

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
CrI. Misc. Application No. S-360 of 2025

Applicants: Muhammad Ali Khoso, Raza Muhammad and Arz Muhammad *through* Mr. Mushtaque Ahmed Shahani, Advocate

Respondent No.5: Gul Bahar, in person

Respondents 1 to 4: The State and others *through* Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General

Date of hearing: 10.7.2025

Dated of Decision: 17.7.2025

ORDER

Muhammad Jaffer Raza, J.- Through instant criminal miscellaneous application u/s 561-A of the Criminal Procedure Code, the Applicants have impugned the order dated 10.6.2025, passed by learned Additional Sessions Judge/Ex-Officio Justice of Peace, Moro in Criminal Misc. Application No.290/2025, whereby the learned Judge, while disposing of the application u/s 491 Cr.P.C filed by Respondent No.5, directed the concerned SHO to treat the said application as a formal complaint and if cognizable offence is made out during the inquiry, register the FIR in accordance with law.

2. At the very outset learned counsel for the Applicants has argued that the learned Additional Sessions Judge Moro, has exceeded the jurisdiction under 491 Cr.P.C and exercised the powers effectively under section 22-A & B, Cr.P.C. The same, according to the learned counsel, is unwarranted and in excess of jurisdiction conferred on the learned court under the law. Learned counsel thereafter has referred to various cross-proceedings between the same parties as his son Ahmed Ali allegedly married the daughter of Respondent No.5.

3. Conversely, Respondent No.5 has argued in support of the Impugned order. He has further contended that the same is in accordance with the provision of section 491 Cr.P.C and not in excess of jurisdiction as contended by the learned counsel for the Applicants. He has further argued that the learned judge has only

ordered to treat his application under 491 Cr.P.C as formal complaint and only if a cognizable offence is made out during enquiry, FIR has been ordered to be registered. He also argued that the said order is fair and equitable given the peculiar nature of the instant case.

4. Learned APG has contended that the matter is liable to be remanded back to the Court of learned Additional Sessions Judge, Moro, for the reason that no recovery of the detenue has been made as yet and the directions issued by the learned court are beyond the scope of Section 491 Cr.P.C.

5. I have heard all the respective parties and perused the record.

6. It is apparent that there is convoluted dispute between all the respective parties pertaining to the marriage between the son of the Applicant No.1 and the daughter of Respondent No.5. It is also apparent that even the Applicant No.1 preferred an application under section 491 Cr.P.C for the recovery of his son, who he claims is missing and in the custody of Respondent No.5. Further, he has also filed an application under section 22-A & B, Cr. P.C. The sister of Respondent No.5 also lodged an FIR against the present Applicants and his allegedly missing son Ahmed Ali. The facts noted in the instant paragraph do not require any deliberation by me as the instant order will be confined to examining the merits of the Impugned order and the legality thereof. In that respect the following question is framed for adjudication:-

**Whether the Court of Sessions, has the powers u/s 491 Cr.P.C
to exercise jurisdiction u/s 22-A, Cr.P.C?**

7. After hearing the respective parties and examining the relevant case law on the subject, I have come to the conclusion that the learned Additional Sessions Judge, Moro, has exceeded the scope of jurisdiction under Section 491 Cr.P.C. It is well settled that the scope of Section 491 Cr.P.C. is limited solely to the recovery of a person from illegal or improper detention, which is evident from the plain

reading of the provision itself. For ease of reference, Section 491 Cr.P.C. is reproduced below:-

“491. Power to issue directions of the nature of a habeas corpus.

Any High Court may, whenever it thinks fit, direct:

- (a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;
- (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;
- (d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners for trial or to be examined touching any matter pending before such court-martial or Commissioners respectively;
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and
- (f) that the body of defendant within such limits be brought in on the sheriff's return of *cepi corpus* to a writ of attachment.

[(1A) The High Court may, by general or special order published in the official Gazette, may direct that all or any of its powers specified in clauses (a) and (b) of sub-section (1) shall, subject to such conditions, if any as may be specified in the order, be exercisable also by--

- (a) a Sessions Judge; or
- (b) an Additional Sessions Judge, within the territorial limits of a Sessions Division.” [Inst. By Order VIII of 2002]
- (2) The High Court may from time to time, frame rules to regulate the procedure in the cases under this section.
- (3) Nothing in this section applies to persons detained under [any other law providing for preventive detention]”

8. The scope of Section 491 Cr.P.C. was elaborately expounded in the case of *Ali Ahmed versus Muhammad Yakoob Almani, Def'ty' Superintendent Of Police, Qasimabad, Hyderabad and 5 others*¹ wherein a learned divisional bench of this court summarised the powers of the High Court under the noted provision in the following words:-

“9. Resume of all the aforementioned case-law leads us to conclude that where any cause is brought before the High Court as a result of proceedings under

¹ PLD 1999 Karachi 134

section 491(a) and (b), Cr.P.C. It will be permissible for the High Court to pass any of the following orders, namely:-

- (i) To issue rule nisi for production of the detenu before the Court;*
- (ii) to set the detenu free;*
- (iii) to convert the proceedings into bail application and to grant bail to the detenu;*
- (iv) to order registration of case against Police Officer/private person who was found violating fundamental rights of the detenu;*
- (v) to direct Police Authorities for conducting departmental proceedings against the Police Officer found responsible for illegal detention;*
- (vi) where the Court is satisfied that the respondent police officers have acted in violation of the Court directions or failed to obey the same, to order institution of Contempt of Court proceedings against such person;*
- (vii) to award cost against the Police Officer and in favour of petitioner for the expenses incurred in getting the detenu released;*
- (viii) to award monetary compensation to the detenu who was deprived of his freedom; and lastly,*
- (ix) to dismiss the petition where the detention is found to be lawful and bona fide.”*

9. It is specified that the above-noted judgment specifies and delineates the power of the High Court under the above-noted Section. It is evident that the directions passed by the learned Sessions court are beyond the scope of the powers available and exercisable even by the High Court.

10. It is also trite law that powers u/s 22-A & B, Cr.P.C are quasi-judicial in nature. The scope and nature of those proceedings was expounded by the Hon’ble Supreme Court in the case of **Younas Abbas and others Versus Additional Sessions Judge, Chakwal and others**² wherein it was held as under:-

“The functions, the Ex-officio Justice of Peace performs, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with things mechanically. His functions as described in Clauses (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.P.C., are quasi-judicial as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind. Every lis before him demands discretion and judgment. Functions so performed cannot be termed as executive, administrative or ministerial on any account.”

10. In light of what has been discussed above, it is apparent that the learned Sessions judge exceeded the jurisdiction vested in him and extended the scope of

² PLD 2016 Supreme Court 581

Section 491 Cr.P.C beyond what was permissible under the noted provision. Consequently, the instant criminal miscellaneous application is allowed, the Impugned order dated 10.6.2025 is set-aside and the matter is remanded back to the learned Court of Additional Sessions Judge, Moro, to decide the matter afresh and to take all possible measures for the recovery of the detainee.

11. The instant criminal miscellaneous application stands disposed of in the above terms.

JUDGE

Sulemen Khan/PA