

**IN THE HIGH COURT OF SINDH, CIRCUIT BENCH
HYDERABAD**

Criminal Misc. Applns. Nos.S-51/2025, 285/2017, 403/2017, 203/2018, 222/2018, 352/2018, 609/2018, 637/2018, 646/2018, 695/2018, 77/2018, 139/2019, 150/2019, 167/2019, 22/2019, 358/2019, 396/2019, 42/2019, 446/2019, 450/2019, 488/2019, 534/2019, 567/2019, 580/2019, 592/2019, 621/2019, 680/2019, 106/2020, 109/2020, 11/2020, 113/2020, 120/2020, 13/2020, 139/2020, 147/2020, 153/2020, 161/2020, 186/2020, 203/2020, 206/2020, 214/2020, 221/2020, 228/2020, 231/2020, 243/2020, 245/2020, 246/2020, 297/2020, 314/2020, 347/2020, 356/2020, 363/2020, 372/2020, 377/2020, 384/2020, 407/2020, 461/2020, 472/2020, 511/2020, 513/2020, 522/2020, 547/2020, 548/2020, 558/2020, 58/2020, 612/2020, 623/2020, 628/2020, 63/2020, 658/2020, 675/2020, 692/2020, 713/2020, 724/2020, 734/2020, 745/2020, 764/2020, 775/2020, 124/2021, 133/2021, 14/2021, 145/2021, 173/2021, 176/2021, 19/2021, 193/2021, 195/2021, 222/2021, 239/2021, 245/2021, 251/2021, 258/2021, 260/2021, 269/2021, 282/2021, 284/2021, 287/2021, 288/2021, 292/2021, 313/2021, 320/2021, 350/2021, 36/2021, 407/2021, 408/2021, 410/2021, 47/2021, 487/2021, 495/2021, 5/2021, 53/2021, 531/2021, 532/2021, 547/2021, 551/2021, 559/2021, 570/2021, 592/2021, 609/2021, 623/2021, 625/2021, 63/2021, 637/2021, 650/2021, 662/2021, 676/2021, 681/2021, 686/2021, 708/2021, 711/2021, 733/2021, 772/2021, 79/2021, 796/2021, 814/2021, 820/2021, 827/2021, 829/2021, 833/2021, 838/2021, 840/2021, 844/2021, 858/2021, 86/2021, 866/2021, 104/2022, 115/2022, 116/2022, 119/2022, 123/2022, 138/2022, 14/2022, 173/2022, 174/2022, 196/2022, 198/2022, 218/2022, 22/2022, 233/2022, 242/2022, 244/2022, 246/2022, 247/2022, 25/2022, 255/2022, 28/2022, 290/2022, 30/2022, 310/2022, 311/2022, 322/2022, 347/2022, 379/2022, 414/2022, 440/2022, 468/2022, 478/2022, 498/2022, 516/2022, 521/2022, 530/2022, 56/2022, 57/2022, 580/2022, 582/2022, 62/2022, 638/2022, 660/2022, 671/2022, 681/2022, 691/2022, 70/2022, 701/2022, 702/2022, 727/2022, 750/2022, 759/2022, 767/2022, 779/2022, 801/2022, 818/2022, 832/2022, 838/2022, 841/2022, 842/2022, 850/2022, 862/2022, 864/2022, 875/2022, 890/2022, 9/2022, 901/2022, 91/2022, 112/2023,

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Applicant:

Ameen Ali & others:

Through M/s. Najaf Ali Memon, Muhammad Hashim Memon, Jaleel Ahmed Memon, Muhammad Arshad Pathan, Ghulam Nabi Jarwar, Ahsan Gul Dahri, Mir Ahmed Mangrio, Muhammad Sachal Awan, Aghis-u-Salam Tahirzada, Syed Sardar Hussain Shah, Manzoor Ali Jessar, Abid Hussain Chang, Mukesh Kumar Oad, Naeemuddin Sahito, Asif Ali Abro, Mohsin Raza Gopang, Muhammad Faisal Bawani, Samina Ajmeri, Rizwan Ali, Mehboob Ali Solangi, Jehanzeb Dahari, Roshan Ali Azeem Mallah, Kashif Ali Lakho, Saeed Ahmed Janwari, Pervaiz Tariq Tagar, Irfan Ali Khaskheli, Harpal Das, Atta Hussain Gadi, Shamsuddin Khushik, Aamir Ali Memon, Karamullah Memon, Muhammad Yaseen Leghari, Rakesh Kumar Lohana, Nauman Aftab Channa, Ghulam Shabbir Mari, Wajid Ali Nindwani, Mustansar Ali Soomro, Jehangir Khan, Safdar Hussain Leghari, Nasir Abbasi, Azizullah Khawaja, Mumtaz Alam Leghari, Khadim Hussain Leghari, Noor-ul-Amin Sipio, Ghulam Hussain Palari, Sajjad Hussain Soomro, Ishfaqe Nabi Kazi, Wafa Nawaz Shar, Muhammad Siddique Buledi, Zaheer Ahmed Bhatti, Nasrullah Khaskheli, Naseeruddin Pathan, Inam Ali Malik, Zain-ul-Abdin Sehto, Faisal Nadim Abro, Zulfiqar Ali Chandio, Talat Hussain Leghari, Muhammad Nawaz Panjotho and Ghulam Mustafa Burdi Advocates.

Respondent: The State through Ms. Rameshan Oad, D.P.G and Ms. Safa Hisbani, A.P.G.

Date of Hearing: 28.03.2025, 25.04.2025, 02.05.2025, 16.05.2025 and, 23.05.2025.

Date of Decision: ____ .08.2025

ORDER

Dr. Syed Fiaz ul Hasan Shah, J.—The listed Criminal Miscellaneous Applications filed by Applicants, invoke the *inherent jurisdiction* of this Court under Section 561-A of the Code of Criminal Procedure, 1898 (**Cr.P.C.**), to assail an order passed by the Ex-officio Justice of Peace (**JoP**) under Section 22-A(6) Cr.P.C. Since the elementary question of jurisdiction is involved, therefore, I am disposing all the listed Criminal Miscellaneous Applications through this common Order.

2. The threshold question is whether such an order—passed by a JoP under Section 22-A (6) Cr.P.C. directing registration of FIR or otherwise is amenable to challenge under inherent jurisdiction under Section 561-A Cr.P.C. and what is the true nature of such an order itself—**judicial, administrative, or quasi-judicial** and its forum of appeal.

Statutory Clauses:

3. Section 22-A and 22-B of Cr. P.C, which read as under:

"22-A. Powers of Justice of the Peace.—

(1)

(2).....

(3).....

(4)

(5)

(6) An ex-officio Justice of the Peace may issue appropriate directions to the police authorities concerned on a complaint regarding-

- (i) non-registration of a criminal case;
- (ii) transfer of investigation from one police officer to another; and
- (iii) neglect, failure or excess committed by a police authority in relation to its functions and duties.

22-B. Duties of Justices of the Peace.—Subject to such rules as may be made by the Provincial Government, every Justice of the Peace for any local area shall-

(a) on receipt of information of the occurrence of any incident involving a breach of the peace, or of the commission of any offence within such local area, forthwith make inquiries into the matter and report in writing the result of his inquiries to the nearest Magistrate and to officer in charge of the nearest police-station.

(b) if the offence referred to in clause (a) is a cognizable offence, also prevent the removal of anything from, or the interference in any way with, the place of occurrence of the offence;

(c) when so required in writing by a police-officer making an investigation under Chapter XIV in respect of any offence committed within such local area.

(i) render all assistance to the police-officer in making such an investigation.

(ii) record any statement made under expectation of death by a person in respect of whom a crime is believed to have been committed."

Section 25, Cr.P.C. defines ex-officio JoP as follows:

25. Ex-officio Justice of the Peace.— By virtue of their respective offices, the Sessions Judges and on nomination by them, the Additional sessions Judges, are Justices of the Peace within and for whole of the District of the Province in which they are serving.

Jurisprudential Development of inherent jurisdiction

4. The judicial understanding of the High Court's ***inherent jurisdiction*** under Section 561-A of the Code of Criminal Procedure, 1898, has undergone a marked evolution. The Hon'ble Supreme Court in ***Shahnaz Begum v. The Hon'ble Judges of the High Court of Sind and Balochistan (PLD 1971 SC 677)*** authoritatively held that such jurisdiction cannot be invoked to interfere with or restrain investigatory actions undertaken by the police, which fall within the realm of executive or administrative functions. However, in ***Bahadur and another v. The State and another (PLD 1985 SC 62)***, the august Court drew a clear distinction between the administrative and judicial functions of a Magistrate and held that a Magistrate's concurrence with a police report under Section 173, Cr.P.C., resulting in the closure of a case, constitutes an administrative act or order and is not amenable to revision under Sections 435–439, Cr.P.C. There opening a gate of High Court to consider such administrative order or proceedings under its inherent jurisdiction under Section 561-A, Cr.P.C. to prevent miscarriage of justice. Conversely, in matters involving judicial proceedings or judicial orders passed by a Magistrate or a Court of Sessions, the appropriate remedy lies within the supervisory revisional jurisdiction of the High Court under Sections 435–439, Cr.P.C.
5. Initially circumscribed in *Shahnaz Begum (supra)* and *Bahadur (supra)*, this interpretation was expanded in ***Arif Ali Khan and another v. The State and others (1993 SCMR 187)***, where the Supreme Court acknowledged the High Court's authority to intervene in matters disclosing ***mala fide intent*** by the police, in order to prevent abuse of process and uphold the ends of justice. This jurisprudence was subsequently affirmed in ***Hidayatullah and others v. The State (2006 SCMR 1920)***, ***Hussain Ahmad v. Ms. Irshad Bibi and others (1997 SCMR 1503)***, and ***Muhammad Sharif and others v. The State and another (1997 SCMR 304)***, establishing that judicial oversight may justifiably be exercised even at the investigative stage where malice or misuse of authority is evident ***during investigation***.

Nature of the JoP's: Judicial or quasi-judicial or administrative:

6. With regard to the nature of functions and powers exercised by a JoP under Section 22-A, Cr.P.C., particularly in directing the registration of an FIR or otherwise, a nuanced legal question arises concerning the appropriate forum for challenging such non judicial orders. This necessitates a careful determination of the character of such orders—whether such order in its nature fall within the domain of administrative, executive, or quasi-judicial authority. The procedural framework under the Code of Criminal Procedure does not provide a statutory appellate remedy against such orders, thereby requiring judicial scrutiny of the boundaries of the High Court's inherent jurisdiction under Section 561-A, Cr. P.C., as delineated by the Hon'ble Supreme Court. In this context, the jurisprudential classification of the JoP's directive assumes critical importance, as it directly impacts the maintainability and scope of any challenge brought before the superior courts.

Forum of Appeal against JoP Order

7. In ***Muhammad Ali v. Additional I.G., Faisalabad and others (PLD 2015 SC 753)***, the Supreme Court held that inherent jurisdiction cannot be exercised for administrative, executive or non-judicial orders and an ex-officio JoP under section 22-A Cr. P.C., performs purely administrative functions and does not constitute a "judicial proceeding" amenable to inherent jurisdiction. The relevant portion is re-produced:

"4. In view of the legal position discussed above we have entertained no manner of doubt that the order passed by the ex-officio Justice of the Peace under section 22-A (6), Cr. P.C. and impugned by the petitioner before the Lahore High Court, Lahore was an executive/administrative order and that the petitioner's petition filed **under section 561-A, Cr. P.C. before the Lahore High Court, Lahore assailing the said order passed by the ex-officio Justice of the Peace was not competent or maintainable.** Apart from that while seized of a petition filed under section 561-A, Cr. P.C. the Lahore High Court, Lahore had no jurisdiction to interfere in the investigation of a criminal case, as held in the precedent cases

mentioned above. It has not been denied before us that during the pendency or hearing of that petition the petitioner had never applied before the Lahore High Court, Lahore or had requested the learned Judge-in-Chamber of **that Court seeking conversion of the petitioner's petition filed under section 561-A, Cr .P.C. into a writ petition under Article 199 of the Constitution or its treatment as a writ petition** without a formal conversion and, thus, the defect in competence and maintainability of the petitioner's petition filed under section 561- A, Cr.P.C. remained uncured and fatal to the petition."

Emphasis added

8. While *Muhammad Ali* (supra) emphasizes a bright-line exclusion of **inherent jurisdiction** in matters involving administrative or investigative processes, it does not fully reconcile earlier precedents such as *Bahadur Khan* (supra) or *Arif Ali Khan* (supra) & others, which allow judicial oversight under inherent jurisdiction where mala fides or abuse of process are evident or against administrative order of Magistrate. This doctrinal tension was addressed and clarified in ***Younas Abbas v. Additional I.G. Police Punjab (PLD 2016 SC 581)***, decided by a five-member larger bench, which reaffirmed that while inherent jurisdiction is limited, the High Court's constitutional jurisdiction under Article 199 may still be invoked where the investigative process is tainted by mala fides or devoid of lawful authority, referring dictum as consistently held in ***Anwar Ahmed Khan v. The State (1996 SCMR 24)***, ***Muhammad Latif ASI v. Sharifan Bibi (1998 SCMR 666)***, ***Nasrullah Khan v. Manzoor Hussain (2004 SCMR 885)***, ***Ajmeel Khan v. Abdul Rahim (PLD 2009 SC 102)***, and ***Hayatullah Khan v. Muhammad Khan (2011 SCMR 1354)***.
9. Notably, in *Younas Abbas* (supra), the Supreme Court expressly disapproved the interpretation adopted in *Muhammad Ali* (supra) and ***Khizar Hayat v. I.G. Police Punjab (PLD 2005 Lah. 470)***, in relation to the functional status of a JoP. However, the Court clarified that while Sections 22-A(1)–(5) and 22-B Cr.P.C. pertain to executive and administrative responsibilities, the functions exercised by a JoP under Section 22-A(6), Cr.P.C. are quasi-judicial in nature. The Hon'ble Court elaborated:

“The duties, the Justice of Peace performs, are executive, administrative, preventive and ministerial as is evident from sub-sections (1), (2), (3), (4) and (5) of Sections 22-A and 22-B of the Cr.P.C. Such duties have not been a subject matter of controversy nor have they ever been caviled at by anybody. Controversy emerged with the insertion of subsection (6) in Section 22-A and Section 25 of the Cr.P.C. when Sessions Judges and on nomination by them the Additional Sessions Judges became the Ex-officio Justices of Peace. **The functions, the Ex-officio Justice of Peace performs, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with things mechanically. His functions as described in Clauses (i), (ii) and (iii) of subsection (6) of Section 22-A, Cr.P.C., are quasi-judicial as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind. Every lis before him demands discretion and judgment. Functions so performed cannot be termed as executive, administrative or ministerial on any account.** We thus don't agree with the ratio of the judgments rendered in the cases of Khizar Hayat and others v. Inspector General of Police (Punjab), Lahore and others (PLD 2005 Lah. 470) and Muhammad Ali v. Additional I. G. (PLD 2015 SC 753) inasmuch as it holds that the functions performed by the ex-officio Justice of Peace are executive, administrative or ministerial.”

Emphasis added

10. The Court further upheld the constitutional legitimacy of the insertion of subsection (6) to Section 22-A and the corresponding amendment to Section 25 of the Cr.P.C., introduced via the Criminal Procedure (Third Amendment) Ordinance, 2002 (Ordinance No. CXXXI of 2002), and held that the JoP's quasi-judicial role under Section 22-A(6) does not contravene the principles enunciated in ***Muhammad Bashir v. SHO, Okara Cantt* (PLD 2007 SC 539)** or ***Brig. (R) Imtiaz Ahmad v. Government of Pakistan* (1994 SCMR 2142)**.
11. In *Muhammad Bashir* (supra), it was clarified that registration of an FIR under Section 154, Cr.P.C. is a mandatory statutory duty, not a matter of discretion. The Supreme Court overruled the Lahore High Court's decision to quash the FIR on allegations of mala fides, reiterating that an offence

against the State cannot be nullified due to procedural missteps by police officers. This principle was reaffirmed in ***Syed Qambar Ali Shah v. Province of Sindh (2024 SCMR 1123)***, where the Supreme Court categorically held that the SHO is bound to register FIR under its statutory duty and the statutory remedy of a private complaint under Section 200 Cr. P.C. cannot override the mandatory obligation of FIR registration; refusal to do so by the SHO would amount to breach of duty, it would render the FIR mechanism redundant and would defeat the legislative intent. Any delay or reluctance in the registration of an FIR may irreparably compromise the evidentiary value of the crime scene, result in the loss of case property, and impair the credibility of the prosecution's case and prejudices the prosecution's legal burden placed under Article 118 of the Qanun-e-Shahadat Order, 1984, and the evidentiary implications under Article 122 of ibid Order.

Consideration of Conflicting View

12. In *Syed Qambar Ali Shah* (supra), the Hon'ble Supreme Court reiterated that inherent jurisdiction under Section 561-A Cr.P.C. is not to be invoked as an alternative remedy. However, while setting aside the High Court's order passed under inherent jurisdiction, the Court reinstated the decision of the 2nd Additional District & Sessions Judge, Ghotki—acting as JoP—implicitly affirming that quasi-judicial orders of a JoP may be challenged in inherent jurisdiction, albeit in narrowly tailored circumstances. Nevertheless, in *Younas Abbas* (supra), the larger bench explicitly rejected the exercise of inherent jurisdiction in relation to quasi-judicial orders issued by authorities other than courts. Adhering to the doctrine of precedential hierarchy, the ruling of the larger bench in *Younas Abbas* prevails and must be followed, irrespective of any subsequent but smaller bench decisions.

Final Determination on Appropriate Forum

13. ***First judicial reason:***

The delineation between the supervisory and inherent jurisdictions of the High Court is well-settled through authorities including *Shahnaz Begum* (supra), *Bahadur Khan* (supra), and *Arif Ali Khan* (supra). Supervisory jurisdiction under Sections 435–439, Cr. P.C. is invoked to review judicial orders of criminal courts, while inherent jurisdiction under Section 561-A Cr.P.C. is reserved for correcting procedural abuse, malafide during investigation, or rectifying administrative order by a Magistrate, typically prior to the framing of charge. However, a complaint under Section 22-A, Cr.P.C. merely seeks registration of an FIR. At this stage, no investigation is yet underway, and therefore, such applications do not fit within either of the recognized categories permitting exercise of inherent jurisdiction.

14. Second Judicial reason:

Statutory object and scope of the power conferred under Section 22-A, Cr.P.C., is inherently non-judicial in nature. This characterization is further substantiated by the absence of any statutory appellate remedy against orders passed under said provision, indicating the legislature's intent not to treat such orders as judicial determinations. The mere designation of a Sessions Judge as an ex-officio JoP does not, by itself, render the order amenable to the High Court's inherent jurisdiction under Section 561-A, Cr.P.C., solely by analogy to administrative orders passed by a Magistrate, as enunciated in *Bahadur's case* (supra). This analogy fails for two juridical distinct reasons: first, the statute does not recognize the office of Justice of Peace as a judicial forum or court; and second, the orders passed by such non-judicial authorities are quasi-judicial in nature as held by larger bench in *Yonus Abbas's case* (supra). Moreover, the comparison with a Magistrate's administrative order is legally untenable. A Magistrate, acting under statutory mandate, is entrusted with supervisory functions over the investigation process, which includes oversight until the acceptance of the police report or charge sheet under Section 173, Cr.P.C., and the subsequent transmission of the case to the competent court. This statutory framework clearly distinguishes the role and legal consequences of a

Magistrate's order from that of a Justice of Peace acting under Section 22-A, Cr.P.C. and therefore not amenable to inherent jurisdiction.

15. Third Judicial reason:

Judicial order or judicial proceeding—its object, scope and constitutional mandate distinct quasi-judicial authorities, though empowered to perform adjudicatory functions, remain administrative or regulatory bodies under statutory law, but it lacks the constitutional stature of "courts" under Article 175(1) of the Constitution. As observed in **Sh. Liaquat Hussain v. Federation of Pakistan (PLD 1999 SC 504)**, judicial functions, including the trial of offences, fall exclusively within the domain of constitutionally established courts. Military courts or similar tribunals, when not conforming to the criteria of independence and impartiality, are unconstitutional.

"Since admittedly the Military Courts were not courts established as contemplated by Article 175(1)... they cannot be conferred jurisdiction to try an accused..."

16. In **Rab Nawaz v. The State (2011 SCMR 1485)**, the Supreme Court held that a JoP cannot impose any sentence and thus his role remains outside the ambit of judicial authority under Section 28 Cr.P.C. or Section 228 PPC. This distinction was further reinforced in **Ali Gohar v. Pervaiz Ahmed (2020 SCMR 30)**, which, while relying on *Muhammad Ali* (supra), confirmed that JoP proceedings do not amount to proceedings before a "court" as defined under Section 6 of Cr.P.C. This position finds continued support in the larger bench decision in *Younas Abbas* (supra), which clarified:

"It will be observed that the power given thereby can be invoked to give effect to any order under Code to prevent an abuse of the process of court or otherwise to secure the ends of justice. The ends of justice necessarily mean justice as **administered by the Courts and not justice in the abstract sense or justice administered by agencies other than Courts**. The words "otherwise to secure the ends of justice" have to be read alongwith the earlier objects mentioned in this section and must have some correlation with them and it is in

this sense that this Court in the case of *M.S. Khawaja v. The State* (PLD 1965 SC 287) opined that the ends to secure which the inherent power may be invoked "have reference to the purposes which the judicial process is intended to secure, and it is difficult to include actions of investigating agencies within the scope of judicial process."

Emphasize added

Conclusion and Relief

17. Consequently, the impugned Order(s) passed by the JoP under the mandate of Section 22-A(6), Cr.P.C., are quasi-judicial in nature and, therefore, fall outside the ambit of this Court's inherent jurisdiction. In line with the authoritative pronouncement of the Hon'ble Supreme Court's Larger Bench in *Younas Abbas* (supra), the appropriate forum for assailing quasi-judicial actions or order of a JoP is the constitutional jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, as is the established practice in matters pertaining to other quasi-judicial and regulatory bodies. In *Younas Abbas* (supra) the Supreme Court has reaffirmed that the JoP's role under Section 22-A (6) Cr.P.C. is complementary to police functions and does not rise to the level of a judicial act nor do the action or order pass by JoP qualify as orders passed by a "court" as defined under Section 6 of the Cr.P.C. and this position aligns with the principles laid down in *Bahadur Khan, Ali Gohar* and *Rab Nawaz* (supra) which restrict the exercise of inherent jurisdiction of this Court to cases arising from either **judicial or administrative proceedings** of a **criminal court** and not from quasi-judicial or regulatory bodies.
18. Therefore, all the listed criminal miscellaneous application filed under section 561-A Cr. P.C before this Court are without jurisdiction and are dismissed as not maintainable under Section 561-A Cr. P.C.
19. It is noted that during the course of hearing, several learned counsels submitted that the listed applications have remained pending for a period ranging from one to four years, thereby leaving the Applicants without an effective remedy at this stage. However, the Applicants may, if so advised,

avail appropriate constitutional remedies, duly supported by the record of the present proceedings. The Court acknowledges and appreciates the valuable assistance rendered by the learned counsels, particularly Mr. Ashfaqe Nabi Kazi and Mr. Muhammad Hashim Leghari, during the course of arguments.

Judge

Kamran, PS