

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI.**

**C.P No. D-7492 of 2022**

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Dated                      Order with signature of Judge.

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**Priority**

1.        For hearing of CMA No.33240/2022
2.        For hearing of main case.

**04.05.2023**

Ms. Khushbakht Shah, Advocate for the Petitioner.  
Ms. Uzma Yousuf, Advocate for the Respondent No.2

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**YOUSUF ALI SAYEED, J.-** The Petitioner is aggrieved by the Order dated 08.10.2022 made by the Civil Judge & Judicial Magistrate-XXVI Karachi East, in Direct Complaint No.930 of 2022 filed by the Petitioner against her husband, being the Respondent No.2, under Sections 7, 11 & 12 of the Sindh Domestic Violence (Protection & Prevention) Act, 2013 (the “**2013 Act**”), whereby the Petitioner had entertained an application filed by said Respondent seeking a meeting with their minor son and directed that the minor be produced on a fortnightly basis for purpose of a meeting under supervision within the Court premises.

2. Per the Petitioner, the impugned Order defeats the purpose of the 2013 Act and encroaches upon the jurisdiction of a Family Court in as much as the subject of custody and visitation is to be dealt with by that forum under the Guardians and Wards Act, 1890. Learned counsel argued that the purpose of the 2013 Act was to provide for the protection of women, children and vulnerable persons, and by deciding the matter of visitation and allowing the Respondent No.2 to meet with the minor in the face of a subsisting protection

order, the learned Judicial Magistrate had acted beyond his powers and committed a grave irregularity that defeated the purpose of the protection order prohibiting the Respondent to communicate or approach the Petitioner. She submitted that the Respondent No.2 had filed a case under the Guardians and Wards Act before the Family Court, which was the competent to address the subject of custody visitation, and argued that the trial Court had no jurisdiction to entertain the Respondents application.

3. Conversely, learned counsel for the Respondent No.2 argued that the impugned Order had been properly and competently made by the trial Court and that the present Petition was not maintainable for if the Petitioner was aggrieved, she could avail the remedy of a revision in terms of Section 28 of the 2013 Act, read with Sections 25 and 2(1)(c) thereof.

4. Turning firstly to the subject of the maintainability of a Petition under Article 199 of the Constitution in the given circumstances, it merits consideration that by virtue of Section 25 read with Section 2(1)(c), all proceedings taken and offences committed under the provisions of the 2013 Act are governed by the Code of Criminal Procedure 1898 (the “**Code**”), with Section 28 of the 2013 Act going on to stipulate that “Chapter XXXII of the Code shall apply to an order passed under Sections 10, 11, 12 and 13”. Sections 439 and 439-A of the Code, falling under Chapter XXXII, read as follows:

**439. High Court’s powers Of revision:** (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court, may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by Section 338, and may enhance the sentence and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by Section 429.

(2) No order under this section, shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Magistrate of the First Class.

(4) Nothing in this section shall be, deemed to authorize a High Court;

(a) To convert a finding of acquittal into one of conviction; or

(b) To entertain any proceedings in revision, with respect to an order made by the Sessions Judge under Section 439-A.

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) for showing cause, why his sentence should not be enhanced shall, in showing cause, be entitled at so to show cause against his conviction.

**439-A. Sessions Judge's powers of revision:** (1) In the case of any proceeding before a Magistrate the record of which has been called for by the Sessions Judge or which otherwise comes to his knowledge, the Sessions, Judge may exercise any of the powers conferred on the High Court by Section 439.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him under any general or special order of the Sessions Judge.

5. From a combined reading of the aforementioned provisions of the 2018 Act and the Code, it is apparent that in the matter of the impugned Order, which has been made within the framework of a case under Sections 7, 11 & 12 of the 2013 Act, a remedy by way of revision is available before the Sessions Judge, hence recourse to the writ jurisdiction of this Court under Article 199 is misplaced.

6. In view of the foregoing, the Petition stands dismissed, leaving the Petitioner at liberty to avail the alternate remedy provided for in the matter.

JUDGE

CHIEF JUSTICE

TariqAli/PA