

Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

(Extraordinary Constitutional Jurisdiction)

Constitutional Petitions No. D – 2149 and 4729 of 2015, and  
172, 935, 1110, 1111, 1112, 1113, 1114, 1115, 1116,  
1117, 1118, 1119, 1122 and 1123 of 2018

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Muhammad Faisal Kamal Alam

M/S Zafar Ali Shah, Muhammad Imran Shamsi, Muhammad Aslam Gadani, Athar Hussain Abro, Zafar Ali Eidan Mangi, Muhammad Arif Malik, Shakeel Ahmed Kalwar, Muhammad Qayyum Arain and Parmanand, Advocates for the petitioners.

M/S Manoj Kumar Tejwani and Muhammad Shakeel Lakho, Advocates for private respondents.

M/S Zulfiqar Ali Naich and Noor Hassan Malik, Assistant Advocates General Sindh.

Amicus Curiae :

Mr. Qurban Ali Malano Advocate,  
President Sindh High Court Bar Association Sukkur,

Mr. Zulfiqar Ali Sangi Advocate,  
General Secretary Sindh High Court Bar Association Sukkur, and  
Jamshed Ahmed Faiz Advocate.

Dates of hearing : 26.04.2018, 08.05.2018, 17.05.2018, 24.05.2018 and  
30.05.2018.

**J U D G M E N T**

**NADEEM AKHTAR J.** – All these petitions have been filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Since common questions of law were involved in these petitions, they were heard together and are being disposed of through this common judgment with the consent of learned counsel for the parties and learned AAG. The main question involved herein is whether the extraordinary Constitutional jurisdiction of High Court under Article 199 of the Constitution can be invoked by a person alleging harassment by private individuals or police officials, without availing the remedy provided under the law for such cases / situations.

2. Frankly speaking no further pronouncement is required in respect of the above as the law is well-settled and numerous reported and unreported cases of all High Courts and the Hon'ble Supreme Court of Pakistan on this subject are already in the field, particularly the recent authoritative pronouncement by

the Hon'ble Supreme Court in the case of Younas Abbas and others V/S Additional Sessions Judge Chakwal and others, PLD 2016 Supreme Court 581. However, the only reason that compelled us in hearing these petitions and subjected us to render this judgment is the gross and blatant abuse of the process of this Court and excessive exploitation, misuse and abuse of Article 199 under the garb of violation of fundamental rights enshrined in the Constitution ; circumstances, details and consequences whereof are explained in subsequent paragraphs. For the sake of convenience, the facts pleaded in all these petitions and the relief sought herein are given below in brief :

S. No.	C. P. No.	FACTS	PRAYER
1.	2149/15	Private respondents were forcing the petitioners to sell their agricultural land to them and when the petitioners did not agree, they prepared a forged document of sale in collusion with SHO and Mukhtiarkar concerned, who are now trying to dispossess the petitioners from their land.	SHO and Mukhtiarkar be directed not to harass the petitioners at the instance of private respondents ; SSP concerned be directed to provide protection to them ; and, Mukhtiarkar be directed not to change <i>khata</i> of the land.
2.	4729/15	Petitioner had purchased four plots from private respondents who are builders ; despite receiving sale consideration from him, they have not handed over title documents of the plots to him and have also restrained him from raising construction ; upon inquiry, petitioner came to know that said respondents have committed fraud with him ; and, official respondents have not taken any action on his complaint and are supporting the builders.	DIG, SSP and SHO concerned be directed not to harass the petitioner and his family members ; Deputy and Assistant Commissioners and SBCA be directed to verify the record of subject plots and to conduct an inquiry into the fraud committed by the builders ; and, official respondents be directed to provide protection to the petitioner and to "assist" him in raising construction.
3.	172/18	Petitioner, who is a Govt. contractor, approached respondent No.6 (Executive Engineer Machinery Maintenance Division) for settlement of his bills, but the said respondent misbehaved with him and assaulted him physically ; official respondents have demanded illegal gratification from him to settle the matter ; and, SHO concerned is harassing him at the instigation of said respondents.	Official respondents 3 to 10 be directed not to harass the petitioner, and SSP and SHO concerned be directed to provide protection to him against official respondents 4 to 10.
4.	935/18	Petitioner, being the owner of the property described in the petition, was raising construction thereon ; private respondents, who are builders,	Official respondents be directed not to harass or pressurize the petitioner and her family members on false complaints of the builders,

		started interfering in her possession and construction by filing false complaints against her as they wanted to purchase her property at a throw away price ; official respondents are supporting the builders as they have not taken any action against the builders and they are pressurizing her to sell her property to the builders.	and SSP concerned be directed to provide protection to her and her family members.
5.	1110/18	Private respondents have harassed the petitioner and his relatives by interfering in their cultivation, not allowing them to sell their crops, raiding their houses, taking away their cattle, lodging false FIRs against them and also by attempting to dispossess them from their land.	Private respondents be restrained from harassing the petitioner and his relatives and official respondents / police officials be directed to provide protection them.
6.	1111/18	Private respondents filed two applications U/S 22-A(6) CrPC one after the other for registration of FIRs against the petitioner and his relatives which were both dismissed ; and, after failing in their said applications, they filed false complaints before official respondents / police officials.	Official respondents / police officials be directed not to issue any notice to petitioner and his relatives ; private respondents be directed not to harass them ; and, DSP concerned be directed not to pressurize them for <i>jirga</i> .
7.	1112/18	Respondents / police officials were pressurizing the petitioner's son to divorce his wife and due to his resistance, they took him to police station and kept him in illegal confinement and insisted that he will not be released unless he divorces his wife.	Respondents / police officials be directed not to harass the petitioner and her son and not to force him to divorce his wife ; and, SSP and SHO concerned be directed to provide protection to them.
8.	1113/18	The petitioner's land is in illegal possession of private respondents 8 to 13 who have demanded money from him and upon his refusal they have harassed and humiliated him and his family members and have also threatened to lodge false criminal cases against them ; and, private respondent No.8 filed false application against petitioner and his uncle before ex-officio Justice of Peace which was dismissed.	SSP, DSP and four SHOs mentioned in the title be directed to provide protection to petitioner and his family members against private respondents 8 to 13 and said private respondents be directed not to harass them.
9.	1114/18	Petitioner No.1 was the wife of private respondent No.7 who divorced her but retained the custody of their infant son ; petitioner No.1 has now contracted marriage with petitioner No.2 due to which private respondents, including	SSP, DSP and SHO concerned be directed to provide protection to the petitioners and not to register any false FIR against them.

		her ex-husband, have declared them as <i>karo kari</i> and are harassing them in connivance with official respondents.	
10.	1115/18	Private respondents 5 and 6, who are real sisters of petitioner, have received their due share in the joint property, but at the instigation of private respondent No.8, they are again claiming their share ; and, upon refusal by the petitioner, official respondents have started harassing him at the instance of private respondents.	Respondents be directed not to harass petitioner and his family members and official respondents be directed to provide protection to them.
11.	1116/18	After the death of the father of petitioner and private respondents 5 and 6, the said private respondents / brothers of petitioner hatched a conspiracy to usurp her share with the help of local police.	SSP and SHOs concerned be directed to provide protection to the lives and properties of the petitioner and her family members, and SHOs concerned be directed not to harass them and not to register any false case against them.
12.	1117/18	Petitioner No.1 was the wife of private respondent No.14 and after being divorced by him, she contracted marriage with petitioner No.2 due to which private respondents, including her ex-husband, have declared them as <i>karo kari</i> and are harassing them in connivance with official respondents.	SSP and SHO concerned be directed to provide protection to the petitioners and their family members, and the three SHOs mentioned in the title be directed not to register any false FIR against them.
13.	1118/18	Private respondents 7 to 14 want to usurp the petitioner's land and upon his resistance, a false FIR was registered against him and he was also being harassed by local police at the instance of private respondents.	IGP, DIGP and SSP concerned be directed to restrain SHO, DSP and ASI concerned from harassing the petitioner and his family members at the behest of private respondents, not to register any false case against them and to provide protection to them.
14.	1119/18	Police officials described in the petition had demanded illegal gratification from petitioner and upon his refusal he was taken to police station where he was beaten up and was deprived of Rs.55,000.00 ; SSP concerned did not take any action on his complaint ; and, SHO concerned is harassing him and has threatened to lodge a false FIR against him.	Police officials be directed not to harass the petitioner, not to demand illegal gratification from him and not to lodge any false case against him.
15.	1122/18	Petitioner obtained loan from private respondents for treatment of his wife which was settled by him, but the said respondents with the help of police officials have now asked	SHOs concerned be directed not to harass the petitioner and his family members and to provide protection to them.

		petitioner to pay Rs.200,000.00 to each of them, failing which criminal cases will be registered against him.	
16.	1123/18	Private respondents, who were armed with deadly weapons, took away the petitioner's crop from his land and threatened him not to take any action against them ; an FIR of this incident was lodged by the petitioner ; after seeking pre-arrest bail, the accused / private respondents started harassing him ; and, when he approached the police station, illegal gratification was demanded from him by police.	Private respondents / accused be directed not to harass the petitioner and not to file false applications against him, and official respondents / police officials be directed to provide protection to him.

3. It was mainly contended by learned counsel for the petitioners that the remedy provided in Sections 22-A and 22-B Cr.P.C. is not speedy and effective, and the Ex-Officio Justice of Peace cannot exercise such powers that can be exercised by the High Court. It was further contended by them that in case of harassment in more than one district, the Ex-Officio Justice of Peace can exercise jurisdiction only in his own district and not in other districts. Regarding the cases of free will marriages, it was contended by them that the parties contracting marriage without the consent of their elders are usually under serious threat as they are declared *karo kari* either by the elders or by a *jirga* held at the instance of the elders ; and, in such cases it is difficult for the parties to approach the police or Ex-Officio Justice of Peace in their own district. It was also pointed out by them that in most of such cases FIR for kidnapping, abduction and rape is registered against the person who marries a girl without her elders' consent.

4. Both the learned Assistant Advocates General Sindh have vehemently opposed these petitions by submitting that Article 199 of the Constitution cannot be invoked without first availing the remedy prescribed by law and if the remedy is concurrent, even then the petitioners ought to have approached the lower forum first as per the settled law. They have also highlighted the difficulties faced by the law officers representing the Province of Sindh because of such large number of petitions, including coordination with hundreds of police officers who are made parties therein, due to which they are unable to defend cases wherein important issues are involved. They have relied upon Younas Abbas and others supra, Muhammad Bashir V/S SHO Okara Cantt. & others, PLD 2007 SC 539, Dr. Abdul Rauf V/S Federation of Pakistan, 2013 PCrLJ 1671,

Muhammad Yousaf V/S Dr. Madad Ali @ Gulab Laskani & 8 others, PLD 2002 Karachi 328, Mst. Bhaitan V/S The State & 3 others, PLD 2005 Karachi 621, Muhammad Mushtaq V/S Additional Sessions Judge Lahore & others, 2008 YLR 2301 and Mst. Sulima V/S Government of Sindh through Secretary Home Department & 14 others, 2013 PCrLJ 100. The conclusion drawn in the written synopsis submitted by learned AAGs reads as under :

**“CONCLUSION**

*The wording of Article 199(1) of the Constitution of Islamic Republic of Pakistan, 1973, is very much clear which reads “Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law” regarding directly approaching the High Court in the above matters. Meaning thereby that where there is any adequate remedy available the Constitutional Jurisdiction of the High Court cannot be invoked before availing that remedy.*

*From the detailed discussion placed above in the light of parameters laid down by the Honourable Courts without hesitation it can be said that practice of directly approaching the High Court in the matters relating to (i) Harassment and Protection Petitions (ii) Petitions seeking directions for registration of criminal cases and (iii) Transfer of Investigation etc. must be deprecated and the route of such litigation must be turned towards the speedy, efficacious and alternate remedy available i.e. Sub-Ordinate Courts / Ex-officio Justice of Peace so that the main purpose of insertion of Section 22-A(6) be got in a fruitful manner, besides lessening the burden from the High Courts. This will prove as an step towards provision of expeditious and inexpensive justice to the people at their doorstep and downtrodden people can see eye to eye with those who infringed their rights with impunity in the past. There is string of judgments pronounced by the Honourable Apex Court as well as High Courts in conformity of these views. However, few of those judgments have already been highlighted above.”*

5. Learned Amicus Curiae, M/S Qurban Ali Malano and Zulfiqar Ali Sangi Advocates, who are the present President and General Secretary (respectively) of the Sindh High Court Bar Association Sukkur, and Mr. Jamshed Ahmed Faiz Advocate, as well as learned counsel for private respondents M/S Manoj Kumar Tejwani and Muhammad Shakeel Lakho, have adopted the arguments advanced and cases relied upon by learned Assistant Advocates General Sindh, and have strongly opposed these petitions. Additionally, it was contended by them that this Court is not the proper forum for such petitions and the same ought to have been filed before the forum provided by law ; and, the trend of not giving due importance to the prescribed forum merely because it is a lower forum, is not a healthy sign and it is against the spirit of law. They have also voiced concern about the delay in hearing and disposal of important cases before this Court because of such petitions. According to them, every case the jurisdiction whereof is vested in this Court under the law, falls within the

definition of important case, and all such cases wherein the jurisdiction lies before some other forum and have been filed before this Court intentionally or unintentionally, should be discouraged and stopped forthwith by passing a formal order.

6. It can be seen from the pleadings in these petitions that in almost all these cases disputes have been alleged between private parties either in respect of moveable or immovable properties or in relation to obligations arising out of contracts or breach of legal or moral duties ; and in this background, it has been alleged that the private parties at fault are harassing the petitioners either themselves and/or with the help of police officials and instead of taking action against the wrongdoers, the police is supporting them. In C.P. No. D-1119/2018 direct and specific allegations of illegal gratification, extortion and harassment have been made only against police officials. During the past several years we have seen the above position with the same stereotypical allegations and relief in thousands of petitions filed under Article 199 which are basically of three types ; first, harassment by police officials at the instance of private individuals or otherwise ; second, harassment by private individuals with the help of and/or under protection of police ; and third, free will marriage resulting in strong hatred and enmity against the parties contracting marriage by their families. In all the above scenarios, and particularly in the last one of free will marriage, protection of police is sought against alleged harassment. In large number of cases a direction is also sought that false case or FIR should not be registered by the police, and the wrongdoers / private individuals be restrained from harassing the alleged victim / petitioner.

7. In view of the above, the Bench of this Court at Sukkur as well as the Circuit Courts at Hyderabad and Larkana and to some extent the Principal Seat at Karachi are faced with the following situation resulting in additional workload and consuming time of this Court and that of genuine litigants causing hardship to the latter ; details whereof are based on our own experience, statistics provided to by the office and submissions made by learned Assistant Advocates General Sindh, learned Amicus Curiae and learned counsel for private respondents :

I. About 40–50% of the cases listed in the daily cause list at the Bench of this Court at Sukkur and the Circuit Courts at Hyderabad and Larkana pertain to one of the above three types.

- II. Due to such large number of cases fixed on daily basis, other important criminal, civil and constitutional matters, which in fact are the matters supposed to be dealt with mainly, heard and decided by this Court in its appellate and constitutional jurisdiction, cannot be taken up.
- III. The main prime time of this Court and energy of the learned judges and their staff are consumed and exhausted in all such cases leaving hardly any time or energy to take up the urgent, serious and important cases that are actually meant to be heard and decided only by this Court.
- IV. The important cases of urgent nature that cannot be taken up, adjourned and delayed, inter alia, are criminal appeals against conviction or acquittal, criminal revision applications, bail applications wherein the accused enlarged on interim bail unnecessarily enjoy their freedom or the accused in custody painfully wait for the turn of their cases, habeas corpus petitions wherein the detainees continue to be in illegal detention, important civil matters of urgent nature including appeals and revisions against the judgments / decrees / orders of subordinate courts, matters involving issues relating to succession and inheritance, tax and fiscal matters, banking matters, family matters, rent matters, service matters, labour matters, election matters, land acquisition matters, land revenue matters, building control matters, cases in which interim orders are operating or proceedings of lower courts are suspended, etc.
- V. Not only are the learned judges of this Court and their staff forced to spend their time and energy on such type of cases on a daily basis, but the entire office staff also has to get involved in every single case starting from its presentation, scrutiny, preparation of file, registering and numbering, paging, seeking order from Additional Registrar to place it before the Court, entering it in the cause list, etc. ; and when notice is ordered by the Court, then in preparing and issuing notice to all respondents and Advocate General, whereafter bailiff of the Court also gets involved in the process.
- VI. Upon receiving notice, the office of Advocate General also comes into action by calling comments from official respondents who are mostly police officials, then by drafting and filing formal comments in Court on their behalf and then by appearing before the Court for assistance in every case on every date of hearing.



- VII. Invariably in all cases several police officials including ASIs, Inspectors, SHOs, DSPs, SPs, SSPs, DIGs and even the IGP are cited as respondents. It has been observed that due to this reason about three to five police officials are present in Court daily in every case making the total number of police officials present in Court every day from morning till late afternoon to about seventy to eighty. Presence of such large number of police officials in Court on a daily basis only because of these cases based on mere allegations and resultantly their absence from their respective areas is indeed alarming as all such police officials are stopped by these cases from performing their duty of preventing and controlling the crime and maintaining law and order in their respective areas of jurisdiction. Moreover, the State has to bear additional expenses of all such police officials coming from different districts to attend the Court on every date of hearing.
- VIII. In most of the cases, comments filed by police officials show that criminal cases, specific details whereof are also disclosed in the comments along with copies of relevant record, are pending against the petitioner and in some cases also against his family members, or complaints against them are pending. We have also come across such cases wherein the petitioner and/or his family members have been declared as absconders by the trial court. This trend clearly shows that a large number of such petitions are filed only in order to pre-empt registration of criminal cases or to sabotage the investigation and/or trial of the cases already registered.
- IX. Another shocking yet unfortunately common example of petitions alleging harassment is allegations against Government officials, such as officials of Irrigation and Revenue Departments. The allegations in such cases inter alia are, at the instance of private party watercourse has been changed illegally or watercourse is not being changed or allowed despite application or water supply has been stopped ; at the instance of private party demarcation of land is not being effected or illegal demarcation has been effected ; *Fouti Khata* of land is not being changed or mutation is not being effected ; sale certificate of land is not being issued ; etc. Such frivolous and ill-advised petitions are filed directly before this Court despite the fact that the remedies of the acts complained of lie with the Irrigation and Revenue authorities.

- X. It is a common practice that when the petitioner or his counsel in any of the above type of petitions is asked to satisfy the Court regarding their maintainability or why the remedy is not being availed before the forum provided by law, they state that the purpose of filing the petition will be achieved once notice is ordered by the Court, and they insist upon issuance of notice to respondents. This trend clearly indicates that the main purpose of filing such petitions is to pressurize the respondents so that upon seeing the notice with the seal of the High Court, they may succumb to the demand of the petitioner or drop the case / complaint against him or settle the dispute with him at his terms, as the case may be.
- XI. It was observed by us in hundreds of such petitions that the allegations and relief contained therein and their drafting / language were verbatim the same. Upon inquiry, it transpired that computer operators having no background, education or training in law, are carrying their business freely in vicinities close to the Court, and one of such operators was called by this Court in C. P. No.S-341/2018 to explain his position. These operators, who also act as touts, lure innocent and uneducated people and after persuading them to indulge themselves into litigation, draft their stereotype petitions by simply filling in the blanks in the draft already saved in their computers and then hand them over to the advocates. All these disturbing facts have been disclosed to the Court by various "forced" litigants who were incidentally present in Court or were called due to suspicion. Most shockingly, none of them had the vaguest idea about the allegations made or relief sought in the petition on their behalf, and it was stated by them that they were told that in order to pressurize and impress the opposite party, they should file the case directly before the High Court instead of wasting their time and money before the lower court.
- XII. It has been observed that these type of petitions are filed by a handful of advocates. It is indeed unfortunate that instead of building their professional career by indulging themselves into proper and main stream of litigation, such advocates, who are mostly young, energetic and intelligent, waste their energy and valuable prime time in such frivolous petitions that do not add any experience or intellectual ability to their career. Such advocates, who have great potential and ability to help

genuinely aggrieved litigants, have no idea about the vast areas and subjects of law wherein they can practice and by doing so how much they can contribute in the field of law by the assisting the High Court in the dispensation of justice. It is even more unfortunate that due to the above, genuine causes are delayed indefinitely and the litigants involved and advocates engaged in such genuine causes suffer tremendously.

8. The workload and pressure, coupled with the sense of responsibility and expectation of quality judgments / orders, faced by every learned judge of this Court is immense and it cannot be expressed in words. The actual negative and adverse impact of these type of petitions on the working of this Court is much greater than the above narration. The abuse of the process of this Court in the manner briefly narrated above directly affects the performance of every individual judge and consequently affects the overall image of the institution of judiciary's proper and speedy dispensation of justice. Because of these frivolous and ill-advised petitions, the learned judges of this Court do not get sufficient time to hear serious and important matters or to render judgments and orders within time. Thus, these type of petitions are one of the major causes of delay in the decision of cases and delivering judgments or recording reasons. We can say with conviction that if such frivolous and meaningless petitions are kept away from this Court, (a) the dispensation of justice will be speedy and expeditious in true sense ; (c) even the office of the Advocate General Sindh, who is responsible to protect the interest of the Government, will be able to concentrate on sensitive matters involving health, education and state land, and will be able to assist this Court in a proper manner ; and, (d) the advocates will also get much better opportunity and environment to gain professional experience for building their career.

9. As noted above, remedy against the Irrigation and Revenue Departments lies within the said departments under the law. The remedy against police functionaries is available before the Ex-Officio Justice of Peace under Sections 22-A and 22-B Cr.P.C. In case of wrongs and offences committed by other public servants, they can be prosecuted against in respect of the offences provided in Chapter IX of the Pakistan Penal Code, 1860. As far as criminal wrongs, including harassment, committed by private parties are concerned, the aggrieved party is required to approach the SHO concerned who after recording his statement under Section 154 Cr.P.C. is bound to register FIR against the accused if a cognizable offence is made out. If the SHO does not record such statement or after recording statement in relation to a

cognizable offence does not register FIR against the accused, the aggrieved party is required to approach the Ex-Officio Justice of Peace concerned under the above sections by filing an application. Needless to say that Article 199 cannot be invoked against a private party under any circumstances. Regarding those cases wherein a direction is sought against the police that false case or FIR should not be registered are concerned, we are of the view that such cases are misconceived and not maintainable as only the Magistrate concerned is competent to decide whether a case is false or not, and that too only after investigation and examination of the investigation report. It is well-settled that investigation in a criminal case cannot be interfered with by this Court. If any party feels that the allegation / case against him is false or he is aggrieved with the investigation report in respect thereof, he has the remedy under the law to challenge such report before the competent forum. In addition to the above, the remedy of a private complaint under Section 200 Cr.P.C. is not only available, but has also been held to be an effective, practical and adequate remedy by a learned Division Bench of this Court in Mrs. Ghanwa Bhutto and another V/S Government of Sindh and another, **PLD 1997 Karachi 119**. Thus, Article 199 of the Constitution cannot be invoked directly in any of the above events / situations without first availing and exhausting the remedies provided by law.

10. There was a misconception and trend, which unfortunately is still subsisting, that in any of the situations discussed above Article 199 of the Constitution can be invoked without availing and exhausting the remedy provided by law, on the ground of violation of fundamental rights guaranteed by the Constitution. It used to be and is still being argued, as in the present petitions, that the remedy provided in Sections 22-A and 22-B Cr.P.C. is not speedy and effective as the Ex-Officio Justice of Peace cannot exercise such powers that can be exercised by the High Court, and as such the High Court is duty-bound to entertain such cases in order to protect such rights. This controversy has now been finally and completely set at rest by a Larger Bench of five (05) Hon'ble Judges of the Supreme Court of Pakistan in the case of Younas Abbas and others V/S Additional Sessions Judge Chakwal and others, **PLD 2016 Supreme Court 581**.

11. It has been held inter alia in Younas Abbas and others supra that the functions performed by the Ex-officio Justice of Peace being quasi judicial in nature cannot be termed as executive, administrative or ministerial as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind ; with the insertion of Sub-

Section (6) in Section 22-A, an aggrieved person could get in time at his doorstep, what he could not get despite approaching the High Court ; ever since the day the Sessions Judges / Additional Sessions Judges became the Ex-Officio Justices of Peace, no rich and well off person could break the law with impunity or obstruct the person oppressed and assaulted from seeking remedy at his doorstep ; if the SHO of a Police Station, owing to the influence and affluence of any, refused to register a case, resort could be had to the Ex-Officio Justice of Peace for the issuance of an appropriate order or direction by moving a simple application ; aggrieved persons, who could not afford the luxury of engaging a lawyer in the past for filing a writ petition in a High Court to get the desired relief, could seek an order or direction from the Ex-Officio Justice of Peace without spending much ; he could complain against the neglect, failure or excess committed by the Police Authorities in relation to their functions and duties ; the legislature rose to the occasion, enacted Sub-Section (6) of Sections 22-A and 25 Cr.P.C. and enabled the poor and the downtrodden to see eye to eye with those who infringed their rights with impunity in the past ; jurisdiction to issue a writ is traditionally a high prerogative jurisdiction of a High Court, but such jurisdiction has now been conferred on the Ex-Officio Justices of Peace as the power to issue direction in the nature of habeas corpus has been conferred on the Sessions Judges and Additional Sessions Judges under Section 491(1-A) Cr.P.C. ; the rationale behind conferment of such powers on the Ex-Officio Justices of Peace under Sub-Section (6) of Section 22-A and on the Sessions Judges as well as Additional Sessions Judges under Section 491(1-A) Cr.P.C. is to provide remedy to an aggrieved person at his doorstep; the provisions contained in Sub-Section (6) of Section 22-A and Section 25 Cr.P.C. do not infringe any of the fundamental rights guaranteed by the Constitution ; on the contrary, they not only facilitate their enforcement but also guard against their infringement by providing expeditious and inexpensive justice to the people at their doorstep ; and, the parameters laid down for the High Courts are equally applicable to the Ex-Officio Justice of Peace exercising almost similar powers.

12. We may also refer to the cases of Dr. Sher Afgan Khan Niazi V/S Ali S. Habib and others, 2011 SCMR 1813, Muhammad Abbasi V/S SHO Bhara Kahu and 7 others, PLD 2010 SC 969, Dr. Abdul Rauf V/S Federation of Pakistan through Interior Secretary & others, 2013 PCrLJ 1671 and Muhammad Yousuf V/S Dr. Madad Ali @ Gulab Laskani & 8 others, PLD 2002 Karachi 328.

- A. In Dr. Sher Afgan Khan Niazi supra, a criteria has been laid down for High Courts by the Hon'ble Supreme Court for determining the adequacy of the relief, and one of such criteria is that *"If it appears that the machinery established for the purposes of that remedy is not functioning properly, the correct step to take will be a step that is calculated to ensure, as far as lies in the power of the Court, that that machinery begins to function as it should. It would not be correct to take over the function of that machinery. If the function of another organ is taken over, that other organ will atrophy, and the organ that takes over, will break down under the strain."* The above criteria laid down by the Hon'ble Supreme Court leaves no doubt that the functions of the machinery of the Ex-Officio Justice of Peace established as a remedy specifically to cater the issues at hand should not be taken over by this Court, and if this Court finds in any particular case that such machinery is not functioning properly, the correct step to take would be to ensure that such machinery begins to function as it should.
- B. In Muhammad Abbasi supra, it was held inter alia by the Hon'ble Supreme Court that it is well-settled by now that extraordinary jurisdiction of High Court is available only after all other legal remedies are exhausted ; and, Constitutional jurisdiction of High Court would be declined where the petitioner has not exhausted all remedies available to him before filing of Constitutional Petition.
- C. In Muhammad Yousaf supra, it was held by Hon'ble Mr. Justice Mushir Alam (as his lordship then was) that jurisdiction under Sections 22-A and 22-B Cr.P.C. vests both in the High Court and Court of Sessions, therefore, as a rule of propriety the Court of first instance should be approached first.
- D. In Dr. Abdul Rauf supra, the view taken in Muhammad Yousaf supra was affirmed by a learned Division Bench of this Court and it was further held that the remedy under Sections 22-A and 22-B *ibid*, being more efficacious and speedy, should be availed before approaching this Court.
13. In view of the authoritative pronouncement by Hon'ble Supreme Court in Younas Abbas and others supra and the other cases briefly discussed above, the argument of learned counsel for the petitioners that the remedy provided in Sections 22-A and 22-B Cr.P.C. is not speedy and effective or the Ex-Officio

Justice of Peace cannot exercise such powers that can be exercised by the High Court, is not tenable. Their other argument that in case of harassment in more than one district, the Ex-Officio Justice of Peace can exercise jurisdiction only in his own district and not in other districts, also has no force as normally the aggrieved party seeks protection against the alleged harassment by police officials and private parties in the district where he resides or works for gain. Therefore, he can very conveniently approach the SHO concerned and upon his failure the Ex-Officio Justice of Peace of that district, and if for any reason he feels threatened in any other district also, he can simultaneously approach the SHO / Ex-Officio Justice of Peace of that other district as well. Such remedy, being speedy and inexpensive as held in Younas Abbas and others supra, can be availed by aggrieved party as long as his apprehension subsists. Certainly Article 199 cannot be invoked directly on such flimsy ground. It is important to note that it is not the case of any of the petitioners that the remedy provided by law was availed by them prior to invoking Article 199, but they are still aggrieved. In fact, it has been conceded on behalf of all the petitioners that they did not avail the remedy provided by law at all before filing these petitions.

14. In our humble opinion, one of the reasons for introducing the doctrine of alternate remedy was to avoid and reduce the number of cases that used to be filed directly before this Court, and at the same time to allow the prescribed lower forum to exercise its jurisdiction freely under the law. Moreover, if a person moves this Court without exhausting the remedy available to him under the law at lower forum, not only would the purpose of establishing that forum be completely defeated, but such person will also lose the remedy and the right of appeal available to him under the law. Under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, for the determination of civil rights and obligations or in any criminal charge against him, every citizen is entitled to a fair trial and due process. Therefore, it follows that fair trial and due process are possible only when the Court / forum exercises jurisdiction strictly in accordance with law. It further follows that this fundamental right of fair trial and due process in cases before this Court is possible when this Court exercises jurisdiction only in cases that are to be heard and decided by this Court and not in such cases where the remedy and jurisdiction lie before some other forum. If the cases falling under the latter category are allowed to be entertained by this Court, the valuable fundamental right of fair trial and due process of the persons / cases falling under the former category will certainly be jeopardized.

15. The apprehension expressed on behalf of the petitioners regarding the safety of parties contracting free will marriages and FIR lodged in such cases against the person marrying a woman without the permission of her *wali*, cannot be ignored. Keeping this apprehension and all other aspects in mind we had passed a short order on 30.05.2018 whereby all these petitions were dismissed with a direction to Ex-Officio Justice of Peace in the following terms :

*“In all these petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have alleged that they are being harassed by the official and/or private respondents and on the basis of such allegations, they have prayed that protection be granted to them against the respondents. Prior to the filing of these petitions, admittedly none of the petitioners have availed or exhausted the remedy against such wrong by approaching the competent forum provided under the law i.e. the Ex-Officio Justice of Peace. It has been observed that this practice has become very common and at one stage the total number of such petitions was about 20% of the total cases pending before this Court. Not only this, about 2/3<sup>rd</sup> of the cause list used to have such cases daily for hearing. Due to this reason, the Court was unable to hear important / main cases, both of civil and criminal nature, resulting in an alarming increase in the number of pending cases. In this background, all these petitions were heard at length to decide whether this Court should continue to entertain such petitions at the cost of serious and actual litigation or should an order be passed that such persons should avail their remedy by approaching the competent forum provided by law.*

*It was mainly contented on behalf of the petitioners that cases cannot be filed before the Ex-Officio Justice of Peace if petitioners and respondents reside in different districts, and police officials do not obey if any order for protection is passed by the Ex-Officio Justice of Peace. As regards their first contention, the person seeking protection can approach the Ex-Officio Justice of Peace of such district where the protection is required by him. Their second contention can also be addressed by the Ex-Officio Justice of Peace himself. Both the learned AAGs as well as both the learned amicus curiae and learned counsel for one of the private respondents have strongly opposed these petitions by contending that such matters should not be filed before this Court as Ex-Officio Justice of Peace is the proper forum for such matters according to law and if this Court has concurrent jurisdiction, even then the cases should be filed at the lowest level according to the settled law.*

*Learned counsel for the petitioners, learned counsel for one of the private respondents, learned AAGs and learned amicus curiae have been heard at length. For the reasons to follow, all these petitions are dismissed with no order as to costs. As an interim measure till the reasons of this short order are handed down office is directed to entertain only such petitions in which :*

- i) the petitioner has already approached Ex-Officio Justice of Peace and his application / complaint has been finally decided by Ex-Officio Justice of Peace, provided certified true copy of the final order is filed with the petition ; and*
- ii) F.I.R. has been lodged against the husband in case of free will marriage, provided true copy of the F.I.R. is filed with the petition.*



*Learned Ex-Officio Justice of Peace of all districts are directed that if any order of protection etc. is passed by them in future on an application / complaint of a party, the S.H.O. concerned should be directed by them to submit compliance report to them within seven (07) days.”*

These are the reasons of our above order. The interim measure ordered above is hereby made absolute by directing the offices at all Benches and Circuits of this Court to strictly follow the same in letter and spirit. Office is further directed to circulate this judgment forthwith for information and compliance to the Registrar, Additional and Assistant Registrars of this Court at the Principal Seat at Karachi, Bench at Sukkur and Circuit Courts at Hyderabad and Larkana, as well as to all the learned Sessions Judges / Ex-Officio Justices of Peace in the Province of Sindh.

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