Advocate.

For the private
respondent(s): Mr. Ahmed Nawaz Tanoli,
Advocate.

For the State: Sheikh Masood Iqbal, Advocate
General.

Date of hearing: 18.09.2025.

JUDGMENT:

Raza Ali Khan, J:- The captioned appeal by
leave of the Court has been filed against the judgment

dated 23.04.2025, rendered by the High Court in Criminal Misc. No. 470/ 2023, whereby, the petition filed by the present appellant under Section 561-A, Cr.P.C., was dismissed.

2. The crux of the controversy as narrated by the appellant, is that she submitted an application before the Inspector General of Police, Azad Jammu and Kashmir, on 22.05.2023, alleging that the accused persons, including one Sardar Tariq Hameed Abbasi, had fraudulently fabricated an agreement to sell concerning a plot owned by the Abdul Hameed Karimi, Advocate (late). It was specifically averred that the relevant stamp papers were never issued in the name of the accused persons and that the forged documents were subsequently used in parallel civil litigation before two different courts. The appellant annexed to her application the certified reports from the treasury office and stamp vendor to substantiate the claim of forgery. Despite these allegations and supporting documentation, no FIR was registered by the police. Subsequently, the Inspector General of Police referred the matter to Senior Superintendent of Police (SSP)/ respondent No.3 for appropriate action. However, notwithstanding repeated visits to the concerned police station and the submission of further application for registration of an FIR, the Station House Officer, Police Station Saddar, failed to act upon the directions of the Inspector General of Police or discharge his statutory obligation under Section 154, Cr.P.C. to register a criminal case upon disclosure of a cognizable offence. Consequently, the appellant invoked the jurisdiction of Ex-Officio Justice of Peace, Muzaffarabad, by filing an application under Section 22-A, Cr.P.C. seeking direction

for registration of an FIR. However, the application was dismissed, and the request for the initiation of criminal proceedings was declined. Feeling aggrieved, the appellant filed a petition under Section 561-A, Cr.P.C. before the High Court, assailing the order of the Ex-Officio Justice of Peace, Muzaffarabad. The High Court, through the impugned judgment dated 23.04.2025, dismissed the petition primarily on the ground that it was filed through a power of attorney, who was not relevant person to file this petition, thereby holding that the petition not maintainable. Hence, the present appeal.

3. Mr. Shahid Ali Awan, the learned counsel for the appellant, submitted that the impugned orders passed by the High Court as well as the Justice of Peace are contrary to law, rules, and judicial precedents, having been rendered without proper appraisal of the material available on the record and governing legal principles. It was argued that under Section 154, Cr.P.C., the Officer In-charge of a police station is under a statutory duty to enter information regarding commission of any cognizable offence into the relevant register and to lodge an FIR, but this mandatory obligation was ignored, amounting to a violation of law. It was further contended that the power of attorney annexed was inadvertently the earlier one, whereas the valid power of attorney in favour of Mr. Javaid Ahmed Wani had been duly filed before the Justice of Peace. Moreover, in criminal law, the role of a power of attorney holder is merely that of an informer, and once a cognizable offence is disclosed, the court or an authority is under duty to direct initiation of criminal proceedings. It was further contended that despite a bare reading of the application disclosing cognizable offences,

the same was dismissed by the Ex-Officio Justice of Peace without assigning cogent reasoning. It was further argued that the pendency of a civil suit does not bar criminal proceedings and reliance was placed on case titled *Zarar Ismail & 3 others vs. Senior Superintendent of Police & 3 others* [2022 SCR 1225] wherein it was held that civil and criminal liabilities are distinct and independent of each other, and pendency of a civil proceedings cannot obstruct criminal action. It was emphasized that the accused persons have prepared forged documents, thereby, committing fraud upon two courts, which falls within ambit of cognizable offences, as confirmed by the PDSP Muzaffarabad in his legal opinion. Lastly, the learned counsel submitted that the High Court dismissed the petition on purely technical grounds, without adjudicating upon the merits, in violation of the settled principle that justice must be administered on substance rather than on technicalities. The learned Advocate, therefore, lastly prayed for the acceptance of the appeal.

4. Mr. Ahmed Nawaz Tanoli, the learned counsel for the private respondent, supported the impugned orders, submitting that they are well-reasoned and in strict conformity with law and the record, thus, calling for no interference by this Court. He submitted that the appellant has approached this Court with mala fide intent by annexing a fabricated sale deed in which the front of the stamp paper has been altered. It was contended that the instant appeal is not maintainable, as it has been instituted through a special power of attorney which does not confer authority to initiate criminal proceedings. Furthermore, the document relied upon by the appellant's husband is of no legal effect, as he is neither a party to

the dispute nor vested with any propriety right in the property lawfully sold by Abdul Hameed Kareemi, Advocate (late). The learned counsel further submitted that the controversy regarding the *Iqrarnama* is already sub judice before the competent Civil Court, rendering the present appeal manifestly misconceived and patently premature. He further submitted that the appellant neither qualifies as a person aggrieved within contemplation of law nor possesses the requisite locus standi to maintain the appeal. The High Court, after exhaustively scrutinizing the record and hearing the parties, rightly dismissed the petition under Section 561-A, Cr.P.C., and the appellant has utterly failed to demonstrate any illegality, material irregularity, or jurisdictional infirmity in the impugned judgment.

5. Sheikh Masood Iqbal, the learned Advocate General, appearing on behalf of the State, fully endorsed the submissions of the learned counsel for the private respondent and contended that the special power of attorney dated 14.04.2023 executed by Khawaja Muhammad Aslam in favour of Javaid Ahmed Wani, was limited in scope, authorizing the attorney only to prosecute and defend a civil suit pending before the Civil Court Muzaffarabad. Since the principal expired during the proceedings, the said power of attorney automatically stood revoked, leaving the attorney bereft of any legal capacity to institute criminal proceedings under Section 561-A, Cr.P.C. or to maintain the instant appeal. Reliance was placed on the case of *Sikandar Habib vs. Shaista Jabeen and others* (PLJ 2016 SC (AJ&K) 93), wherein it was categorically held that an attorney cannot act beyond the authority explicitly vested in him.

6. We have carefully heard the arguments advanced by the learned counsel for the parties and meticulously examined the record along with the impugned orders. The record reveals that the Justice of Peace, while adjudicating the matter, failed to apply the well-settled principle of law that criminal and civil liabilities are distinct and independent of each other and may proceed concurrently. The refusal to issue a direction for the registration of an FIR merely on the ground that a civil suit was pending before the Civil Court on the same subject matter is a legally untenable approach, being direct contravention of binding precedents of this Court. Such an order betrays either a manifest misapprehension of law or gross negligence, thereby resulting in an abuse of the process of law, which the High Court is inherently empowered to correct. In this regard reliance can be placed on a case reported as "*Zarar Ismail & 3 others vs. Senior Superintendent of Police & 3 others*" (2022 SCR 1225), Wherein in para-9 of the judgment it was observed as under:-

"9. So far as the argument of the learned counsel for the appellants that the matter pertains to civil liability, for which alternate remedy is available and the matter can properly be adjudicated by the civil Court, is concerned, it may be observed here that under law, in a given case, civil proceedings and criminal proceedings can be carried out simultaneously. It depends upon the facts and circumstances of each case that whether civil and criminal proceedings shall remain in field, which question requires to be resolved in the light of evidence brought on the record by the parties. Mere filing of the civil suit is no bar for carrying out the criminal proceedings."

7. The High Court, however, dismissed the petition under Section 561-A, Cr.P.C., on the narrow and

overly technical ground that the petitioner/ appellant, herein, lacked specific authorization to file the petition. This hyper-technical approach cannot be sustained in law. Section 561-A, Cr.P.C. confers inherent powers upon the High Court, which are plenary, unfettered, and to be exercised *ex debito justitiae*, to secure the ends of justice, prevent abuse of process, and give effect to any order under the Code. The exercise of such powers is not contingent upon the adherence to rigid formalities nor defeated by technical defects in pleadings. This Court has consistently held that once the attention of a High Court is drawn to an abuse of the process of law, it is competent to exercise its inherent jurisdiction to cure such illegality. Section 561-A, Cr.P.C. does not mandate that the aggrieved person must personally invoke its jurisdiction, nor does it require adherence to rigid formalities. The jurisdiction is corrective in character, and its object is to ensure that justice is not sacrificed at the altar of technicalities. To deny relief on a purely technical ground would not only frustrate the ends of justice but would also erode public confidence in the judicial process. This Court, in its authoritative judgment reported as "*Abdul Majeed vs. Abdul Samad & another*" (2024 SCR 803), has already rendered a considered opinion regarding the scope of jurisdiction under Section 561-A, Cr.P.C., as well as the authority and responsibility of the High Court. The relevant paragraph is reproduced hereunder for reference:–

"10. We are equally dismayed by the judgment of the learned High Court who dismissed the revision petition on the grounds that petitioner failed to challenge the order of the trial Court dated 23.06.2023, thereby allowing it to become final. This dismissal occurred without

the exercise of proper judicial discretion. The High Court possess inherent powers under section 561-A, Cr.PC to ensure substantial justice and prevent any abuse of judicial process within its jurisdiction. The High Court's power under section 561-A Cr.PC are not contingent upon the filing of an application or petition by any party, rather the Court may invoke these inherent powers suo-moto when it identifies an abuse of the judicial process or when an action is deemed necessary to serve the ends of justice allowing the High Court to intervene independently to prevent injustice, correct procedural wrongs and uphold the integrity."

8. Ordinarily, when the High Court or any other judicial forum declines to examine an order of a subordinate court on merits, the appropriate course would be to first seek the wisdom of the High Court or such judicial forum. However, the case in hand stands on a markedly different footing. The impugned order is manifestly in derogation of a binding judgment of this Court, and in the face of such authoritative precedent, the Court has no option but to follow the same. Secondly, as the parties are already embroiled in protracted litigation, we consider it appropriate, in exercise of the inherent powers vested in this Court under Article 42-A of the Azad Jammu & Kashmir Interim Constitution, 1974, to intervene and decide the matter ourselves, so as to prevent further abuse of the process of law in the interest of complete justice.

9. Section 154, Cr.P.C., casts a statutory duty upon the Officer In-charge of a police station, that upon receipt of information disclosing the commission of cognizable offence, he shall reduce the same into writing, register an FIR and commence investigation.

10. It must be emphasized that the registration of an FIR is only the first step in setting the criminal law into motion and does not confer any substantive right upon the informant. The statutory scheme does not mandate that such information must be personally lodged by the aggrieved party. Reliance is placed on the case reported as "*Amanullah Khan vs. The State*" (2011 PCr.LJ 774), wherein, it was observed as under:-

"it is now a settled proposition that every member of the public has a right to set the wheels of criminal prosecution in motion and there is no embargo for any person to lodge a complaint or to be personally aggrieved."

For the foregoing reasons, this appeal is allowed. Consequently, the orders passed by the Ex-Officio Justice of Peace dated 30.08.2023 and by the High Court dated 23.04.2025 are hereby set aside. The Station House Officer concerned is directed to register an FIR as prima facie the information discloses the commission of a cognizable offence and to proceed strictly in accordance with law.

**JUDGE
(JII)**

**JUDGE
(JI)**

Muzaffarabad,
23.09.2025.