

THE HIGH COURT OF SINDH KARACHI

Criminal Revision Application No. 201 of 2019

*For orders on office objection at 'A'.
For orders on CMA No. 13364 of 2019.
For hearing of main case.*

Applicant : Mst. Naghma Imran through Syed Abdul Waheed, Advocate.
Respondents : The State and 6 others.
Date of hearing : 06-12-2019
Date of order : 06-12-2019

ORDER

Adnan Iqbal Chaudhry J. - The private complaint preferred by the Applicant was dismissed by the learned Magistrate under section 203 Cr.P.C. Against such dismissal, the Applicant has preferred this Criminal Revision directly to the High Court under sections 435 and 439 Cr.P.C. Therefore, the office has raised the following objection:

“How this Cr. Revision Application is maintainable without exhausting the remedy of District & Sessions Judge/Court ?”

Learned counsel for the Applicant submits that where a private complaint is dismissed by the Magistrate under section 203 Cr.P.C., the Revision application lies directly to the High Court and not to the Sessions Judge. To support that argument, learned counsel has relied on *Abdul Sattar Khan v. State* (2014 P.Cr.LJ 1133) and *Mir Khan v. Allah Wadhayo Pitafi* (2011 P.Cr.LJ 1362). In both cases a Revision application was preferred directly to the High Court from the order of the Magistrate. While the case of *Mir Khan* does not discuss the question raised, a learned single Judge of the Lahore High Court in the case of *Abdul Sattar Khan* held that though under section 439-A Cr.P.C., the Sessions Court too had the power to entertain a Revision application against the order of the Magistrate, however, a Revision application preferred directly to the High Court was also maintainable in view of vast power of the High Court under section 435 Cr.P.C.

Section 435 Cr.P.C. states :

“435. Power to call for records of inferior Courts. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation. All Magistrates shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section.”

In *Abdul Hafeez v. State* (PLD 1981 SC 352), the question was whether the Court under the Drugs Act was an “inferior Criminal Court” to the High Court within meaning of section 435 Cr.P.C. The Supreme Court observed that by using the word “inferior” instead of word “subordinate”, the intent was to avoid the limitation of the latter word which could prevent the High Court from looking into cases arises beyond the line of subordination.

Therefore, while it is correct to state that the High Court acting under section 435 Cr.P.C. can “call for and examine” the record of any proceeding before “any inferior Criminal Court”, including the Magistrate, that is not the same as saying that a Revision application against an order of the Magistrate can be filed by a litigant directly before the High Court as a matter of right, for then the Explanation clause of section 435 read with section 439-A Cr.P.C. would become redundant. In my view, the Explanation clause of section 435 Cr.P.C. entails that while the High Court can call for and examine the record of proceeding before a Magistrate, either *suo moto* or in Revision arising from an order of a Sessions Judge, a Revision ‘application’ against the order of a Magistrate is to filed by the litigant to the Sessions Judge to whom the Magistrate is a Court ‘inferior’ within the meaning of the Explanation clause of section 435 Cr.P.C.

In view of the above, the office objection is upheld and this Revision application is dismissed. The Applicant may move the same before the Sessions Judge concerned.

JUDGE