

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

**Cr.M.A No.415 of 2023**

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Order with signature of Judge(s)

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Priority case

1. For hearing of main case
2. For hearing of MA No.7421/2023
3. For hearing MA No.321/2024

**09.02.2024**

Khawaja Muhammad Azeem, Advocate for the Applicant  
Mr. Khurram Lakhani, Advocate for Respondent No.3  
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**Justice Zulfiqar Ahmad Khan:-** This Criminal Misc. Application challenges an order passed by XI-Additional Sessions Judge Karachi (East) on 30.05.2023 under Section 133 Cr.PC, which provision of law empowers a First Class Magistrate to pass conditional orders for the removal of nuisance.

Relevant portion of the said Section is reproduced hereunder:-

“(1), Whoever a Magistrate of the first class considers, on receiving a police report or other information and on taking such evidence (if any) as he thinks fit;

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated.....”

Facts are that the applicant has been running a commercial establishment having a high volume commercial kitchen under the name “Quality Caterer” by installing 10 to 15 highly heated live gas fired stoves on the ground floor of Building built on plot No.370, Block-B, Adamjee Nagar, Kathiawar Housing Society, Karachi, against which acts an application was filed by the Respondent No.3 who is residing in same Building’s first floor, which application was favourably decided for the

said complainant by the order dated 06.12.2022, against which a Criminal Revision Application was filed by the present applicant, which is dismissed by the impugned order. Thus the applicant is before this Court against concurrent findings.

Learned counsel for the applicant stated that private disputes cannot be settled under Section 133 Cr.PC as the applicant had already filed a suit against the complainant and has a decree in his favour. In support of his arguments, he has placed reliance on **PLD 2000 Karachi 245** (*Amir Malik and another v. Government of Sindh and 4 others*) and **PLD 2012 Peshawar 167** (*Ghulam Muhammad v. Paida Rahman and 4 others*).

To me, Section 133 Cr.PC in very clear terms empowers a Magistrate of First Class to pass orders, where community is hurt through any trade or occupation undertaken by an individual, which acts appear to be injurious to health and physical comfort of the community. It seems that the Kathiwar Housing Society itself wrote a letter dated 27.12.2021 (Flag-A) to the applicant calling upon the latter to stop such illegal and dangerous use of the residential premises; so it is not only the Respondent No.3 but also the community which is against the applicant's commercial and hazardous use of the subject property where the applicant is literally playing with fire by installing a number of high temperature and pressurized burners to cook food in "Daigs" in commercial quantities. It is also a fact that the inquiry made by Police affirmed that the applicant was running 10 to 15 high temperature stoves, which are extremely dangerous for the public residing in the building, hence the concurrent findings.

The case law cited by the learned counsel for the applicant are quite different from the matter at hand, as in PLD 2000 Karachi 245 the Magistrate passed final order without conducting an inquiry, but in the

present case Police Inquiry has already been conducted. In the case of PLD 2012 Peshawar 167 there was a dispute with regard to usage of old road versus new road, which is totally different from the facts of this case. As to any Civil Court order or decree, the applicant should take all steps in such pursuit, but before this Court is an order passed under Section 133 Cr.PC.

In the circumstances at hand, there is no merit in the present Cr. Misc. Application, which is dismissed with cost of Rs.20,000/- as the impugned order is strictly within four corners of law and does not require any interference and the delay of each and every day is exposing the community with nuisancial acts of the applicant, which must come to an end immediately.

JUDGE

B-K Soomro