

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Miscellaneous Application No.S-733 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For orders on office objection
- 2. For orders on M.A. 12762/2024
- 3. For hearing of main case
- 3. For hearing of M.A. 11209/2024

Mr. Muhammad Jamil Ahmed advocate for applicant.
Mr. Nadir Ali Lund advocate for Respondent No.1.
Mr. Siraj Ahmed Bijarani Assistant PG.

Date of hearing: 15.04.2025
Date of Decisions: 24.04.2025.

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MIRAN MUHAMMAD SHAH, J.- Learned Counsel has filed this Application u/s 561-A Cr.P.C. where being aggrieved and dissatisfied with the Order dated 25.10.2024 passed by the learned 2nd Additional Sessions Judge/Ex-Officio Justice of Peace Hyderabad in connection with Criminal Miscellaneous Application No.5061 of 2024 u/s 22-A & B Cr.P.C whereby the learned Sessions Judge-II Hyderabad pleased to allow/dispose of the above said Criminal Miscellaneous Application without applying the judicial mind and legal prudence.

2. Facts of the case are that the Respondent No.1 filed Application u/s 22-A & B Cr.P.C against Applicant/proposed accused alleging that proposed accused is residing in Flat No. 1 of the same plaza, where electricity PVC wires are concealed in walls and are passing through the balcony of flat of proposed accused, who broken the wall of balcony and disconcealed PVC electric wires and tear 2 to 3 PVC wires of electricity and time to time illegally joint connections from tear PVC electric wires. It is further alleged by the Respondent No.1 that on 27.09.2024 he receives electricity bill of Rs.1,19,400/- (One Lac Nineteen Thousands Four Hundred), and on checking he found that proposed accused has unlawfully connected his electricity from his electric wire.

3. Learned Counsel for the Applicant states that the impugned Order has been passed without applying judicial mind and legal prudence and reiterated all the grounds mentioned in his Application. He has prayed that the impugned Order may be set aside.

4. Learned Counsel for Respondent No.1 and learned DPG have supported the impugned Order and prayed for dismissal of this Application.

5. After hearing the parties at length I have come to the conclusion that when the law provides a procedure under its given sections then mere factual arguments should not be given any weightage. In this case Pakistan Penal Code provides a Chapter i.e. Chapter No.XVII-B for offences relating to Electricity which was inserted by Act VI of 2016 where section 462 and its different provisos were provided to deal with electricity theft. In the case in hand section 462-O is reproduced as under for reference:

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 an 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.

6. This section clearly provides a mechanism for taking cognizance of the offences falling under the electricity theft where it is categorically stated that the Court shall not take cognizance of offences under this chapter except on a complaint made by duly authorized officer not below grade 17 of the Government or the Distribution Company as the case may be. Such proviso of section 462 bars entertainment of any such complaint by a private person u/s 22-A & B Cr.P.C. In such circumstances, it is clear that the learned 2nd Additional Sessions Judge/Ex-Officio Justice of Peace Hyderabad without approaching the law and without adopting the legal procedure provided for this special offence has in arbitrary manner passed this impugned Judgment which cannot sustain in the eyes of law provided. In fact it is passed in violation of the legal provisions of Pakistan Penal Code 1860. Thus the Order dated 25.10.2024 of the Additional Sessions Judge/Ex-Officio Justice of Peace is set aside and this Criminal Miscellaneous Application No.S-733/2024 is hereby allowed.

JUDGE