HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

Cr. Misc. Application No.S-493 of 2026

[Kashif Ali Kaka alias Kashif vs. The State & Others]

Applicant	:	**Kashif Ali alias Kashif** By Mr. Fayaz Ahmed Laghari advocate
Private respondent	:	**Ashfaque Ali Kaka** By Mr. Shoukat Ali Kaka advocate
Official respondents by	:	**The State and others** By Ms. Sana Memon Assistant P.G
Date of Hearing	:	21.09.2026
Date of Decision	:	21.09.2026

O R D E R

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JAWAD AKBAR SARWANA J:- Kashif Ali Kaka alias Kashif s/o Muhammad Mosa Kaka–the applicant/respondent no.5 in the habeas corpus cr. misc. appln. no.98 of 2026 filed by Ashfaque Ali S/o Sadoro Kaka/respondent No.4 (complainant) under Section 491 Cr.PC is aggrieved by the Order dated 07.08.2026 passed by the learned Additional Sessions Judge Hala, in the said cr. misc. appln. for the production of the detainee, Mst. Hidayat Khatoon d/o Sadoro Kaka, wherein, while observing that the detainee could not be found after two police raids at the respondents' residence, the Addl. Sessions Judge directed the SHO concerned to record the statement of respondent No. 4 (complainant). Counsel for the applicant/respondent No. 5 argued that the direction was contrary to law, given that the detainee had not been produced; the concerned Addl. Sessions Judge did not have the power to direct recording of the complainant's statement.

3. Counsel for the respondent No.4/complainant submits that prior to filing of the aforesaid habeas corpus cr. misc. appln. on 13.07.2026, the same complainant had filed a complaint before the Sessions Judge/Ex-Officio Justice of Peace Matiari, i.e Criminal Miscellaneous Application No.702 of 2026, wherein vide Order dated 11.07.2026 the Ex-Officio Justice of Peace declined the complainant's prayer for recording of statement of the complainant and registration of FIR and instead directed the concerned SHO to provide legal protection to the respondent No.4/complainant in accordance with law. He submitted that the impugned Order in the Habeas Corpus Application was the natural

progression of the Order passed by the Ex-Officio Justice of Peace, and was within the powers of the Addl. Sessions Judge, as it arose from an interlocutory application filed in the said application seeking interim relief for taking legal action and registering an FIR. Therefore, the impugned Order (the final order) directing the SHO to record the statement is/was proper, and the concluding relief which arose from the interlocutory relief sought in the proceedings.

4. Learned Assistant P.G. has argued that in the facts and circumstances of the case, the Additional Sessions Judge, Hala, while hearing the 491 Cr.P.C. application, did not have the power to pass an order for recording the statement of the respondent No. 4/complainant.

5. Heard learned counsel and APG and perused the available record.

6. On 03.07.2026, respondent No.4/complainant-Ashfaque Ali Kaka had filed with the Ex-Officio Justice of Peace a cr. misc. appln. under Section 22-A (6)(i)(iii) Cr.P.C., praying for the same relief he would later pray for/has prayed for at the interlocutory stage of his habeas corpus cr. misc. appln. filed before the Addl. Sessions Judge. Further, the title page of the cr. misc. appln. filed before the Ex-Officio Justice of Peace discloses that the present applicant, Kashif Ali Kaka, had been impleaded as proposed accused No.3 in the said lis. After hearing the parties, the Ex-Officio Justice of Peace, vide Order dated 11.07.2026, declined the request for registration of FIR and directed the concerned SHO to provide legal protection to respondent No.4 (complainant) in accordance with law. Counsel for respondent No.4 (complainant), during the course of arguments, candidly conceded that the complainant had also challenged the Ex-Officio Justice of Peace order dated 11.07.2026 before this (High) Court in Criminal Miscellaneous Application No.S-504 of 2026, which is still pending adjudication and listed for hearing in the second week of October 2026.

7. At the outset, as per Section 491 Cr.PC, the learned Sessions Judge is/was not vested with the power to extend the scope of Section 491 Cr.PC and grant relief beyond what is permissible under the said provision. Section 491 Cr.PC was/is limited in scope to the recovery of a person from illegal or improper detention. This view is well-expressed in the Order dated 10.07.2025 reported in the case of *Muhammad Ali Khoso and 2 Others v. The State and 4 Others*, 2026 MLD 977. In the facts and circumstances of the case, the detainee was also not produced/found after two police raids, and no exception can be made out to extend the jurisdiction of the concerned Court.

8. During the course of the arguments, counsel for the respondent No.4 relied upon another judgment passed by this Court in the case of *Bakaullah Khan Samoo vs. Province of Sindh through Home Department and 9 others* [**PLD 2002 Sindh 308**] to justify the legality of the impugned Order. However, the facts and circumstances of the said case are entirely distinguishable, and the same is not relevant, notwithstanding that the said judgment was passed by the Sindh High Court while exercising powers under Article 199 of the Constitution of the Islamic Republic of Pakistan, and also prior to the coming into force of the 26th and 27th amendments to the 1973 Constitution (See Order passed by the Federal Constitutional Court in judgment dated 27.11.2025 in the case of *Khalid Mehmood vs Pakistan through Secretary, Ministry of Finance, and others)*.

9. There is another aspect concerning the respondent no.4 (complainant's) conduct, which does not inspire confidence. When the matter concerning the recording of the statement of the complainant and registration of FIR was pending legal challenge, the complainant ought to have exercised restraint, avoided complications and ought not to have attempted to seek the same relief in an entirely separate proceeding before another forum, i.e. the Additional Sessions Judge, Hala, in the habeas corpus appln. No.98 of 2026 under Section 491 Cr.PC. Indeed, respondent No. 4 (complainant) continues before this (High) Court to defend the challenge to the impugned Order and, on the other hand, to agitate the same relief in the Cr. Misc. Appln. S-504/2026, which is pending hearing next month. This is notwithstanding that the interlocutory relief allowed to him by the Addl. Sessions Judge was never pleaded by him in the main proceedings of the Section 491 Cr.PC application. At this stage, no case can be made out for confirming interlocutory relief in the Section 491 Cr.P.C. application, when the same relief was/is being agitated before another forum, notwithstanding that the interlocutory relief awarded to respondent no.4 (complainant) was never pleaded in the main proceedings and, for the reasons discussed hereinabove, cannot be sustained in the Section 491 CrPC application.

10. In view of the above, the instant criminal miscellaneous application is allowed, and the directions given by the Additional Sessions Judge Hala through the impugned Order dated 07.08.2026 concerning recording of statement of respondent No.4/complainant are set aside. The parties are at liberty to pursue and/or continue to pursue their remedy before the competent forum(s) in accordance with law.

JUDGE

Sajjad Ali Jessar