

**ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P. No.D-1230 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:
Mr. Justice Arshad Hussain Khan
Mr. Justice Irshad Ali Shah

1. For orders on M.A. No.5419/2021.
2. For orders on office objections.
3. For orders on M.A. No.5420/2021.
4. For orders on M.A. No.5421/2021.
5. For hearing of main case.

05.08.2021

Mrs. Razia Ali Zaman Patoli, Advocate for the petitioner.

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1. Urgency granted.

2to5. The facts in brief necessary for disposal of instant constitutional petition are that the private respondent filed a direct complaint, the cognizance whereof was taken by learned 3rd Civil Judge & Judicial Magistrate Sanghar for offence punishable u/s: 3 and 4 of Sindh Child Marriage Restraint Act 2013, vide his order dated 19.06.2021, which is impugned by the petitioner before this Court by preferring instant constitutional petition.

On being asked how an order passed by the Magistrate u/s: 204 Cr.P.C can be examined by this Court, in exercise of its constitutional jurisdiction? It was stated by learned counsel for the petitioner that this Court can do everything in exercise of its constitutional jurisdiction to meet with the ends of justice. In support of her contention, she relied upon case of *Muhammad Fayyaz Khan Vs. Ameer Khan and another* [2010 SC 105].

The impugned order has been passed by learned Magistrate on a direct complaint in exercise of his powers u/s: 204 Cr.P.C. It apparently is a judicial order, legality or illegality whereof could be examined only by Sessions Judge having jurisdiction in exercise of his powers u/s: 439-A Cr.P.C and not by this Court in exercise of its Constitutional jurisdiction under the garb to meet with the ends of justice.

In case of *Muhammad Farooque Vs. Ahmed Nawaz Jagirani & others* [PLD 2016 SC 55] it has been held by Hon'ble Apex Court that:

“10.....The orders passed either under Section 203, Cr.PC whereby the direct complaint is dismissed or under Section 204, Cr.PC whereby the Court has taken cognizance of an offence complained of and has issued warrants or summons for causing the accused to be brought or produced before the Court are judicial orders. Where taking cognizance of the offence after hearing the accused persons and the Prosecutor, the Court considers that the charge is groundless or that there is no probability of the accused being convicted of any charge, it may record acquittal under section 249-A Cr.P.C and or Section 265-K Cr.P.C as the case may be. The Sessions Judge and or the High Court under Sections 435 and 439 Cr.P.C may exercise Revisional power to examine the legality or propriety of any order passed and or examine the regularity of any proceedings of the Court subordinate to it. Exercise of jurisdiction under Section 561-A, Cr.P.C by the High Court is akin to the exercise of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973; exercise of such jurisdiction is not to be exercised in routine and or as a matter of course merely because such jurisdiction is available and or could be exercised. Exercise of inherent jurisdiction is dependent on non availability of alternate and efficacious remedy and or existence of some extraordinary circumstances warranting exercise of such jurisdiction by-passing such alternate remedy by the High Court. Another rule of propriety, that has evolved by precedent law must not lose sight is that where two Courts have coextensive or concurrent jurisdiction, than the propriety demands that jurisdiction of Court of the lower grade is to be invoked in the first instance.”

Nowhere in the case law relied upon by learned counsel for the petitioner it is held that the order dismissing a direct complaint by Magistrate could be examined by the High Court in exercise of its constitutional jurisdiction without having a recourse under section 439-A Cr.P.C.

In view of the facts and reasons discussed above, the instant constitutional petition being misconceived is dismissed in *limine* together with the listed applications.

JUDGE

JUDGE

Muhammad Danish Steno*