

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
C. P. No. D-4247 of 2023

Date	Order with signature of Judge
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FRESH CASE.

1. For orders on Misc. No.19554/2023.
2. For orders on Misc. No.19555/2023.
3. For orders on Misc. No.19556/2023.
4. For hearing of main case.

05.09.2023.

Mr. Rafeo Fazal, Advocate for the Petitioners.

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**YOUSUF ALI SAYEED, J.** - The Petitioners have preferred the captioned Petition under Article 199 of the Constitution, directly impugning the Order dated 14.07.2023 made by the learned Civil Judge and Judicial Magistrate-XVth, Karachi, East, in Domestic Violence Complaint Nil of 2023 filed against them by the Respondent No.1 under the Sindh Domestic Violence (Prevention & Protection) Act, 2013 (the “**Act**”), whereby the learned Magistrate has directed certain interim measures in exercise of powers conferred under that the statute whilst taking cognizance of certain offences under the Act.

As against that part of the order whereby the Magistrate has taken cognizance of offences under the Act, learned counsel does not agitate that aspect after being unable to convince us to interfere, and he confines his grievances to the part of the order whereby the Magistrate has directed certain interim measures under the Act. In that regard a question then arises to the maintainability of a Petition under Article 199 of the Constitution. 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 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.

From a combined reading of the aforementioned provisions of the Act and the Code, it is apparent that in the matter of interim measures, which have been made within the framework of a case under Sections 10, 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.

In view of the foregoing, while granting the application for urgency we dismiss the Petition *in limine* along with the other pending miscellaneous applications, leaving the Petitioner at liberty to avail the alternate remedy provided for in the matter, if so desired.

JUDGE

JUDGE

MUBASHIR