

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Constitution Petition No.S-383 of 2025
(Khabhar Jatoi Vs. Province of Sindh & others)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:-
Mr. Justice Ali Haider 'Ada'

01. For orders on office objection "A".
02. For of hearing of main case.

04.09.2026.

Mr.Ali Akbar Shar, Advocate for the Petitioner.

Mr. Abdul Waris Bhutto, Assistant Advocate General,
Sindh along with Inspector Mian Bux Dahani, SHO
Police Station Naperkot, and PC Tarique Solangi.
(Respondent No.5 and 7)

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Ali Haider 'Ada' J.- Through the instant petition, the petitioner has invoked the Constitutional jurisdiction of this Court, *inter alia*, seeking a direction to Respondents No.2 and 3 (D.I.G Larkana and S.S.P Shikarpur) for the release/restoration of the petitioner's cattle. The petitioner has further sought a declaration that the action of the respondents in taking and retaining the cattle is in violation of his fundamental rights, besides seeking appropriate departmental action against the responsible officials and registration of a proper FIR in accordance with law.

2. It is pertinent to note that the learned Sessions Judge, Shikarpur, had already adjudicated upon the application of the Petitioner through letter dated 17.04.2024, order dated 18.04.2024, and letter dated 03.05.2024, thereby passing directions in favour of the Petitioner, as referred to hereinabove.

3. The crux of the matter is that the Petitioner initially filed an application under Section 491, Cr.P.C, before the learned Sessions Judge, Shikarpur, alleging that the police functionaries had taken away his cattle and had also detained certain persons. Upon receipt of the application, the learned Sessions Judge, Shikarpur, issued a letter dated 17.04.2024 to the S.S.P., Shikarpur, directing him to inquire into the matter. Thereafter, vide order dated 18.04.2024, the learned Sessions Judge directed registration of an FIR. Subsequently, through letter dated 03.05.2024, the S.S.P., Shikarpur, was again directed to ensure compliance with the said order. In compliance thereof, FIR No.31 of 2024 was registered at Police Station Naper Kot. However, the Petitioner was not satisfied with the manner in which the matter had been dealt with or with the contents and outcome of the said FIR. Thereafter, Mst. Sehat Khatoon, the paternal aunt of the Petitioner, also approached the learned Sessions Judge, Shikarpur, in respect of the alleged detention of the Petitioner. The learned Sessions Judge, Shikarpur, passed an order dated 06.05.2024, pursuant to which FIR No.53 of 2024 was registered. Despite the registration of the aforesaid FIRs, neither the Petitioner nor his paternal aunt was satisfied with the manner in which the matter had been addressed or with the outcome of the proceedings. Consequently, the Petitioner was constrained to approach this Court for appropriate relief.

4. Learned counsel for the Petitioner submits that the matter initially arose from Criminal Miscellaneous Application No.55 of 2024, which was instituted before the learned Sessions Judge, Shikarpur. In the said proceedings, the learned Sessions Judge, Shikarpur, issued directions and further ordered that the same be conveyed to the concerned authorities under intimation, with a compliance report to be submitted. Learned counsel submits that, despite such directions, no compliance report was submitted. Consequently, the learned Sessions Judge, Shikarpur, passed a detailed order dated 18.04.2024, whereby the concerned authorities

were again directed to ensure compliance with the earlier order without fail. Learned counsel further submits that the learned Sessions Judge, Shikarpur, thereafter drew the attention of the S.S.P., Shikarpur, through letter dated 03.05.2024, and subsequently through another letter dated 07.05.2024, whereby the S.S.P., Shikarpur, was directed to ensure registration of the FIR, and, in the event of failure on the part of the police, to have the FIR registered on behalf of the State. Learned counsel contends that, pursuant to the aforesaid directions, a stereotyped FIR was registered by the State under Sections 392 and 452 PPC, bearing Crime No.31 of 2024 at Police Station Naper Kot; however, the said FIR was neither in accordance with the actual version of the Petitioner nor did it properly reflect the substance of his grievance. He further submits that Mst. Sehat Khatoon, aunt of the Petitioner, also invoked the jurisdiction of the competent Court, whereupon FIR No.53 of 2024 was registered; nevertheless, the grievance was not properly addressed and the police authorities committed excesses against the Petitioner and his family. Learned counsel further submits that, during the proceedings, the police functionaries submitted a detailed report wherein they admitted the factual position regarding the posting of Tariq Solangi, as he was, in fact, serving as a Police Constable but acted as like S.H.O. He, therefore, submits that the conduct of the police authorities, as reflected from the record, demonstrates non-compliance with the judicial directions and warrants interference by this Court. He accordingly prays that the instant petition be allowed.

5. Learned Assistant Advocate General, Sindh, however, submits that the FIRs were registered in accordance with the statements furnished and, therefore, no further grievance survives for consideration. He accordingly prays for dismissal of the petition.

6. Heard the learned counsel for the parties and perused the record.

7. At the outset, the legal aspect of the instant petition requires consideration, particularly as the petition primarily concerns compliance with the orders passed by the learned Court below. It is evident that the directions in question were issued in judicial proceedings and were not administrative in nature. Therefore, in the event of any non-compliance, the learned Court was competent to initiate appropriate proceedings under the Contempt of Court Ordinance, 2003. Conversely, if the learned Court was satisfied that the directions had been duly complied with, it could close the proceedings accordingly.

8. However, the manner and mode of securing compliance with a judicial order fall within the exclusive domain of the competent judicial forum. If this Court were to entertain the petition or invoke its Constitutional jurisdiction for the purpose of enforcing compliance with an order passed by a subordinate Court, it would, in effect, assume the role of an executing Court in respect of such order, which is not permissible in proceedings under the Constitutional writ jurisdiction. Although Article 203 of the Constitution of the Islamic Republic of Pakistan confers supervisory jurisdiction, such jurisdiction does not mean that, this Court to act as an executing Court for the orders of subordinate Courts. Accordingly, the Petitioner's stance seeking enforcement or compliance with the orders of the learned Court below is wholly misconceived and cannot be granted.

9. If, traces the historical development of writ jurisdiction in the British Indian subcontinent, its origins may suitably be traced back to the enactment of the Indian High Courts Act, 1861, which empowered the High Courts of Calcutta, Madras, and Bombay to exercise certain prerogative powers. A more structured writ jurisdiction was subsequently introduced under the Government of India Act, 1935, which also established the Federal Court with original jurisdiction in disputes between the Federation and the Provinces and appellate jurisdiction over judgments of the High

Courts. After that, in Pakistan, writ jurisdiction was initially exercised. Following the adoption of the Government of India Act, 1935, as the interim Constitutional framework, Section 223-A was inserted, empowering the High Courts of Pakistan to issue writs within their territorial jurisdiction, including *habeas corpus*, *mandamus*, *prohibition*, *quo warranto*, and *certiorari*. This jurisdiction was subsequently recognized under Article 170 of the Constitution of 1956, Article 98 of the Constitution of 1962. Now, at present, the High Court's exercise Constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

10. Now, come to the aspect of merits of the case that the FIRs were already lodged and if the petitioner is not being satisfied or his relative is not satisfied then it does not mean directly to invoke the extra ordinary jurisdiction when the remedy available under the law is available . Section 22-A and 22-B, Cr.P.C. empower the Justice of the Peace to order the transfer of an investigation and to examine allegations of police excesses committed in the performance of official duties. The power to curtail and remedy such excesses is expressly vested in the Justice of the Peace under Section 22-A(6)(iii), Cr.P.C.

11. Furthermore, where the higher police authorities find that a police official has not been posted in accordance with the orders of the competent authorities, they are empowered to initiate appropriate legal and departmental proceedings under the Police Rules and the Efficiency and Discipline Rules, 1988. Although the Police Order, 2002, was repealed, it was subsequently reintroduced. In any event, the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002) (Amendment) Act, 2019, contains relevant provisions governing such matters. Accordingly, it falls within the domain of the competent higher police authorities to initiate appropriate proceedings where, upon examination of the record, they form the opinion that any police official has acted in violation of the applicable rules or orders.

12. It is well settled that, where an alternate and efficacious remedy is available under the law, a Constitutional petition is ordinarily not maintainable. Reliance in this regard is placed upon the judgments reported as **Indus Trading and Contracting Company v. Collector of Customs (Preventive), Karachi and others (2016 SCMR 842)**; **President, All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others (2020 SCMR 260)**; **Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others (2022 SCMR 92)**; and **Executive Director (P&GS), State Life, Principal Office Karachi and others v. Muhammad Nisar, Area Manager, State Life Corporation of Pakistan, Peshawar Zone (2025 SCMR 249)**.

13. So, in view of the foregoing reasons and discussion, the instant petition, being misconceived, is hereby dismissed.

JUDGE