

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitution Petition No. S-284 of 2019
Constitution Petition No. S-285 of 2019
Constitution Petition No. S-286 of 2019
Constitution Petition No. S-287 of 2019
Constitution Petition No. S-288 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of main case.

Malik Sadaqat Awan, Special Prosecutor, SSGC.

26th May, 2022

Omar Sial, J: The orders of the learned 8th Judicial Magistrate, Karachi South dated 12-9-2017, 14-9-2017, 19-9-2017, 20-9-2017 and 13-10-2017 have been challenged in all the above captioned petitions. The orders are the same and therefore all petitions will be disposed of through this common order.

2. A background to the case is that all the petitioners are alleged to have indulged in the act of stealing gas under sections 15 and 17 of the Gas (Theft, Control and Recovery) Act, 2016. F.I.Rs were registered against each petitioner however details of those F.I.R.s are not important for the present purposes.

3. During the hearing of the cases before the learned magistrate, it was argued by the respondents that the court could not take cognizance of the cases as according to section 5(2) of the Act of 2016, the same could only be done on a complaint made by an authorized officer of the gas utility company. The learned magistrate agreed with the stance of the respondents and therefore discharged all the petitioners and directed that the petitioners may file complaints instead of F.I.R.s. SSGC has challenged the order of the learned magistrate through these petitions.

4. I have heard the learned special prosecutor for SSGC whereas the respondents counsels preferred to remain absent despite having been given several opportunities to put forward their stance and on the previous date also cautioned that no further time will be given. My observations and findings are as follows.

5. It is pertinent to mention that the SSGC's allegation in all the cases is that all the respondents do not fall within the ambit of a "domestic consumer" of gas and in fact a large volume of gas has been stolen by them and that they are all "commercial or industrial consumers". Whether or not the respondents were domestic or commercial and industrial consumers is a factual question which cannot be decided in the writ jurisdiction of this court. Prima facie the allegations leveled against them SSGC appear to make them fall within the latter group of consumers. It however appears that the learned magistrate was not assisted properly and the judgment of the Honorable Supreme Court in the case of **Mian Haroon Riaz Lucky and another vs The State and others (2021 SCMR 56)** was not brought to his attention. In this case the Honorable Supreme Court dismissed petitions seeking cancellation of the F.I.R.s on the same ground as in the present cases. The Honorable Supreme Court was of the view that except in cases on a domestic consumer, cases filed under the Act of 2016 were liable to be dealt with in accordance with the provisions of the Code and thus registering F.I.Rs was permissible.

6. In view of the above, the impugned orders are set aside.

JUDGE