

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Dr. Syed Fiaz ul Hasan Shah

Crl. Misc. Application No.221 of 2022

Date	Order with signature(s) of Judge(s)
	<ol style="list-style-type: none">1. For order on office objection as at 'A'.2. For hearing of case.3. For hearing of MA No.4612/2022.

01.01.2026

Mr. Masood Khan Ghouri, Advocate for Applicant.

Mr. Bashir Ahmed Ghoto, Advocate for Respondent No.1.

Ms. Rahat Ahsan, Addl. P.G. Sindh.

O R D E R

Being aggrieved and dissatisfied with the order dated 17.03.2022 passed by the learned Xth Additional Sessions Judge, Karachi South in Crl. Revision Application No.34 of 2021, whereby, the said revision application was allowed by setting aside the order dated 01.04.2021 passed by XIIIth Judicial Magistrate, Karachi South in Crl. Misc. Application No.01 of 2021, the Applicants have filed instant Crl. Misc. Application.

2. Respondent No.1, being the resident of an Apartment bearing No.A-418, 14th Floor, Block-B, Amma Tower situated at M.A. Jinnah Road, Karachi, was filed a complaint under section 133, Cr.P.C. against the applicants/builders for causing injury and nuisance and grave hazardous to her apartment due to installation of chiller plant affixed at the roof top just above her apartment. Learned Judicial Magistrate summarily disposed of the complaint by directing the applicant/respondent No.1 to

carry out necessary repair works within thirty (30) days by placing reliance on the Stability Certificate submitted by the Karachi Cantonment Board.

3. Conversely, learned Xth Additional Sessions Judge, Karachi South after hearing both the parties summarily disposed of the revision application by directing the present applicants to remove the heavy AC chiller plant within 15 days.

4. It is an admitted position that both the orders passed summarily without recording of evidence of the parties or summoning the witnesses, which is contrary to the requirement of subsection (1) of section 133 of the Code of Criminal Procedure, 1898, which states that "*whenever 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*". However, I do not find any merits in the contention of the learned counsel for applicants that the provision of section 133, Cr.P.C. can only be filed against any public nuisances and not against any private nuisance, as the third proviso states 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**".

5. Therefore, the case in hand is squarely covers within the third proviso, which relate to health injurious or physical comfort

of the community. Learned counsel for the respondent No.1 has motivated to file complaint due to the physical discomfort by installing heavy AC chiller installed at the roof of project just above the apartment of respondent No.1, which also created sound resonance and its continuous function may harm structure of respondent No.1's apartment and give continuous mental injury. Since the evidence has not been recorded in terms of subsection (1) of section 133, Cr.P.C, I, therefore, set aside the impugned order and remand back the matter to the learned Magistrate concerned to summon the witnesses and after recording of evidence, decide the complaint in accordance with law, without being influenced with the Stability Certificate issued by Karachi Cantonment Board purportedly to avoid statutory duties.

6. Instant Crl. Misc. Application stands disposed of accordingly.

J U D G E

Farhan/PS