

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

C.P No. D-159 of 2025

[Sajeel Ahmed v. Mushtaque Ali and others]

Before:

Mr. Justice Arbab Ali Hakro

Mr. Justice Riazat Ali Sahar

Petitioner	:	Sajeel Ahmed through Mr. Umaid Ali Kh, Advocates.
Respondents No.1&2	:	Mushtaque Ali and another through Mr. Muhammad Aslam Laghari, Advocate.
Respondent No.3to17	:	Through M/s. Muhammad Rafique Dahri, A.A.G. Sindh and Shahid Ahmed Shaikh A.P.G. Sindh.
Date of Hearing		19.02.2026
Date of Judgment	:	19.02.2026

O R D E R

RIAZAT ALI SAHAR. J. - Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has prayed for the following reliefs:-

- a) Declare the Impugned Order dated 14.01.2025 passed by Ld. Additional Sessions Judge II, Tando Allahyar on Criminal Revision filed by Petitioner as illegal, unlawful and void ab initio.*
- b) Declare the Impugned Order dated:-09.10.2024 passed by Ld. Judicial Magistrate 1, Chamber on Criminal Miscellaneous Application N.04 of 2024 filed by Respondents No.1 & 2 as illegal, unlawful, void ab initio, corum non judice, exparte and against the natural justice.*

- c) Set aside the Impugned Order dated:- 14.01.2025 passed by Ld. Additional Sessions Judge II, Tando Allahyar as well as Impugned Order dated:-09.10.2024 passed by Ld. Judicial Magistrate 1, Chamber and dismiss the Criminal Miscellaneous Application N.04 of 2024 filed by Respondents No.1 & 2 in the interest of justice.*
- d) Suspend the operation of Impugned Order dated:-09.10.2024 passed by Ld. Judicial Magistrate I, Chamber passed on Criminal Miscellaneous Application N.04 of 2024 filed by Respondents No.1 & 2 and proceedings pending before Ld. Judicial Magistrate - I, Chamber may also please be stayed, in any manner whatsoever, till final disposal of instant petition.*
- e) Grant cost against the Respondents.*
- f) Grant any other relief which this Honorable Court may deem fit and proper in the circumstances of the case.*

2. The facts giving rise to the present petition are that the petitioner has called in question the legality and propriety of (i) order dated 09.10.2024 passed by learned Civil Judge & Judicial Magistrate-I, Chamber in Criminal Miscellaneous Application No.04 of 2024 under Section 133 Cr.P.C., and (ii) order dated 14.01.2025 passed by learned 2nd Additional Sessions Judge, Tando Allahyar, whereby Criminal Revision filed by the petitioner was dismissed as time-barred. As per petition, respondents No.1 & 2 instituted an application under Section 133 Cr.P.C. before the learned Civil Judge & Judicial Magistrate-I, Chamber seeking removal of alleged obstruction in the natural flow of "Saagri Darya (Old Dhoru)" and drainage of accumulated rainwater, alleging public nuisance. The petitioner was not arrayed as party in the said proceedings. After issuance of notices and receipt of certain reports from official respondents, the learned Magistrate vide order dated 09.10.2024 passed a conditional order directing Deputy Commissioner and other officials to remove

nuisance by draining rainwater from government paths and restoring the natural flow of Dhoru, to remove encroachments and submit compliance report within 30 days.

3. The petitioner submitted that he became aware of the order only on 06.01.2025 when revenue officials attempted to interfere with his agricultural surveyed land on the pretext of compliance. He thereafter filed Criminal Revisional Application under Section 439-A Cr.P.C., which was dismissed vide order dated 14.01.2025 by the learned 2nd Additional Sessions Judge, Tando Allahyar, on the ground that it was barred by limitation and that connected revisions had already been decided. Hence, the present petition.

4. Pursuant to notice of this Court, respondents No.1 & 2 have filed objections stating that the application under Section 133 Cr.P.C. was filed for removal of public nuisance and not against any individual or lawful private property. They submitted that the learned Magistrate applied judicial mind and passed the conditional order strictly in accordance with law after considering reports confirming blockage in the Dhoru. They stated that the petitioner could have approached the Magistrate but instead filed a belated Revisional Application. The Revisional Court, according to them, rightly dismissed the revision on limitation.

5. The official respondents including SSP, DSP, Chairman District Council and others have stated that they were impleaded in official capacity only and no allegation is attributed to them. They have submitted that they acted in compliance with judicial orders and would abide by any order passed by this Court. The Assistant Commissioner and Mukhtiarkar have submitted reports indicating infrastructural concerns and possible adverse consequences if the order is implemented without proper safeguards.

6. Learned counsel for the petitioner contended that proceedings under Section 133 Cr.P.C. are maintainable against a “**person**” causing nuisance, whereas the application was directed against “**public servants**” and in this regard, he referred Section 11 and Section 21 PPC to demonstrate that “**Person**” and “**Public Servant**” are separately defined. He contended that the legislature intentionally confined Section 133 Cr.P.C. to “**person**” and not “**public servant**”. He also contended that the petitioner was not impleaded nor heard, thereby violating principles of natural justice. Learned counsel also questioned the order dated 09.10.2024 to have passed by the learned Magistrate beyond the pleadings in the application. On his main plea, the learned counsel contended that no specific limitation is provided for criminal Revisional Application under Section 439-A Cr.P.C. hence, in such eventuality, Article 181 of the Limitation Act, 1908 is applicable, and as such, the Revisional Court misdirected itself in dismissing the revision as time-barred and by relying upon revisions filed by other persons.

7. Learned counsel for the respondents No.1 and 2 contended that Section 133 Cr.P.C. empowers the Magistrate to remove public nuisance affecting community at large and the order was passed to restore natural water flow and prevent flooding. According to him, the petitioner’s rights were not directly adjudicated; however, the revision was filed beyond prescribed limitation and was rightly dismissed. He contended that no constitutional infirmity exists in the matter and prayed for dismissal of instant petition.

8. Learned A.A.G. Sindh and learned A.P.G. Sindh, both have relied upon Rule 57 of the Sindh Chief Court Rules (**Appellate Side**) and contended that revision by other persons must be filed within sixty days from the date of decision complained of; however, the petitioner failed to do so, as such, the Revisional Court applied correct legal principle and no

interference is warranted in the matter. They prayed for dismissal of instant petition.

9. We have carefully examined the material available on the record and considered the respective contentions of learned counsel for the parties.

10. At the very outset we would like to discuss as to whether Revisional Application filed by the petitioner before the Court of learned Revisional Court was within time. As far as, the learned A.A.G. Sindh and A.P.G. Sindh referred **Rule 57 of Sindh Chief Court Rules (Appellate Side)**, which for ready reference is reproduced as under:-

(1) Applications by Government for exercise of criminal revisional jurisdiction shall be made within six months from the date of the decision complained against, exclusive of time required for obtaining copies.

(2) Applications by other persons shall be made within sixty days from the date of the decision complained against, exclusive of time required for obtaining copies:

Provided that where a revisional application is made to the Sessions Judge or District Magistrate and rejected by that officer, the period of sixty days shall be computed from the date of that order.

Section 11 PPC – “Person” provides that;

“The word ‘person’ includes any Company or Association, or body of persons, whether incorporated or not.”

Section 21 PPC – “Public Servant” enumerates various categories of officers including government officials, judges, revenue officers and officers charged with public duties.

Section 133 of the Code of Criminal Procedure, 1898 is reproduced as under:-

133. Conditional order for removal of nuisance:

(1) 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;

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 of such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing-such obstruction or nuisance or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to desist from carrying on, or to remove or regulate in such manner as maybe directed, such trade or occupation, or

to remove such goods or merchandise, to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure;

or to remove or support such tree, or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do,

to appear before himself or some other [Magistrate of the First Class] or Second Class, at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

11. The impugned Revisional order reveals that the Revisional Application was dismissed primarily on limitation without independent examination of petitioner's plea regarding

knowledge of the order and without evaluating merits of the conditional order. **Rule 57 of the Chief Court Rules (Appellate Side)** provides sixty days limitation, exclusive of time required for obtaining copies. The question whether the revision was within limitation or whether with delay, if any, stood explained, required judicial determination with reasons. Moreover, the Revisional Court relied upon certain connected revisions filed by other individuals without adjudicating grounds raised by the present petitioner. Such approach requires application of judicial mind to independent facts and grounds. The Revisional jurisdiction under Section 439-A Cr.P.C. obligates the Court to examine legality, correctness and propriety of the impugned order. Dismissal on technical ground without proper inquiry into limitation and merits amounts to material irregularity in exercise of jurisdiction. As such, we are of the view that the learned Revisional Court failed to properly appreciate the scope of **Rule 57** of the Chief Courts Rules (Appellate Side) and the factual claim regarding date of knowledge and **procurement of certified copies**. The Revisional Court was required to specifically determine limitation in light of record coupled with the factum that the petitioner was not impleaded as party in the application under section 133 Cr.P.C. and thereafter, if within time or sufficiently explained, to examine legality and propriety of the conditional order dated 09.10.2024 passed by the learned Magistrate.

12. The summary dismissal of Revisional Application, coupled with reliance on connected revisions, which admittedly were not filed by the petitioner, reflects misdirection in law and failure to exercise jurisdiction vested in the Court. Such defect strikes at the root of judicial adjudication and cannot be sustained. It is well settled that Revisional jurisdiction is meant to correct jurisdictional errors, illegality or material irregularity even by way of *Suo Moto* on the basis of information sought by any source. Where the Revisional Court declines to exercise jurisdiction on inappropriate technical ground, this Court in its constitutional

jurisdiction may intervene to ensure that subordinate courts act within bounds of law and dispense justice in accordance with due process.

13. For what has been discussed above, the, order dated 14.01.2025 passed by learned 2nd Additional Sessions Judge, Tando Allahyar is hereby **set aside**. The matter is **remanded to the Revisional Court** with direction to decide the Criminal Revisional Application afresh, strictly in accordance with law, after affording opportunity of hearing to all concerned parties and after determining the question of limitation in accordance with applicable Rule 57 of the Chief Courts Rules (Appellate Side). The Revisional Court shall dispose of the revision **within 45 days** from receipt of this order. The parties shall appear before the Revisional Court within ten (10) days. No adjournment shall be granted except for exceptional reasons to be recorded in writing.

14. Needless to observe that this Court has not expressed any opinion on merits of the conditional order dated 09.10.2024, which shall be independently examined by the Revisional Court.

15. Petition stands **disposed of** in above terms. The pending application(s) also stand disposed of.

JUDGE

JUDGE

Approved for Reporting

Abdullah Channa/PS