

## THE HIGH COURT OF SINDH AT KARACHI

Criminal Miscellaneous Application No.97 of 2024

Applicant : Syed Usman Habib, Inspection Manager, IBC K-Electric Karachi through Mr. Malik Khushhal Khan, Advocate

Respondents: The State through Mr. Zahoor Shah, Additional Prosecutor General Sindh

Date of Hearing : 12.09.2025

Date of Announcement : 26.09.2025

### **ORDER**

**Muhammad Hasan (Akber), J.**—The applicant, through this Criminal Miscellaneous Application under section 561–A Cr.P.C., assails the Order dated 20.10.2023, passed by learned Judicial Magistrate-XI, Karachi East, in Criminal Case No. Nil of 2023 (The State versus Akbar Chawla & Nadeem Chawla) arising out of FIR No.431/2023, registered at P.S. Shah Faisal Colony, Karachi, for offence under Section 462-J P.P.C., whereby the learned Magistrate did not agree to take cognizance and disposed of the subject FIR under “C” class.

2. Brief facts alleged in the FIR are that on 16.09.2023 at 1210 hours complainant Syed Usman Habib, Inspector Manager IBC, K-Electric, Shah Faisal, Karachi, visited the Police Station and verbally lodged complaint that his subordinate Abdul Qudoos, Meter Inspection Officer, informed him that on 15.09.2023 at 1150, while on inspection in the area, noticed that electricity of meters No.SET89403, SET89404 and SET89405 installed at House No.C-1-26/283, Old Iqbalabad, Drig Road, Karachi, was disconnected due to non-payment of bills but they are using electricity by way of installing kundas and committing theft of electricity, their such act fall under Section 462-J, PPC, hence subject FIR.

3. After completion of Investigation, Final Report under section 173, Cr.P.C. was submitted before the learned Civil Judge & Judicial Magistrate concerned, who disposed of the aforesaid FIR under “C” Class by observing that,

**“.....I do not agree with the opinion of learned ADPP for State as well as of IO and even of the learned counsel for K-electric, as such the cognizance of the case is expressly barred in the absence of written complaint under section 4(h), Cr.PC., therefore, this Court is not empowered to take the cognizance of**

**alleged offence and the instant FIR being registered on account of “misstate of law” is hereby disposed of under ‘C’ Class”.**

4. Learned counsel for the applicant argued that the order is illegal, and the Judicial Magistrate wrongly refused to take cognizance and failed to exercise the jurisdiction vested in it.

5. Learned APG disagrees with such proposition and submits that in cases of theft of electricity, special provision of Chapter XVII-B and Section 462-J P.P.C. are to be followed and the Court would take cognizance only when a complaint, in writing, is filed, by the duly authorized officer (not below the ranked of grade 17) of the Government or the distribution company, as the case may be. Learned APG supports the reasoning adopted by the learned Judicial Magistrate, so also the Order impugned.

6. The second line of argument by the learned APG was that the FIR was also lodged verbally and not in writing, and that too, without any due authority from the distribution company in favour of the complainant, hence mandatory requirements of section 462-O(2) were also not fulfilled, and the applicant's case fails on this ground as well.

7. Heard and perused. A short controversy appears to be involved in the present case i.e. whether First Information Report (FIR) under section 154 Cr.P.C. is to be registered in a case (of theft of electricity) falling under section 462-O P.P.C. Case of the Applicant, being power distribution company is that FIR is to be registered in such cases, whereas the learned APG controverts such stance and supports the Order impugned.

8. **Chapter XVII-B** relating to the matters of electricity has been included in the PPC. vide Criminal Law (Amendment) Act, 2016, wherein an inbuilt provision has been provided by Section 462-O, PPC for dealing with the matters covered by the Chapter *ibid*. Section 462-O, PPC specifically excludes the provisions of Code of Criminal Procedure, 1898, (Cr.P.C.) as well as any other law for the time being in force in the matters covered under Chapter XVII-B. The term "**Court**" for the said purpose has been defined in clause (a) of section 462-G, PPC to mean the Court of Session designated as Electricity Utilities Court empowered to take cognizance of an offence under the said Chapter. For ready reference, the provisions of Sections 462-O and 462-P are reproduced below:

**"462-O. Cognizance.** (1) The Court shall try an offence punishable under this Chapter.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 or any other law for the time being in force, the Court shall not take cognizance of any offence under this Chapter except on a complaint made, with reasons to be recorded in writing along with full particulars of the offence committed under this Chapter, by duly authorized officer (not below Grade 17) of the Government or the distribution company, as the case may be."

9. In addition to the above non-obstante provision, section 462-P also gives an overriding effect to Chapter-XVII-A P.P.C., in the following terms:

**"462-P. Overriding effect.**—The provisions of this Chapter shall have effect notwithstanding anything contained in any other law for the time being in force."

10. This legal issue involved in this case appears to have already been discussed and decided in the case of **'PESCO through Chief Executive Officer v. The State and 43 others' 2020 PCr.LJ 249** the Peshawar High Court upheld the decision of the learned Sessions Judge, that in cases falling under section 462–O P.P.C., FIR cannot be registered, but the Court would only take cognisance on a complaint in writing by duly authorized officer of the Government or distribution company.

"6. In these quashment petitions, the precise question for determination before this Court is "whether the provisions of section 462-O, P.P.C. are applicable to the cases covered by Chapter XVII- B of the Pakistan Penal Code 1860, or the Schedule appended to the Code of Criminal Procedure 1898, is to be followed in respect of the ibid offences."

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9. Hence, in view of the above, the offences relating to Chapter XVII-B of the P.P.C. shall only be covered by the provisions of Section 462-O, which ousts the applicability of the Code of Criminal Procedure, 1898 or any other law for the time being in force relating to the assumption of jurisdiction of the court in the matter. Thus the Court shall not take cognizance of any offence under this Chapter, except on a complaint made, with reasons to be recorded in writing along with full particulars of the offence committed under this Chapter, by duly authorized officer (not below Grade 17) of the Government or the distribution company, as the case may be. This certainly means that the Court shall not take cognizance of any of the offences relating to Chapter XVII-B of the P.P.C., but except upon a complaint provided by the provisions of section 462-O.

10. The term "Court" for the said purpose has been defined in clause (a) of section 462-G, P.P.C. to mean the Court of Session designated as

Electricity Utilities Court empowered to take cognizance of an offence under the said Chapter.

11. Moving on further to the assertions of the learned counsel for the Petitioners that the Schedule would prevail over the parent statute, suffice it to mention that it is by now a settled principle of law that when there is conflict in an enabling provision of an Act or an Ordinance and the Schedule thereto, then, the provisions of the main Act/Ordinance are to prevail upon the provisions of the Schedule appended therein. In this respect reliance is placed on the case of "Federation of Pakistan through Secretary, Ministry of Finance and others v. Haji Muhammad Sadiq and others" 2007 PTD 67 (Supreme Court of Pakistan)...."

11. Identical view was adopted in '**Muhammad Ibrahim v. The State**' 2021 P.Cr.LJ 412 by the Baluchistan High Court holding that direct FIR cannot be registered in cases falling under section 462-O PPC.

"1. This judgment disposes of Criminal Appeal No.29 of 2019 filed by the appellant Muhammad Ibrahim son of Musa Kaleem, against the judgment dated 25th June, 2019 (hereinafter referred as "the impugned judgment") passed by learned Sessions Judge, Quetta (hereinafter referred as, "the trial Court"), whereby the appellant has been convicted under section 462-K, P.P.C. and sentenced for a period he has already undergone with fine of Rs.20,000/- (Rupees Twenty Thousand Only) in default thereof to further suffer S.I. for One (01) month.

.....

9. Thus, in view of the above, the offences relating to Chapter XVII-B of the P.P.C. shall be covered by the provisions of section 462-O, which ousts the applicability of the Code of Criminal Procedure, 1898 or any other law for the time being in force relating the assumption of jurisdiction of the Court in the matter. Thus, the Court shall not take cognizance of any offence under this Chapter, except on a complaint made, with reasons to be recorded in writing along with full particulars of the offence committed under this Chapter, by duly authorized officer (not below Grade 17) of the Government or the distribution company, as the case may be. It means that the Court shall not take cognizance of any of the offences relating to Chapter-XVII-B of the P.P.C., but except upon a complaint provided by the provisions of section 462-O, P.P.C.

10. Thus the matter in hand, all the proceedings carried out in violation of provisions of section 462-O, P.P.C. and it is settled principle of law that when law requires a thing to be done in a particular manner it must be done in the same manner as provided under the law, as deviation from the prescribed procedure amounts to violation of law.

11. A comparative study of section 462-O, P.P.C. has made it clear that FIA authorities illegally and unlawfully and without any mandate of law raided the Ice factory thereby travelled beyond their authority as the required procedure was not followed rather violated, it is well settled principle of law that the mandatory requisites of law, which are pre-requisites, if not followed, then the entire proceedings would be nullified in the eyes of law; thus, the case of prosecution from very inception is defective, not maintainable and the - impugned judgment of conviction

passed by the trial Court deserves to be set aside, the learned trial Court while delivering the impugned judgment has not considered the above legal aspects of the case, thus, conviction and sentence so awarded cannot be maintained.

For the above reasons, the appeal is accepted. The impugned judgment dated 25th June, 2019 passed by trial Court is set aside. The appellant is acquitted of the charge.”

12. Lastly, in the case of ***‘K-Electric (Pvt.) Ltd. through authorized officer/Attorney and others v. The State and others’*** PLD 2019 Sindh 209 wherein a Division Bench of this Court after comparing various provisions of the Electricity Act, the Criminal Procedure Code, Chapter XVII-B and section 462-O PPC., held that Chapter XVII-B in P.P.C. introduced vide Criminal Law Amendment Act, 2016, which deals with the offences in respect of electricity would be treated as a special law and the same shall prevail over the relevant provisions of Electricity Act to the extent of such inconsistency. Relevant portions of the Judgment are reproduced below:

“7. We may further observe here that a law which is essentially general in nature may contain some special provisions relating to certain matters and on these matters, the said law would be classified as a special law. And if there are certain provisions therein which are wholly inconsistent with the prior special law, the same would be considered to have abrogated the said special law by implication to the extent of such inconsistency. Going by such construction which their lordships have articulated in the case of Justiniano Augusto De Foneseca, (1979) 3 SCC 47: AIR 1979 SC 984 referred to in the case of R.S. Raghunath v. State of Karnataka and another (AIR 1992 Supreme Court 81) relied upon by learned counsel for the petitioner, it would not be difficult to say that 2016 Act introducing Chapter XVII-B in P.P.C. to specially deal with the offences in respect of electricity would be treated as a special law and on account of patent inconsistency (which we have discussed in following paragraphs) it shall prevail over the relevant provisions of Electricity Act to the extent of such inconsistency.

.....

9. We have reproduced some of the necessary facts from the statement of objects and reasons to show that this amendment in P.P.C. was brought in by the legislature after noting failure of mechanism in Electricity Act to curb theft of electricity, etc., and the consequences emanating from such a situation. It is quite obvious that the legislature was led by such a failure to believe that Electricity Act was not producing the desired results, and which necessitated a fresh approach to the problem. In such a context a conscious departure in regard to instituting prosecution and punishment of offence of theft of electricity from the previous law i.e. Electricity Act or for that matter Chapter 9 of Customer Service Manual which actually refers to Electricity Act for dealing with such an offense has been made. In section 462O P.P.C.,

which relates to 'cognizance', it has been provided that notwithstanding anything contained in the Code of Criminal Procedure, 1898 or any other law for the time being in force, the court shall not take cognizance of any offence under the said chapter except on a complaint made by duly authorized officer (not below Grade 17) of government or the distribution company as the case may be. This would mean the prosecution under this chapter shall necessarily start only with a complaint and such complaint shall be filed in the court by a duly authorized officer of the government or distribution company as the case may be. The court for the said purpose has been defined in clause (a) of section 462G P.P.C. to mean the court of session designated as Electricity Utilities Court empowered to take cognizance of an offence under the said chapter. Contrary to it, the offence under section 39 of Electricity Act which deals with theft of energy is a cognizable offence, the police can lodge the FIR for such an offence and there is no legal requirement to file a complaint in this regard, and the same is triable by the Judicial Magistrate as provided by section 50-A of Electricity Act. But it must be minded that as per section 50 of Electricity Act, such an FIR could be lodged only at the instance of the Government or an Electric Inspector or of person aggrieved by any act or omission contrary to the provisions of the said act. This shows that there is a material conflict between the two laws not only in respect of mode of launching the prosecution but how and by whom and before whom such prosecution has to be instituted. 2016 Act stipulates a complaint in the Electricity Utilities Court (the sessions court) to be filed by only duly authorized officer of the government or of a distribution company as the case may be, while Electricity Act requires registration of FIR for the same offence which not only the government or an electric inspector but any aggrieved person in this behalf can lodge and the same is triable by the Judicial Magistrate. Besides, there is a difference in the punishment provided for the said offence in the two laws which hampers their standing together harmoniously. The offence under section 39 of Electricity Act is punishable with imprisonment for a term which may extend to three years, or with a fine which may extend to five thousand rupees, or with both; while the same offence provided under section 462G P.P.C. is punishable with imprisonment of three years or with fine up-to ten million or with both.

11. For the foregoing discussion, we are of the view that the provisions of 2016 Act to the extent of such inconsistency in respect of offences relating to electricity would prevail over the provisions of Electricity Act. And in view thereof these petitions are found without any merits and are dismissed accordingly without any order as to costs...”

13. From the above, it appears that while on one hand, section 462-O PPC ousts the applicability of the Code of Criminal Procedure, 1898 or any other law for the time being in force, whereas section 462-P PPC. gives overriding effect to Chapter XVII-B, notwithstanding anything contained in any other law for the time being in force. Based upon the above and as held in the afore-discussed Judgments, offences concerning electricity falling under Chapter XVII-B, PPC. shall

be covered by provisions of Section 462-O, PPC. "***Expressio unius est alterius exclusio***" is yet another settled principle which provides that express mention of one thing implies exclusion of another. A statute limiting a thing to be done in a particular form necessarily includes negative i.e., thing shall not be done otherwise, as held in '***Chairman Evacuee Trust Property v. Muhammad Din and others***' PLD 1971 Lahore 217.

14. Applying the principles discussed in the preceding paragraphs 8 to 14 to the present case, it appears that the Order 21.10.2023 passed by the learned Judicial Magistrate after due application of judicial mind. The same is based upon correct interpretation of law and sound legal principles, against which the appellant side was unable to point out any illegality or infirmity. The decisions relied upon by the Applicant's learned counsel are distinguishable. For instance, the case of '*Zeeshan Anjum v. The State*' 2022 MLD 1091 was passed by a learned Single Judge while considering a bail application wherein no final decision was pronounced, and the observations therein were tentative in nature. Moreover, the principles settled in the case of ***K-Electric*** *supra* were also not discussed in the said Order. The next case of '*Hakim Ali vs. The State & others*' 2017 PCr.LJ 604 was also with reference to confirmation of a pre-arrest bail and suffice it to say that observations were also tentative in nature, wherein the decisions in K-Electric case *ibid* were also not discussed. Same was the situation in PLD 2012 SC 892 '*Muhammad Nazir vs. Fazal Karim*', and in the unreported Order dated 02.10.2023 in Cr. Bail Application No.2201/2023 '*Nadeem vs. The State*'.

15. Upshot of the above discussion is that the Applicant could not point out any illegality in the Order impugned; hence, the instant Criminal Miscellaneous Application is dismissed. The applicant may, if so advised, avail itself of its remedies before the relevant Court having jurisdiction, but strictly in accordance with law and subject to all just and legal exceptions. The Application stands dismissed in the above terms.

Before parting with this Order, a word of appreciation for the assistance provided by Mr. Malik Khushal Khan learned Advocate for Applicant, and Mr. Zahoor Shah the learned law Officer.

**JUDGE**