IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Applications No. 186 and 189 of 2022

Applicants in Criminal Revision Application No.186/2022	:	through M/s. Jam Asif Mehmood & Gohar Mehmood, advocates
Applicants in Criminal Revision Application No.189/2022	:	through Mr. Riaz Akhtar Soomro advocate
Iqbal Hussain Channa, Respondent/Complainant in Both Revision Applications	:	through Mr. Sarfaraz Ali Metlo, advocate
State	:	through Mr. Gulfaraz Khattak, Assistant Attorney General for Pakistan
Dates of hearing	:	14.02.2023
Date of Judgment	:	09.03.2023
Date of Announcement	:	16.03.2023

J U D G M E N T

MUHAMMAD SALEEM JESSAR. J- By this single judgment, I propose to dispose of above-noted two criminal revision applications as both the applications arise out of the same order.

2. By means of instant Criminal Revision Applications the applicants have assailed Order dated 06.07.2022 passed by learned VIth Additional Sessions Judge, Karachi South in Private/Direct Complaint No. 872 of 2022, filed by respondent Iqbal Hussain Channa s/o Ameer Bux Channa whereby the trial Court has taken cognizance of the alleged offences and passed order for issuance of bailable warrants against the applicants in respect of the offences punishable under sections 449/500/501/34 PPC read with Section 502-A PPC. In Criminal Revision Application No.189 of 2022 the applicants have also assailed Order dated 25.03.2022 passed by learned XIIth Judicial Magistrate Karachi South whereby he had sent the complaint / case to the Court of

Sessions as, according to him, the alleged offences pertained to the jurisdiction of Sessions Court.

3. Brief facts, relevant for the disposal of instant Criminal Revision Applications, are that the respondent/complainant namely, Iqbal Hussain Channa S/o Ameer Bux Channa filed private complaint, stating therein that he is educated, well reputed businessman, respectable citizen of Pakistan, and is philanthropist, actively works for social welfare and enjoys high respect in family, friends, colleagues, peers and business community having wide social circle. He is also administrator of Income Tax Co-operative Housing Society, Sector 26-A, Gulzar-e-Hijri, KDA, Scheme-33, Karachi. According to him, the accused/opponents No.1 to 4 shown in the direct compliant are residents of the society, out of whom accused No. 1 to 3 falsely claim themselves to be the General Secretary, President and Finance Secretary respectively of the said society, who have prepared fake letter head of the society to deceit and cheat public. He further stated that accused Nos.1 to 3 wrote letter to SHO, PS Sachal claiming to be office bearers of the society, who got it verified from the Office of Managing Director, Sindh Cooperative Housing Society, who informed the SHO through letter dated 16.02.2022 that the respondent/complainant is the Administrator of the said Society and that the claim of accused No.1 to 3 to be the office bearers of the Society is false. He further stated that accused No.4 is the wife of an officer of NAB who has illegally encroached upon public road of the society by constructing a room over it, while accused Nos.5 to 16 are mainstream media (news) television channels, having viewership worldwide as mainstream media television channels in various countries including UAE, Kingdom of Saudi Arabia, United Kingdom, Europe, Canada, Australia, and United States etc., whereas accused Nos.17 to 30 are responsible for managing and running the accused No.5 to 16 being their CEOs, COOs, Directors and / or owners, while accused No.31 is the reporter of accused No.5, while accused No.32 is the reporter of accused No.16, accused No.33 has criminal record who has undergone imprisonment on account of his involvement in the case of thirteen murders of the persons of Pak Land Cement Factory and neither he is resident of the society, nor is the member thereof and despite that he participates and arranges hirelings for the malicious protest. Complainant further alleged that the accused in collusion with each other committed serious offences and labelled the complainant as a land grabber, extortionist (*Bhatakhor*), *gunda* and

hires armed *gundas* and is fake administrator of the Society and is involved in corruption of millions of rupees, based on disparaging, conjectural, misconceived, and false and incorrect informations against him causing defamation to him without hearing counter version of the complainant in disregard to responsible journalism as required by accused Nos.5 to 32. They ruined the complainant, torn down his dignity, weakened his esteem and social contribution and re-cognition of decades of continuous philanthropic and social efforts without even bothering to conduct any investigation and to seek a comment / counter version from the complainant although there was no urgent need to air such heinous imputations against him. According to him, certain delay if caused on account of verification of such allegations before publishing the same, would not have caused any harm. Accused No.5 to 32 practiced forbidden 'grey' journalism and acted in violation of second part of code 22 (1) of the 2015 code, section 20 (f) of the 2002 Ordinance and, so also the directions of the Superior Courts issued to the electronic media. His grievance is that the accused persons have committed offences under Sections 449, 500, 501 & 34 read with Section 502-A of Chapter 21 of PPC. Therefore the respondent/complainant namely Iqbal Hussain Channa S/o Ammer Bux Channa filed instant Private/Direct Complaint.

4. After filing the complaint, the Court of learned XII-Judicial Magistrate, Karachi South / Respondent No.2 in Cr. Revision Application No.189 of 2022, sent the same to the Court of Sessions for trial vide his Order dated 25.3.2022 as, according to him, the alleged offences pertained to the jurisdiction of Court of Sessions. On receiving the complaint, learned VIth Additional Sessions Judge, Karachi South / Respondent No.1 got recorded the statement of complainant Iqbal Hussain Channa and thereafter on 18.5.2022 sent the case to the Court of learned Judicial Magistrate-XII for holding preliminary inquiry/investigation. Accordingly, learned Judicial Magistrate- XII recorded statements of two witnesses of the complainant namely, Arbab Ahmed Shar and Tajuddin Buriro on 20.5.2022, then after hearing counsel for the complainant, learned VIth Additional Sessions Judge, Karachi South passed the impugned order which has been impugned in the instant criminal revision applications.

5. I have heard arguments advanced by learned counsel for the parties and have perused the material available on the record.

6. Learned counsel for the applicants in criminal revision application No.186 of 2022 submitted that Complaint under Section 200 Cr. P.C., (copy whereof is available at page 49 of the file) was not competent before the ordinary Court and while referring para 8 and 9 of said complaint, he submitted that remedy for respondent No. 2 is provided under section 26 of the PEMRA Ordinance, 2002, as according to him, sections 33 and 34 read with section 37 of the PEMRA Ordinance, 2002 bar the jurisdiction of Court, therefore, in present case remedy was available to complainant to approach the PEMRA Authorities through a complaint, which was required to be sent to Council of Complaint. He, therefore, submitted that Court below has wrongly assumed the jurisdiction; hence, impugned order dated 06.07.2022 (available at page 37 of the file), suffers from legal infirmity and cannot be maintained; hence, pray for quashment of the same. They further submitted that law cited at the bar by the counsel for respondent No. 2 does not show the discussion over the Sections 33, 34 and 37 of the PEMRA Ordinance, 2002; hence, facts and circumstances of those cases are different and distinguishable from present case, therefore, are not applicable in this case. Learned counsel for the applicants further submitted that the Court below has assumed wrong jurisdiction, which requires proper revision, therefore, revisions filed by the applicants are maintainable; hence, pray for grant of said revision applications and setting aside of the impugned order, with dismissal of the complaint, filed by respondent No. 2.

7. Learned counsel for the applicants have further argued that complainant/respondent No. 2 is involved in NAB Reference No.16/2019 (copy whereof is available at page 291 of Court file), besides the complainant/respondent No. 2 had also filed Suit No.603/2022 against the applicants before this Court (copy of the plaint is available page 385 of Court file), wherein he has leveled almost same allegations as has been mentioned under the complaint. Learned counsel have also referred to pages 205 and onwards, which are news lines screen shots flashed by the news channels against complainant/respondent No. 2, whereby the womenfolk as well as persons of the society had held procession against complainant/respondent No. 2 for forcibly encroachment on their respective houses. The counsel further submitted that applicant or any of the news channels had not given their personal opinion rather flashed the news covered by the correspondents of the news channels, therefore, no offence in terms of Section 500 PPC had

ever been committed by the applicants, which may warrant filing of complaint against them.

8. Learned counsel for the applicants in criminal revision application No.189 of 2022 submitted that while passing the impugned orders learned Judicial Magistrate as well as learned Additional Sessions Judge did not follow the procedure as prescribed in the criminal procedure code. He referred to sections 190, 192, 193, 200 and 202 Cr.PC and submitted that the Courts below have passed impugned orders in derogation of these sections. He further submitted that the allegations leveled against the complainant through media are, in fact true as such the same do not fall under the definition of defamation. He further submitted that superior Courts have held that in appropriate cases the inherent jurisdiction of this Court under section 561-A Cr.PC can be invoked without first approaching the lower Court under section 265-K Cr.PC. In support of his contention, learned counsel has placed reliance upon cases of *(i) GHULAM ALI Versus JAVID and another (1989 P.Cr.L.J 507), (ii) MIAN MUNIR AHMAD Versus THE STATE (1985 SCMR 257), (iii) MAHMOOD ABDULLAH Versus THE STATE (1987 P.Cr.L.J 33) & (iv) BABAR KHAN and another Versus THE STATE (1997 P.Cr.L.J 1297)*.

9. Mr. Gulfaraz Khattak, learned Assistant Attorney General for Pakistan, opposed Criminal Revision Applications and supported the impugned order to the effect that Court of Sessions is the competent forum to entertain the complaint under section 200 Cr. P.C., therefore, objection raised by the applicants/accused does not vitiate the status of the Court below.

10. Mr. Sarfaraz Ali Metlo, learned counsel for respondent No.2/complainant submitted that by virtue of Criminal Procedure Code, 1898, direct complaint has to be maintained before the Court of Sessions in terms of Section 200 Cr. P.C. and after completion of preliminary inquiry, the Court of Sessions being ultimate Court of trial, was the competent forum to take cognizance, which it did. He, therefore, submitted that revision applications are not maintainable and impugned order does not suffer from any illegality or infirmity, which may warrant interference by this Court. He has also referred to cases of Ch. ZULFIQAR ALI CHEEMA V. FARHAN ARSHAD MIR and others (PLD 2015 SC 134) as well as Haji SARDAR KHALID SALEEM V. MUHAMMAD ASHRAF and others (2006 SCMR 1192), and

submitted that after admission of the complaint before the trial Court, the remedy for the applicant was to file application under section 265-K, Cr. P.C. instead they filed instant revision application directly before this Court, which are not maintainable. He; therefore, submitted that by dismissing the revision applications, case may be remanded to the trial Court with direction to record evidence of the parties and decide fate of the cases, according to merits as well as law. In support of his contentions, he places reliance upon the cases of MUHAMMAD FAROOQ V. AHMED NAWAZ JAGIRANI and others (PLD 2016 SC 55) and SAEED GHANI V. Dr. SHAHID MASOOD and 3 others (2022 YLR [Sindh] Note 3).

11. In the first instance, I would like to deal with Cr. Revision Application No.186 of 2022. Learned counsel for the applicants in this revision application have mainly attacked the impugned order on the ground of maintainability of private / direct complaint and lack of jurisdiction by the trial Court /Additional Sessions Judge as, according to them, the trial Court had wrongly assumed the jurisdiction as in instant case only concerned authorities of PEMRA were competent to try the alleged offences. According to them, the proper course for the complainant / respondent No.2 was to approach PEMRA authorities and the trial Court/respondent No.1 has wrongly exercised/assumed the jurisdiction as the jurisdiction is only vest with PEMRA. Subject matter of the complaint fully falls under the provisions of PEMRA Ordinance, 2001 and proper method and procedure is provided by the Law for dealing said types of complaint and Councils of the complaints were established Under section 26 of the PEMRA Ordinance to deal and decide the subject matter of the complaints and barred the jurisdiction of normal-cum-ordinary criminal court(s) through said special law PEMRA Ordinance as per section 33 and 34 of PEMRA Ordinance.

12. It is a settled law that where maintainability of any legal proceedings and/or jurisdiction of any Court is called in question, such legal point is to be decided in first instance before discussing the merits of the case, therefore, I would first deal with said legal point raised on behalf of the applicants / accused. Before proceeding further, it would be advantageous to reproduce hereunder relevant provisions of PEMRA Ordinance, 2002:

> **26. Council of Complaints**.-1[(1) The Federal Government shall, by notification in the Official Gazette, establish Councils of Complaints at

Islamabad, the Provincial capitals and also at such other places as the Federal Government may determine.

(2) Each Council shall receive and review complaints made by persons or organizations from the general public against any aspects of programmes broadcast or distributed by a station] established through a licence issued by the Authority and render opinions on such complaints.

(3) Each Council shall consist of a 1[Chairperson] and five members being citizens of eminence from the general public at least two of whom shall be women.

(3A) The Councils shall have the powers to summon a licensee against whom a complaint has been made and call for his explanation regarding any matter relating to its operation.]

(4) The Authority shall formulate rules for the functions and operation of the Councils within two hundred days of the establishment of the Authority.

(5) The 1[Councils] may recommend to the Authority appropriate action of censure, fine against a broadcast or CTV station or licensee for violation of the codes of programme content and advertisements as approved by the Authority as may be prescribed.

27. Prohibition of broadcast media or distribution service operation. The Authority shall by order in writing, giving reasons therefor, prohibit any broadcast media or distribution service operator or owner from,–

(a) broadcasting or re-broadcasting or distributing any programme or advertisement if it is of the opinion that such particular programme or advertisement is **against the ideology of Pakistan or is likely to create hatred among the people or is prejudicial to the maintenance of law and order or is likely to disturb public peace and tranquility or endangers national security or is pornographic, obscene or vulgar or is offensive to the commonly accepted standards of decency**; or

(b) engaging in any practice or act which amounts to abuse of media power by way of harming the legitimate interests of another licensee or willfully causing damage to any other person.

30. Power to vary conditions, suspend or revoke the licence.- (1) The Authority may revoke or suspend the licence of a broadcast media or distribution service by an order in writing on one or more of the following grounds, namely:-

(b) the licensee has **contravened any provision of this Ordinance or rules or regulations** made thereunder or an order passed under section 27:

(c) the licensee has failed to comply with any condition of the licence; and …….

30A. Appeals. Any person aggrieved by any decision or order of the Authority may, within thirty days of the receipt of such decision or order, prefer an appeal to the High Court:

Provided that PEMRA shall make available a copy of its decision or order of revocation of licence within twenty-four hours after decision to the licensee for referring an appeal to the High Court.

33. Offences and penalties.-(1) Any broadcast media license or its representative who violates or abets violation of any provision of this ordinance shall be punishable with imprisonment for a term which

may extend to three years or with a fine may extend to ten million rupees or with both.
(2) Any distribution service license or its representative who violates or abets violation of any provision of the ordinance shall be punishable with imprisonment for a term which may extend to one year or with a fine which may extend to five million rupees or with both

(3) Where the violation, or abetment of the violation of any provision of this Ordinance is made by a person who does not hold a licence, such violation shall be punishable with imprisonment for a term which may extend to four years, or with fine, or with both, in addition to the confiscation of the equipment used in the commission of the act.

(4) Whosoever damages, removes, tampers with or commits theft of any equipment of a broadcast media or distribution service station licensed by the Authority, including transmitting or broadcasting apparatus, receivers, boosters, converters, distributors, antennae, wires, decoders, set-top boxes or multiplexers shall be guilty of an offence punishable with imprisonment which may extend to three years, or with fine, or both.

33A. The Officers of Federal, Provincial and Local Government to assist Authority.- The officers of Federal Government, Provincial Governments and Local Governments including the Capital Territory Police and the Provincial Police shall assist the Authority and its officers in the discharge of their functions under the provisions of this Ordinance and the Rules and Regulations made thereunder.

33B. Warrants for search.-(1) Where on information furnished by the Authority, the Court has reason to believe that any unlicensed broadcast media or distribution service is being owned, controlled or operated or its equipment is being kept or concealed, it may issue a search warrant and the person to whom search warrant is directed, may enter the premises where such unlicensed broadcast media or distribution service is being owned, controlled, operated or provided or its equipment is being kept or concealed, or carry out search and inspection thereof and seize all or any equipment therein.

(2) Any equipment of a broadcast media station seized under sub-section (1) having no ostensible owner shall vest in the Authority.

34. Offences to be cognizable and compoundable. The offences under this Ordinance shall be cognizable and compoundable.

35. Cognizance of offences etc.-(1) No court inferior to that of a Magistrate of the first class shall try an offence punishable under this Ordinance.

(2) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (Act V of 1898), it shall be lawful for any Magistrate of the first class to pass any sentence authorized by this Ordinance even if such sentence exceeds his powers unde0r the said section 32.

36. Offences by companies.-(1) Where any offence under this Ordinance has been committed by a person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company itself shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the person guilty of an offence under this Ordinance, is a company, corporation or firm, every director, partner and employee of

> the company, corporation or firm shall, unless he proves that offence was committed without his knowledge, or consent, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
>
> **37. Ordinance overrides other laws**.-(1) The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force, or any contract, agreement or any other instrument whatsoever:
>
> Provided that –
> (a) the national broadcasters, namely the Pakistan Broadcasting Corporation shall continue to be regulated by the Pakistan Broadcasting Corporation Act 1973 (XXXII of 1973) and the Pakistan Television Corporation and Shalimar Recording and Broadcasting Company Limited shall continue to be administered under the provisions of the Companies Ordinance 1984 (XLVII of 1984); and
>
> (b) other existing private broadcasters or CTV operators who had been granted respective monopolies in multi-modal distribution system, cable TV and in FM radio shall henceforth be regulated by this Ordinance except in respects where specific exemptions are granted by the Authority.
>
> **38. Indemnity.** No suit, prosecution or other legal proceeding shall lie against the Federal Government or any Provincial Government or local authority or any other person exercising any power or performing any function under this Ordinance or for anything which is in good faith done or purporting or intended to be done under this Ordinance or any rule made thereunder.

13. From perusal of the contents of Section 26 of PEMRA Ordinance, it seems that the Council as mentioned in the section constituted under the provisions of PEMRA Ordinance shall receive and review complaints made to it by persons or organizations from the **general public against any aspects of programmes broadcast or distributed** by a station established through a licence issued by the Authority. Subsection (5) of said section provides that the Council may recommend to the Authority appropriate action of censure, fine against a broadcast or CTV station or licensee **for violation of the codes of programme,** content and advertisements as prescribed and approved by the Authority. Section 30 of the Ordinance provides that the Authority may revoke or suspend the licence of a broadcast media or distribution service on, *interalia,* the grounds; that the licensee has contravened any provision of the Ordinance or rules or regulations made thereunder or an order passed under section 27, that the licensee has failed to comply with any condition of the licence. Section 30-A provides appeals against the order passed under Section 30.

14. Subsection (1) to Section 33 provides that if any broadcast media licensee or its representative **violates or abets violation of any provision of the Ordinance 2002**, shall be punishable with imprisonment for a term which may extend to three years or with a fine may extend to ten million rupees or with both. Subsection (2) of said section provides that if any distribution service license or its representative violates or abets violation of any provision of the ordinance shall be punishable with imprisonment for a term which may extend to one year or with a fine which may extend to five million rupees or with both, whereas subsection (3) provides that if the violation, or abetment of the violation of any provision of this Ordinance is made by a person who does not hold a licence, such violation shall be punishable with imprisonment for a term which may extend to four years, or with fine, or with both, in addition to the confiscation of the equipment used in the commission of the act. Section 35(1) provides empowers a Magistrate of the first class to try an offence punishable under the Ordinance, whereas subsection (2) thereof further provides that notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (Act V of 1898), it shall be lawful for any Magistrate of the first class to pass any sentence authorized by the Ordinance even if such sentence exceeds his powers under Section 32 Cr. P.C.

15. Section 36 of the Ordinance, 2002 provides that if any offence under the Ordinance has been committed by a person who was in charge of such company or was responsible for the conduct of the business of the company, he shall be liable to be proceeded against and punished accordingly. Subsection (2) of this Section provides if a company, corporation or firm, is guilty of such offence, then every director, partner and employee of such company, corporation or firm shall be guilty of such offence and shall be liable to be proceeded against and punished accordingly, , unless he proves that such offence was committed without his knowledge, or consent.

16. Section 37 of the Ordinance, 2002 provides that provisions of the Ordinance, 2002 shall have overriding effect over any other law for the time being in force, or any contract, agreement or any other instrument. Section 38 provides that no suit, prosecution or other legal proceeding shall lie against the Federal Government or any Provincial Government or local authority or any other person exercising any power or performing any function under the Ordinance, 2002 or for anything which has been done in good faith.

17. From perusal of above said provisions of PEMRA Ordinance, 2002, it seems that a full mechanism has been provided for the inquiry / investigation and the proceedings in respect of any offence committed under said Ordinance and the manner of conviction as well as quantum of sentence to be awarded to any accused has also been prescribed, if found guilty of the commission of such offence. Now the question arises as to whether the allegations levelled by the accused / applicants, as claimed by the complainant / respondent No.2 in Direct Compliant, fall within the ambit of alleged offences / violations as detailed in the Ordinance, 2002 or not? For this purpose, I would have to scrutinize the contents of the private compliant. It seems that the complainant in para 9 of the complaint has stated that the accused in collusion with each other committed serious offences and labelled the complainant as a land grabber, extortionist (*Bhatakhor*), *gunda* and hires armed *gundas* and is fake administrator of the Society and is involved in corruption of millions of rupees, based on disparaging, conjectural, misconceived, and false and incorrect informations against him causing defamation to him without hearing counter version of the complainant in disregard to responsible journalism as required by accused Nos.5 to 32. They ruined the complainant, torn down his dignity, weakened his esteem and social contribution and re-cognition of decades of continuous philanthropic and social efforts without even bothering to conduct any investigation and to seek a comment / counter version from the complainant although there was no urgent need to air such heinous imputations against him. According to him, certain delay if caused on account of verification of such allegations before publishing the same, would not have caused any harm. Accused No.5 to 32 practiced forbidden 'grey' journalism and acted in violation of second part of code 22 (1) of the 2015 code, section 20 (f) of the 2002 Ordinance and, so also the directions of the Superior Courts issued to the electronic media. His grievance is that the accused have committed offences under Sections 449, 500, 501 & 34 read with Section 502-A of Chapter 21 of PPC. Therefore the respondent/complainant namely Iqbal Hussain Channa S/o Ammer Bux Channa filed instant Private/Direct Complaint.

18. From perusal of Sub-section (2) of Section 26 of the Ordinance, 2002, it seems that each Council established under the provisions of the Ordinance, has been empowered to receive complaints made by persons or organizations

from the **general public against any aspects of programmes broadcast or distributed by a station** established through a license issued by the Authority and render opinions on such complaints. Subsection (5) of said section further empowers such Council to recommend to the Authority appropriate action of censure and fine against a broadcast or CTV station or licensee **for violation of the codes of programme content and advertisements**.

19. Clauses (a) and (b) of Section 27, *inter alia,* speak about prohibition of displaying any programme or advertisement which is against the ideology of Pakistan or is likely to **create hatred among the people or is prejudicial to the maintenance of law and order or is likely to disturb public peace and tranquility** or endangers national security or is pornographic, obscene or vulgar or **is offensive to the commonly accepted standards of decency or willfully causing damage to any other person**.

20. Apart from above, Section 20 of the Ordinance is also relevant which reads as under:

> **Section 20. Terms and Conditions of Licence.** A person who is issued a licence under this Ordinance shall---
>
> (a) Ensure preservation of the sovereignty, security and integrity of the Islamic republic of Pakistan.
>
> (b) Ensure preservation of the national, cultural, social and religious values and the principles of public policy as enshrined in the Constitution of the Islamic Republic of Pakistan.
>
> (c) Ensure that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards or decency.
>
> (d) Comply with rules made under this Ordinance;
>
> (e) Broadcast if permissible under the terms of its licence programmes in the public interest specified by the Federal Government or the authority in the manner indicated by the Government or as the case may be, the Authority, provided that the duration of such mandatory programmes do not exceed ten per cent of the total duration of broadcast or operation by a station in twenty-four hours except if, by its own volition, a station chooses to broadcast such content for a longer duration;
>
> (f) Comply with the codes of programmes and advertisements approved by the authority and appoint an in-house monitoring committee, under intimation to the Authority, to ensure compliance of the Code;
>
> (g) Not broadcast or distribute any programme or advertisement in violation of copyright or other property right;
>
> (h) Obtain NOC from Authority before import of any transmitting apparatus for broadcasting, distribution or teleporting operation.

(i) Not sell, transfer or assign any of the rights conferred by the licence without prior written permission of the Authority.

21. Even the complainant himself in para 9 of his complainant made admission to the effect, ***"Accused No.5 to 32 practiced forbidden 'grey' journalism and acted in violation of second part of code 22 (1) of the 2015 code, section 20 (f) of the 2002 Ordinance".***

22. From perusal of aforesaid provisions of Ordinance, 2002 coupled with the admission of the complainant himself, as quoted above, it is obvious that the grievances of the complainant, as raised in the Direct Complaint, are fully covered under the aforesaid provisions of the Ordinance. In such circumstances, the bar, as contained in Sections 37 and 38 of the Ordinance, would be applicable in instant case.

23. Needless to emphasize that PEMRA Ordinance 2002 being a special law shall have overriding effect over all other laws for the time being in force which also include Criminal Procedure Code and Pakistan Penal Code. Therefore, the complainant should have resorted his remedy for redressal of his grievances against the accused / applicants by invoking the provisions of PEMRA, Ordnance. In this connection it would be advantageous to refer to certain decisions pronounced by Superior Courts. In the case of ***Mir SHAKEEL-UR-REHMAN and others*** Vs/ ***The STATE OF GILGIT-BALTISTAN***, reported in **2016 G B L R 280**, which also relates to PEMRA, it was held as under:

> ***"We also hold that after promulgation of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002, being a Special Law, have exclusive jurisdiction and take cognizance of offences committed by Media Channels in violation of PEMRA Laws and Rules thereto i.e. in presence of penal provisions, PEMRA can suspend, cancel licence, prosecute convict and award sentences of fines whosoever violates the PEMRA Laws and Rules thereto. The PEMRA Ordinance, 2002 has an overriding effect upon other previous enacted special laws.***

24. In the case of ***Mohammad Iqbal*** Vs. ***Nasrullah*** reported in **2023 SCMR 273,** Honourable Supreme Court held that ***wherever there is special and general law applicable to a certain matter, the special law will prevail.***

25. In the case of ***Syed MUSHAHID SHAH and others*** Vs. ***FEDERAL INVESTMENT AGENCY and others***, reported in **2017 S C M R 1218,** while dealing with this point, a Full Bench of Honourable Supreme held as under:

> ***"It is a settled canon of interpretation that where there is a conflict between a special law and a general law, the former will prevail over the latter. In Muhammad Mohsin Ghuman's case (supra) this Court observed that "special statute overtakes the operation of general statute".***

26. Yet in another case of ***GULISTAN TEXTILE MILLS LTD. and another*** Vs. ***SONERI BANK LTD. and another***, reported in **PLD 2018 SC 322**, another Full Bench of Honourable Supreme Court held as under:

> ***"This view is incorrect because according to the principle of harmonious interpretation the special law would take precedence over the general law (generalia specialibus non derogant). The Ordinance is a special law, and therefore its specific provisions will displace the general law which shall be deemed to be inapplicable. Reference in this regard may be made to the judgment reported as Neimat Ali Goraya and 7 others v. Jaffar Abbas, Inspector/Sargeant Traffic through S.P., Traffic, Lahore and others (1996 SCMR 826). This position is also supported in Section 4 of the Ordinance which provides that "the provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force". The reason behind this is logical in that the legislature, having devoted attention to a special subject and provided for all the peculiar circumstances that may arise in respect thereof (the legislature is presumed to know the law when enacting legislation), it cannot intend to derogate from such special enactment by allowing the general law to override the special law, unless it does so through express and specific mention of its intention to that effect."***

27. In the case reported as ***Malik TARIQ AYUB and another*** Vs. ***Raja ARSHAD MEHMOOD and another*** (2022 M L D 2037) [Islamabad], a Division Bench of Islamabad High Court held as under:

> ***"The ATA is a special law. It is a settled principle that provisions of special law trump provisions of general law and the provisions of a general law cannot be relied upon when the subject-matter is specifically addressed by a special law. Section 21-D of the ATA provides an independent scheme for consideration of bail of an accused under the ATA and in view of settled principle of interpretation of special law versus general law, provisions of Section 497 of Cr.P.C cannot be relied upon in the presence of Section 21-D of the ATA. Notwithstanding the settled principle of interpretation, even otherwise Section 21-D(1) of the ATA starts with non-obstante language, which excludes provisions of Sections 496, 497 and 498 of Cr.P.C while vesting in the ATC, the High Court and the Supreme Court, the power and jurisdiction to grant or refuse bail to an accused in a case triable by the ATC. Section 21-D(2) of the ATA is in pari materia to Section 497(1) of Cr.P.C, whereby in order to release a person accused of a non-bailable offence under the ATA, the court must first form an opinion that there appear no reasonable grounds to***

> ***believe that the accused is guilty of an offence punishable with death or imprisonment for life or imprisonment for not less than ten years. Formation of such opinion is a pre-requisite for grant of bail without which no accused, triable by the learned ATC, can be afforded the benefit of bail. Section 21-D(3) of the ATA then lists additional factors that constitute a negative list in the presence of which bail is to be denied, even in the event that the learned ATC comes to the tentative conclusion that no reasonable grounds exist for believing that the person is guilty of the offence charged with under the ATA. The ATC is to deny bail under Section 21-D(3) if it concludes that the person, if released on bail, would (a) fail to surrender to custody, (b) commit an offence while he on bail, (c) interfere with witnesses or obstruct the course of justice, or (d) fail to comply with conditions of release, if any. If the learned ATC comes to the conclusion that there are no reasonable grounds to believe that the person is guilty of the offence charged with, and further none of the negative considerations listed in Section 21-D(3) of the ATA are attracted, Section 21-D(4) of the ATA then provides the list of considerations to be taken into account in guiding the discretion of the learned ATC to release a person on bail."***

28. In a recent decision given by Islamabad High Court in the case of *MOHAMMAD RAFIQUE AND ANOTHER* Vs. **DIRECTOR GENERAL, FEDERAL INVESTIGATION AGENCY, ISLAMABAD AND ANOTHER,** reported in **2023 P.Cr.L.J. 38 [Islamabad],** while discussing this point elaborately, held as under:

> ***"14. It is also settled law that any enactment having overriding clause, like section 39 of the Anti-Money Laundering Act, 2010, shows its special character of being special law and excludes the general law. In other words, the special provision overrides the general provision and the special enactment prevails over general enactment, even, the special law dealing with specific matter provides special procedure, therefore, special procedure in such matter would be followed that the same has not been provided under the general law, as such, recourse to general law is permissible when special law is silent on particular point, except where the provision of general law is inconsistent with the provision of special law. It is also settled that special law is to be applied to a particular case on the basis of special jurisdiction envisaged in that particular law and provisions of general law stand displaced as held in 1996 SCMR 826 (Neimat Ali Goraya v. Jaffar Abbas). Furthermore, while taking analogy from cases reported as PLD 2002 Karachi 83 (Messrs Noorani Traders, Karachi v. Pakistan Civil Aviation Authority), 2010 SCMR 27 (Ismaeel v. The State), PLD 2010 Lahore 498 (The State v. Fazeelat Bibi), 1993 CLC 2009 Karachi (National Bank of Pakistan v. Emirates Bank International Ltd.) and 2014 CLD 582 Lahore (Saeed Ullah Paracha v. Habib Bank Ltd.), it has been observed that special law prevails over the general law and all the specialized kinds of offences, like predicate offences, and the special procedure dealing with Anti-Money Laundering is not provided in the Pakistan Penal Code, 1860 or in any other law disclosing specific character of AMLA, 2010, as such, there is no second opinion that it is a special statute providing special legislative intent to deal with specialized crime and when such kind of special laws have been promulgated the legislature has to provide an overriding clause in order to protect its character to prevail over any***

> ***other law, legislation, rules and administrative instructions. The piece of legislation having overriding effect has to be interpreted in the light of phraseology and language used by the legislature. The Courts while interpreting laws relating to specialized economic activities and complexities of recent times do not admit of solution through any doctrinaire or straitjacket formula as held in PLD 2007 SC 133 (Federation of Pakistan v. Haji Muhammad Sadiq). The plain language of section 39 of AMLA, 2010 provides an overriding effect notwithstanding anything contained in any other law and this special Act is in addition to the Anti-Narcotics Force Act, 1997, Control of Narcotic Substances Act, 1997, Anti-Terrorism Act, 1997, National Accountability Ordinance, 1999 and any other law relating to predicate offences. Section 39 of the Act clearly establishes the legislative intent that this special law has precedence on all other specialized crimes referred in other laws, therefore, the argument advanced by learned counsel for petitioner that the AMLA, 2010 is not a special law, rather same has to be applied."***

29. In view of this legal position, the trial Court was not competent to take cognizance in the matter and issue bailable warrants to the extent of accused persons who are related to Media, as in such a case PEMRA was the only competent authority to take cognizance of the offences, if any, it being a special law would prevail upon general law. In this view of the matter and keeping in view the principle laid down by Superior Courts including Honorable Supreme Court in various cases, the case law relied upon by learned counsel for complainant / Respondent No.2 viz. ***SAEED GHANI*** V. **Dr. SHAHID MASOOD and 3 others (2022 YLR [Sindh] Note 3)** would not be attracted to the facts of instant case.

30. Now, I advert to Cr. Revision Application No.189 of 2022. It may be noted that the applicants in this revision application are private persons and have no connection with Media. The learned counsel, appearing for the applicants has attacked the impugned order mainly on the ground that procedure as contemplated in the Criminal Procedure Code, 1898, for entertaining and disposal of Direct / Private Complaint has not been adopted and followed by learned Magistrate, Respondent No.2, who had sent the complaint to the Court of Sessions as well as by learned Additional Sessions Judge / Respondent No.2, who has passed the impugned order dated 06.7.2022. Learned counsel has quoted various provisions of Criminal Procedure Code in the memo of Revision Application in order to emphasize that such relevant provisions of the Code were not followed in letter and spirit by Respondents No.1 and 2. Before discussing the relevant provisions of law, it would be advantageous to reproduce the same hereunder:

"190. Cognizance of offences by Magistrates: (1) All Magistrates of the First Class, or any other Magistrate specially empowered by the Provincial Government on the recommendation of the High Court, may take cognizance of any offence- (a) upon receiving a complaint of facts which constitute such offence; (b) upon a report in writing of such facts made by any police officer; (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed which he may try or send to the Court of Session for trial and]

(2) A Magistrate taking cognizance under sub-section (1) of an offence triable exclusively by a Court of Session shall, without recording any evidence, send the case to the Court of Session for trial.

192. Transfer of cases by Magistrate [Omitted by the Ordinance. XXXVII of 2001, dt. 13.8.2001.]

193. Cognizance of offences by Courts of Session: (1) Except as otherwise expressly provided by this Code or by any other law for the time being in force no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the (1) case has been sent to it under Section 190, sub-section [(2)]. (2) Additional Sessions Judges and Assistant Sessions Judges shall try such cases only as the Provincial Government by general or special order may direct them to try or as the Sessions Judge of the division by general or special order may make over-to them for trial.

200. Examination of complainant: A Magistrate taking, cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate : Provided as follows: (a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under Section 192 [or sending it to the Court of Sessions]; (aa) when the complaint Is made in writing nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or -purporting to act in the discharge of his official duties; (b) [Omitted A.O., 1949,Sch.]; (c) when the case has been transferred under Section 192- and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant. Words added by Law Reforms Ordinance. XII of 1972

201. Procedure by Magistrate not competent to take cognizance of the case: (1) If the complaint has been made in/writing to a Magistrate-who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect. (2) If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

202. Postponement of issue of process : (1) Any Court, on receipt of a complaint of an offence of which it is authorised to take cognizance; or which has been sent to it under Section 190, sub-section (3), or referred to it under Section 191 or-Section 192, may, if it thinks fit, for reasons to be recorded, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case itself or direct any inquiry or investigation to be made by [any Justice of the Peace or by] a police officer or by such other person as it

thinks fit, for the purpose of ascertaining the truth or falsehood of file complaint:
Provided that save, where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of Section 200.

(2) A -Court of Session may, instead of directing an investigation under the provisions of sub-section (1), direct the investigation to be made by any Magistrate subordinate to it for the purpose of ascertaining the truth or falsehood of the complaint.

(3) If any inquiry or investigation under this section is made by a person not being a Magistrate [or Justice of the Peace] or a police officer, such person shall exercise all the powers conferred by this Code on an officer-in-charge of a police station, except that he shall not have power to arrest without warrant.

(4) Any Court inquiring into a case under this section may, if it thinks fit, take evidence of witnesses on oath].

203. Dismissal of complaints: [The Court], before whom a complaint is made or to whom it has been transferred, 2s[or sent] may dismiss the complaint, if, after considering the Statement on oath (if any) of the complainant and the result of the investigation or inquiry (if any) under Section 202 there is in his judgment no sufficient ground for proceeding. In such cases he shall briefly record his reasons for so doing. Words subs. by Law Reforms Ordinance, 1972.

204. Issue of process: (1) If in the opinion of a Court] taking cognizance of an offence there is sufficient ground of proceeding, and the case appears to be one in which, according to the fourth column of the Second Schedule, a summons should issue in the first instance, it shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, it may issue a warrant, or, if it thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Court or if it has no jurisdiction itself some other Court having jurisdiction.

(2) Nothing in this section shall be deemed to affect the provisions of Section 90.

(3) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid, and if such fees are not paid within a reasonable time, the Court may dismiss the complaint."

31. On a bare perusal of the contents of Section 200 Cr. P.C. it seems that when a complaint has been filed before a Magistrate he, while taking, cognizance of the offence alleged in the complaint, shall forthwith examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate. However, the proviso to said section, provides that when the complaint has been made **in writing**, then it would not be necessary for a Magistrate to examine the complainant on oath before transferring the case under Section 192 or if the offences are triable by the Court of Sessions before sending the

case to the Court of Sessions. Subsection (2) to Section190 Cr. P.C. provides that while sending the case to the Court of Sessions for trial, the offence being exclusively triable by the Court of Sessions, the Magistrate shall send the case as aforesaid without recording any evidence. Subsection (2) of Section 200 Cr. P.C. empowers the Sessions Court to get the preliminary enquiry / investigation conducted by any Magistrate subordinate to it for the purpose of ascertaining the truth or falsehood of the complaint. Subsection (4) to Section 200 Cr. P.C. bestows powers upon any Court / Magistrate, holding a preliminary inquiry / investigation into the case, to record evidence of witnesses on oath. After holding preliminary enquiry / investigation recording evidence of the witnesses, if deemed fit, such Magistrate shall send back his report to the concerned Court of Sessions. Section 203 Cr.P.C. provides that after considering the Statement on oath of the complainant and also keeping in view the result of the investigation or preliminary inquiry, if conducted under Section 202 Cr. P.C., if concerned Court is of the opinion that there is no sufficient ground for proceeding with the case, then after recording brief reasons, it may dismiss the complaint. Section 204 Cr. P.C. provides that if concerned Court is of the opinion that there is sufficient ground for proceeding with the matter, it may issue a summons or warrant, as the circumstances of the case may require, for getting attendance of the accused.

32. Now examining instant case in the light of abovesaid provisions of Criminal Procedure Code, it seems that the complainant had filed the complaint under Section 200 Cr.P.C. against the accused / applicants for allegedly committing offences under Sections 449, 500/501/34 read with Section 502-A PPC in the Court of XII-Judicial Magistrate, Karachi South, respondent No.2 herein, copy whereof is available at page 57 of the Court File. The said complaint was sent by learned Judicial Magistrate to the Court of Sessions for trial vide his Order dated 25.3.2022 as, according to him, the alleged offences pertained to the jurisdiction of Court of Sessions. The relevant portion from the said order is reproduced as under:

> ***"Therefore, keeping in view above section and memo of direct compliant along with relevant documents, I am of the view that offence pertains to the Jurisdiction of Hon'ble Sessions Court, therefore, same be sent up to the hon'ble District and Sessions Court."***

33. On receiving the complaint, learned VIth Additional Sessions Judge, Karachi South, respondent No.1 herein, got recorded statement of the

complainant namely, Iqbal Hussain Channa, on 18.5.2022, as required under Section 200 Cr.P.C. copy available at page 49 of the Court file. Thereafter, respondent No.1 sent the case to respondent No.2 for holding preliminary inquiry/investigation as provided under Subsection (2A) to Section 202 Cr.P.C. Accordingly, as provided under subsection (4) to Section 202 Cr. P.C. respondent No.2 got recorded statements of two witnesses of the complainant namely, Arbab Ahmed Shar and Tajuddin Buriro on 20.5.2022, copies available at pages 53 and 55 respectively of the Court file. Ultimately, after hearing counsel for the complainant, learned Additional Sessions Judge / trial Court passed the impugned order. The concluding para of the impugned order is reproduced hereunder:

> ***"The question of defamation at the hands of accused could only be adjudged at the stage of trial and not otherwise. Accordingly, the complaint is registered and cognizance is taken against the accused No.1 to 4 and 17 to 33. Let the attendance of accused No.1 to 4 and 17 to 33 be secured by furnishing the surety in the sum of Rs.50,000/- each and execution of P.R Bond in the like amount. Let such process be issued through S.H.O concerned for compliance"***

34. Learned counsel for the applicants has not been able to point out as to how and in what manner, respondents No.1 and 2 have passed the impugned orders in contravention of the legal procedure as prescribed under the Code of Criminal Procedure. As detailed above, it is apparent that the Courts below have adopted the procedure as laid down in the Criminal Procedure Code, 1898, and I have not been able to find any derogation or contravention thereof.

35. Learned counsel, while emphasizing on Section 193 Cr. P.C., contended that a Court of Sessions is, at all, not competent to take cognizance of any offence as a Court of original jurisdiction, therefore, learned Additional Sessions Judge seriously erred in taking cognizance in the matter and issuing warrants against the accused persons, therefore, the impugned order is liable to be set aside on this ground. It seems that learned counsel, while making this submission, has not gone through the provisions of relevant law. It seems that the cognizance was not directly taken by learned Additional Sessions Judge. In fact, as stated above, the complaint was filed by the complainant in the Court of Judicial Magistrate who sent the same to the Court of Sessions, the offence falling within the jurisdiction of Court of Sessions. It was thereafter that learned Additional Sessions Judge, got recorded statement of the complainant and then sent the matter to Judicial Magistrate for holding

preliminary enquiry and after receiving the report of the preliminary inquiry and considering the contents of the statement of the complainant as well as his two witnesses, he passed the impugned order. In this view of the matter, the impugned order does not seem to be suffering from any illegality or material irregularity.

36. It may be observed that by insertion of section 502-A through the Defamation (Amendment Act IX) of 2004 in the P.P.C. the offence of defamation under section 500 of the Pakistan Penal Code has been made to be triable by the Court of Sessions. Section 502-A PPC reads as under:

> ***"502-A. Trial of offences under this chapter.---Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Court of Session shall have the jurisdiction to try an offence under this Chapter and decide it within a period of ninety days."***

37. Even the complainant in caption of the complaint has also mentioned section 502-A PPC. In view of above legal position, the contention of learned counsel for applicants has no force.

38. It appears that learned counsel for the applicants in paras 10 to 16 of the grounds of the revision application has narrated defamatory allegations leveled against the complainant by the accused persons as mentioned in the impugned order passed by respondent No.1 vide clause (a) to (g) at page 41 to 43 of the Court file. As regards allegation contained in clause (a), it has been stated that material is available with proposed accused No.4 namely, Ms .Fouzia Khan, regarding opening of wine shop beside her house against which she had raised objection. As regards allegation contained in clause (b), it is averred that material is available with certain week and poor members of the Society, who could not unearth the truth about complainant's malpractices due to fear that they might have been implicated in false and bogus cases by the complainant. As regards the allegation contained in clause (c), it has been mentioned that the material relied upon by members of the society reflects that they had filed applications / complaints at PS against the complainant, but the concerned SHO never entertained any such complaint against the complainant. As regards the allegation contained in clauses (d) and (e), it has been stated that material relied upon by the society members reflects that whenever they had raised objections on illegal occupation by the complainant, they were victimized at the hands of complainant. As regards the allegations

contained in clauses (f) and (g), it has been asserted that members of the society as well as the applicants had to face various illegal and bogus litigations / cases since inception of the society at the hands of the complainant in order to refrain them from seeking justice and knocking the door of the Court of law.

39. From perusal of above grounds taken on behalf of the applicants for setting aside the impugned order whereby bailable warrants have been issued against the applicants for securing their attendance before the trial Court, it is apparent that all these facts, which have been admitted by the applicants themselves, do require the recording of evidence and without recording evidence of the parties such facts cannot, at all, be adjudicated upon in a proper and judicious manner and this is exactly what the learned trial Court has observed in the impugned order dated 06.07.2022 i.e. "***The question of defamation at the hands of accused could only adjudged at the stage of trial and not otherwise***". In this connection reference may be made to the case of ***Daim Ali Khan*** Versus ***Mushtaque Ali alias Farooq and 4 others*** reported in **2017 Y L R 1456** wherein it was held as under:-

> ***"12. There are two different aspects of present controversy i.e. firstly, the question of sale of suit house through sale agreement without mutation of title/Foti Khata in favour of the legal heirs of deceased Moula Bux Khoso, and the matter relating to the sale agreement in question could only be dealt with by the Civil Court; and second, the question of illegal dispossession is absolutely different from the civil liabilities, and learned trial Court was bound to ascertain as to whether the allegations levelled by the applicant constituted an offence under Illegal Dispossession Act, 2005, or otherwise. Trial Court, in circumstance, had failed to exercise the jurisdiction vested in it in appropriate manner and committed material illegality and gross irregularity, while dismissing the complaint without recording the evidence of the parties and affording them opportunity to produce their documents during the trial."***

40. The stand taken by the applicants, as stated above, was that the facts reported / displayed in the media by accused persons were substantially true and that the same were published / displayed in public interest, as such no case of criminal defamation can be made out against the applicants / accused. In this connection, suffice it to say that it is yet to be determined at the trial stage after recording of evidence etc. as to whether the alleged defamatory news contained true or untrue facts and before undertaking such exercise, it would be premature to adjudge determination of such fact. Needless to emphasize that while dealing with a private complaint at the

initial stage, the Court has only to see as to whether a prima facie case has been made out by the complainant for issuing further process in the matter or not and at that stage a detailed inquiry is not warranted.

41. In the case of Noor Muhammad v. The State and others reported in PLD 2007 SC 9, Honourable Supreme Court held as under:

> ***"The Court cannot overstretch the proceedings as to convert the preliminary inquiry or the averments made in the complaint to a stage of full-fledged trial of the case. It is quite an initial stage whereafter the accused is having the opportunity, apart from showing his innocence in the case at the final stage, to have a recourse of an intermediary remedy by moving the Court showing the complaint to be false and frivolous one and requesting the Court for his acquittal under section 249-A or 265-K, Cr.P.C. prior to further proceeding in the case to be taken. Mere summoning of an accused by the Court to answer the charges levelled against him does not tantamount to any infringement of any right of a person but rather an opportunity afforded to him to explain his position. During the investigation of a FIR case, where the police is empowered to arrest without warrant i.e., in cognizable case, such a process, i.e., arrest etc. is resorted to by the police, even in a case where the person accused of the charge pleads innocence before the police and he succeeds in his efforts to some extent and the police agrees with him, yet before any recommendation by the police for his discharge, an insistence is made of his surrender before the authorities/court. The possibility of accusation turning out to be false or frivolous at the trial should not overbear the Court from issuing the process if the material available, prima facie discloses the case against the accused. At this stage a protracted inquiry or full-dressed rehearsal of trial is not required."***

42. Even otherwise, it seems that in instant case only process has been issued to the applicants for their appearance in the Court and at the trial stage they would be afforded sufficient opportunity of hearing to disprove the allegations levelled by complainant/respondent No.3 in the direct complaint. Besides, other remedies admissible under the law would also be available to them for initiating appropriate proceedings against the complainant and also for awarding compensation to them, if ultimately it is found and concluded that the complaint was frivolous and vexatious and had been filed with ulterior motives only to victimize the applicants. In case of Noor Muhammad v. The State and others (PLD 2007 SC 9), Honourable Supreme Court held as under:

> ***"Moreover, section 250, Cr.P.C. also provides sufficient safeguard to an accused against a false and frivolous accusation by the complainant, which envisages that the court while acquitting an***

> ***accused at the trial stage, holding that the charge brought against him, was false, frivolous or vexatious has sufficient power to award adequate compensation."***

43. In the case in hand the applicants have prima facie by-passed the ordinary legal course available to them provided under the Criminal Procedure Code and since there has been placed no exceptional circumstances to justify departure from normal course, hence in absence thereof inherent jurisdiction vested under Section 561-A, Cr.P.C. cannot be exercised which otherwise would amount to interrupt and divert the ordinary Code of Criminal procedure; however, the applicants can agitate the same plea before the trial Court. As far as revisional powers vested under Section 435 Read with Section 439, Cr.P.C. are concerned, I find no jurisdictional error or material illegality and irregularity in the impugned order which may warrant interference of this Court. It is settled law that Revisional jurisdiction cannot be used for interrupting or subverting the normal criminal proceedings unless an order under reference is found tainted with miscarriage of justice, same cannot be interfered with.

44. In case of Muhammdd Farooq v. Ahmed Nawaz Jagirani and others reported in PLD 2016 Supreme Court 55, it was held by apex Court as under:-

> ***"To take cognizance of an offence in complaint case, burden of proof in preliminary enquiry for the issuance of process and or summons as the case may be is much lighter on the complainant and he is required to establish prima facie case, whereas, the burden of proof placed on the prosecution during regular trial is much stringent and the prosecution is required to establish and prove the case beyond reasonable doubt."***

45. Since the trial Court after completion of codal formalities has brought the complaint on record. After registering the case, trial Court took cognizance of the same and has issued bailable warrants against the applicants. The applicants without approaching the trial Court by availing remedy available under the law under Section 265-K Cr. P.C., have directly approached to this Court for quashment of the proceedings which is not permissible. In this connection, reference may be made to the case of ***Director General, Anti-Corruption Establishment, Lahore, and others*** v. ***Muhammad Akram Khan and others*** reported in **PLD 2013 SC 401**, wherein it has been held as under:

> **"2. ...** ***The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under sections 249-A/265-K, Cr.P.C. to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction.***

46. It is a settled principal that where two courts have coextensive or concurrent jurisdiction, the Court of the lower grade is to be approached in the first instance. In instant case although alternate remedy in shape of application for quashment under section 265-K Cr.PC was available to the applicants, however, instead of availing such remedy they have directly invoked the inherent jurisdiction of this Court under section 561-A Cr.PC which is not warranted by law. In this connection reference may be made to the case of MUHAMMAD FAROOQ V. AHMED NAWAZ JAGIRANI and others reported in PLD 2016 SC 55 wherein, while dealing with this legal point Honorable Supreme Court held as under:-

> ***"10. We have heard the arguments of learned ASCs for the parties as well as the learned Additional Prosecutor General, Sindh, and perused the record. 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.
11. The remedy under Section 561-A, Cr.PC is not an alternate and or substitute for an express remedy as provided under the law in terms of Sections 435 to 439, Cr.P.C. and or Sections 249-A or 265-K, Cr.PC, as the case may be. One cannot be allowed to bypass and or circumvent the ordinary remedy in normal course of the event… … ….

13. Even if the contention of Mr. Shahadat Awan, learned ASC for the respondents is taken, on its face value that inherent jurisdiction under Section 561-A, Cr.PC is coextensive with power under Section 249-A, Cr.PC and or under Section 265-K, Cr.PC as the case may be, therefore, no exception to the exercise of such jurisdiction by the High Court in the instant case could be taken, the contention is preposterous. As observed above, it is not the question of taking any exception to the exercise of inherent jurisdiction by the High Court. It is matter of regulating the exercise of inherent jurisdiction available with the High Court. It is now well entrenched legal position that where a power is coextensive with two or more Courts, in ordinary circumstances, propriety demands that the litigant must first seek remedy in the Court of the lowest jurisdiction. Mr. Shahadat Awan does not dispute that learned trial Court was seized of jurisdiction under Section 249-A, Cr.PC. No special and or extraordinary circumstances were either pleaded or considered by the learned Judge in Chambers in the High Court, while exercising its inherent jurisdiction Section 561-A, Cr.PC.

14. The learned Judge in Chambers in the High Court proceeded on a wrong assumption that the complainant has not brought on record sufficient material to show that the allotment was part and parcel of his land. It was not the case of the appellant that part and parcel of his plot has been allotted, but his case was that it was a green belt, a public amenity abutting his plot, which was converted into commercial plot and was allotted. It has also come on record that it was only on the complaint of the appellant such conversion and or allotment of the green belt was cancelled on the same date, which fact is mentioned in the inquiry report that "after having made complaint by Muhammad Farooque, the same allotment was withdrawn/cancelled by the site". To take cognizance of an offence in complaint case, burden of proof in preliminary enquiry for the issuance of process and or summons as the case may be is much lighter on the complainant and he is required to establish prima facie case, whereas, the burden of proof placed on the prosecution during regular trial is much stringent and the prosecution is required to establish and prove the case beyond reasonable doubt (see Noor Muhammad v. State (PLD 2007 Supreme Court 9 at page 14)."

47. Earlier in the case reported as ***Maqbool Rehman*** v. ***State*** (2002 SCMR 1076), learned Apex Court had held as under:

"Normally, High Court does not exercise inherent jurisdiction unless there is gross miscarriage of Justice and interference by the High Court seems to be necessary to prevent abuse of process of court or to secure

> ***the ends of justice. Jurisdiction under section 561-A, Cr.P.C is neither alternative nor, additional in its nature and is to be rarely invoked only to secure the ends of justice so as to seek redress of grievance for which no other procedure is available and that the provisions should not be used to obstruct or direct the ordinary course of Criminal Procedure. This kind of jurisdiction is extraordinary in nature and designed to do substantial justice. It is neither akin to appellate nor the Revisional Jurisdiction."***

48. In the case of ***Bashir Ahmed*** v. ***Zafar-ul-Islam*** reported in **PLD 2004 Supreme Court 298**, Honorable Supreme Court after elaborately discussing the said legal point highlighted guidelines for exercising the inherent powers to the following effect:

> ***"(i) The said provision should never be understood to provide an additional or an alternate remedy nor could the same be used to override the express provisions of law;***
>
> ***(ii) the said powers can ordinarily be exercised only where no provision exists in the Code to cater for a situation or where the Code offers no remedy for the redress of a grievance;***
>
> ***(iii) inherent powers can be invoked to make a departure from the normal course prescribed by law only and only in exceptional cases of extraordinary nature and reasons must be offered to justify such a deviation; and***
>
> ***(iv) in the matter of quashing criminal proceeding, the trial must ordinarily be permitted to take its regular course envisaged by law and the provision of section 561-A, Cr.PC should be invoked only in exceptional cases for reasons to be recorded."***

49. In view of above legal position the applicants in Cr. Revisions Application No.189 of 2022 , if felt aggrieved and dissatisfied with the proceedings initiated by the trial Court and were of the view that the same deserved to be quashed, they must have approached the trial Court in first instance by moving application under section 265-K Cr.PC. However, instead of availing said alternate remedy, they have directly invoked inherent jurisdiction of this Court under section 561-A Cr.PC.

50. The upshot of the above discussion is as under:-

i. **Criminal Revision Application No.186 of 2022 is allowed**, consequently, the impugned order dated 06.07.2022 passed by learned VIth Additional Sessions Judge, Karachi South in Private/Direct Complaint No. 872 of 2022 is set aside **to the extent of accused No.5 to 32** as arrayed in the private complaint. However, the complainant/respondent would be at liberty to

approach the concerned PEMRA Authorities for redressal of his grievances as mentioned in the private/direct complaint.

ii. **Criminal Revision Application No.189 of 2022 is hereby dismissed**, consequently, the impugned order dated 25.03.2022 passed by learned Judicial Magistrate-XII, Karachi South and impugned order dated 06.07.2022 passed by learned VIth Additional Sessions Judge, Karachi South in Private/Direct Complaint No. 872 of 2022 are maintained **to the extent of accused No. 1 to 4 and 33** as arrayed in the private complaint.

Office to place a signed copy of judgment in connected file.

Karachi

Dated. 9th March, 2023. JUDGE