HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-1550 of 2025
[Amanullah vs. Province of Sindh and others]

Before:
JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE MUHAMMAD JAFFER RAZA

Petitioner:	Through Mr. Nazeer Ali Bhatti, Advocate
Respondent No.1	Through Mr. Wali Muhammad Jamari Assistant A.G Sindh
Respondents 2to4&6to7:	None present
Respondent No.5:	Through Mr. Ghulm Rasool Mallah, Advocate
Date of hearing	12.11.2026
Date of Decision	12.11.2026

O R D E R

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ADNAN-UL-KARIM MEMON J The petitioner has filed the instant Constitutional Petition under Article 199 of the Constitution, seeking construction of a proper drainage line at his residence, setting aside the orders dated 05.04.2025 and 16.07.2025 passed by the Judicial Magistrate-I and Additional Sessions Judge, Sehwan, respectively, and protection against any unlawful obstruction or demolition of the drainage line.

2. The petitioner claims to have purchased the house in 2012 and has since been residing there with his family. He submits that the existing underground sewerage pipeline became choked, prompting him to apply to the Municipal Committee on 24.06.2024 for construction of an open drainage line. However, no action was taken. Allegedly, private respondents Nos.5 and 6, due to personal grudge arising from pending civil litigation, obstructed the construction initiated by him on 28.12.2024, which was subsequently demolished by the official respondents on 01.01.2025, causing him a loss of Rs.200,000/-. The petitioner approached the Judicial Magistrate-I, Sehwan, by filing an application under Section 133 Cr.P.C., which was disposed of vide order dated 05.04.2025. His subsequent criminal revision was dismissed by the Additional Sessions Judge, Sehwan, vide order dated 16.07.2025. The petitioner assails both orders, contending that the absence of a functional drainage system causes public nuisance, unhealthy conditions, and inconvenience to his family and other residents. He

further asserts that provision of drainage facilities is an obligatory duty of the Municipal Committee under the Sindh Local Government Act, 2013.

3. The petition primarily concerns the orders passed by the Courts below and the grievance against the Municipal Committee, Sehwan, regarding non-construction of the sewerage/drainage line and alleged obstruction.

4. The learned Civil Judge & Judicial Magistrate-I, Sehwan, disposed of Criminal Miscellaneous Application No. 02/2025, filed under Section 133 of the Cr.P.C. by the petitioner against the Chairman of the Municipal Committee, Sehwan and others. The applicant sought a directive preventing private opponents from interfering with the construction of a drainage channel (*Nali*) for his bungalow in Saddar Mohalla, Sehwan, a structure he claimed had existed since 1946, and ordering official opponents to reconstruct the drain after demolishing it without prior notice. However, reports submitted by the SHO of PS Sehwan and the Chief Municipal Officer (CMO) revealed that the applicant had unlawfully encroached upon a public street (approximately 2 by 80 feet) to build the channel, ignoring warnings to remove it and refusing to connect to the existing government sewerage line used by neighbors. Consequently, the Municipal Committee's anti-encroachment team demolished the structure to clear the street for students and the general public. Regarding the legal criteria for public nuisance, the Court observed that the applicant's request to secure separate drainage due to road elevation issues falls outside the scope of Section 133 Cr.P.C. While affirming that the applicant may install a covered, non-nuisance drainage system at his own expense or approach a competent forum regarding his right of easement, the Court formally disposed of the application on April 5, 2025.

5. Petitioner being aggrieved by and dissatisfied with the aforesaid decision filed Criminal Revision Application No. 12 of 2025, under Sections 435 and 439-A of the Cr.P.C. Upon hearing arguments, the Revisional Court observed that the applicant sought to construct a drainage channel on a public street strictly for his personal use, whereas Section 133 Cr.P.C. is exclusively intended to address public nuisances, which was absent in the applicant's case. Finding that the trial court acted well within its jurisdiction and committed no illegality or irregularity in holding the application non-maintainable, the Additional Sessions Judge dismissed the Criminal Revision Application on July 16, 2025.

6. We have heard learned counsel for the petitioner and have examined the material available on record, including the orders passed by the Courts below.

7. The controversy, in essence, relates to the petitioner's grievance regarding the absence of an effective drainage facility at his residence and the alleged obstruction caused to the construction of a separate drainage channel. However,

the record reflects that the proposed drainage channel was being constructed over a public street, allegedly encroaching upon an area measuring approximately 2 × 80 feet, and was removed by the Municipal Committee to clear the passage for the general public.

8. It is settled that extraordinary jurisdiction under Article 199 of the Constitution cannot ordinarily be invoked to circumvent the statutory remedies or to reopen factual controversies already examined by competent criminal Courts.

9. The learned Judicial Magistrate, while exercising jurisdiction under Section 133 Cr.P.C., was required to determine whether an unlawful obstruction or public nuisance existed within the contemplation of the said provision. The Courts below, upon consideration of the reports submitted by the concerned authorities, concluded that the petitioner's attempt to construct a drainage channel was primarily for his individual benefit and involved encroachment upon a public street. No material has been brought on record to demonstrate that the concurrent findings recorded by the Courts below suffer from any jurisdictional defect, patent illegality, and perversity or material irregularity warranting interference by this Court in its constitutional jurisdiction.

10. Nevertheless, dismissal of the petitioner's application under Section 133 Cr.P.C. does not absolve the Municipal Committee, Sehwan, of its statutory responsibility to provide and maintain an adequate sewerage and drainage system within its municipal limits.

11. The provision of sanitation, drainage and removal of wastewater is an essential municipal function under the Sindh Local Government Act, 2013. A resident cannot be compelled to live in unhygienic conditions merely because his proposed individual arrangement has been found to encroach upon a public street. Similarly, no individual can claim a right to construct a private drainage channel by obstructing a public passage or interfering with the rights of other residents.

12. In the circumstances, the Municipal Committee, Sehwan, being the concerned local authority, is under an obligation to examine the actual drainage problem at the petitioner's residence and devise an appropriate arrangement for the safe disposal of domestic wastewater without causing inconvenience, obstruction or nuisance to the public or neighboring residents.

13. Accordingly, without disturbing the concurrent findings recorded by the Courts below or expressing any opinion on the petitioner's disputed claim of easementary rights, we deem it appropriate to direct the following course of action:

i. The Chief Municipal Officer, Municipal Committee, Sehwan, shall constitute a technical team comprising the concerned engineering and sanitation staff to visit the petitioner's premises and inspect the existing

sewerage system, the level of the road, the available municipal drainage network and the nature of the obstruction complained of.

ii. The technical team shall hear the petitioner as well as the concerned neighboring residents and private respondent Nos.5 and 6, and shall endeavor to identify a mutually acceptable and technically workable solution for disposal of domestic wastewater without fail.

iii. If technically feasible, the Municipal Committee shall facilitate connection of the petitioner's household drainage with the existing municipal sewerage line or provide an alternative covered drainage arrangement, ensuring that wastewater is properly channeled without flowing onto the public street or neighboring properties.

iv. The Municipal Committee shall ensure that no open drain, unauthorized construction or encroachment upon the public street is permitted. The petitioner shall also extend full cooperation and shall not undertake any independent construction on public land without prior approval of the competent municipal authority.

v. The entire exercise shall be completed within thirty (30) days from receipt of this order, and a brief compliance report, along with the proposed technical solution, shall be furnished to the Deputy Commissioner, Jamshoro, for monitoring and necessary assistance.

14. It is clarified that if the proposed solution requires expenditure or any contribution from the petitioner, the same shall be determined strictly in accordance with the applicable law and municipal rules. Any dispute relating to private easementary rights, ownership or entitlement to use a particular passage shall remain open for adjudication before the competent civil Court.

15. In view of the foregoing, we find no justification to interfere with the orders dated 05.04.2025 and 16.07.2025 passed by the Courts below, as no jurisdictional illegality or material irregularity has been demonstrated. However, the petitioner's grievance concerning the absence of an adequate drainage facility deserves consideration by the Municipal Committee in accordance with its statutory obligations as discussed supra.

16. Consequently, the instant Constitutional Petition is disposed of in the above terms, with the directions contained herein. The parties are expected to cooperate with the Municipal Authorities and resolve the matter amicably, keeping in view the rights of the residents as well as the public interest.

JUDGE

JUDGE

Sajjad Ali Jessar