

ORDER SHEET  
THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

**Cr. Misc. Application No.S-432 of 2023**

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| <b>DATE</b> | <b>ORDER WITH SIGNATURE OF JUDGE</b> |
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For orders on office objections.  
For hearing of main case.

**01-08-2023**

Mr. Mashooque Ali Mahar advocate for the Applicant.  
Ms. Safa Hisbani, Assistant Prosecutor General.  
SIP Ali Bux Chandio Police Station Jamshoro.  
SIP Mir Muhammad on behalf of SP Complaint Cell Jamshoro.  
SIP Shahnaz, Women Protection Cell, Jamshoro.

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**MOHAMMAD ABDUR RAHMAN, J:** This is an application that has been maintained by the Applicant under Section 561-A of the Code of Criminal Procedure, 1898, against an order dated 3 June, 2023, passed by the Additional Sessions Judge-I Kotri, in Criminal Miscellaneous Application No.630/2023 dismissing an application under Section 22-A/B of the Code of Criminal Procedure, 1898, as against the Proposed Accused.

2. The basic facts of this application are as follows:

- (i) That the Applicant was married to Proposed Accused No.1 i.e. Mst. Sadaf Nazeer and who at the time of the alleged incident on 13 May 2023 was purportedly pregnant;
- (ii) It is contended by counsel for the Applicant that the relationship between the Applicant and the Proposed Accused No.1 was estranged and she was residing with her parents;
- (iii) That on 13 May 2023 she has forcibly aborted the pregnancy and thereafter had a procedure known as Dilation and Curettage (D&C) performed on her;
- (iv) That the Dilation and Curettage Procedure was preceded by the Proposed Accused No. 1 having been administered certain

medicines which had aborted the pregnancy and which the Applicant contends should have been done with his consent and as his consent had not been procured, gave him the basis for maintaining an application under Section 22 A of the Code of Criminal Procedure, 1898;

- (v) That the Applicant has available with him a WhatsApp message to show that medical files were being demanded of the Applicant by the Proposed Accused No.1 prior to that date so as to demonstrate that this was pre-planned.

3. It was the contention of the Proposed Accused No.1 that members of Applicant's family had physically assaulted her eventually resulting in her suffering excessive bleeding and which not being controllable were life threatening and led to the termination of her pregnancy.

4. It is apparent that the Respondent No.1 has after the Dilation and Curettage (D&C) procedure having being carried applied for Khullah before the Family Judge in Kotri and which is currently pending. The matter came before Additional Sessions Judge-I, Kotri who on 3 June, 2023 passed the following order:

“ ... *It has time and again been held by courts that Ex-officio justice of peace, in exercise of powers under S.22-A, Cr.P.C., is not supposed to proceed and act mechanically by simply considering the version of events narrated by a party applying for registration of an FIR, but instead, in order to safeguard against misuse or abuse of such process, the Ex-officio justice of peace has to apply his judicial mind and has to satisfy himself that prima facie some material is available on record to support such version. In view of the foregoing facts and circumstances, the Applicant has not been able to persuade this court for issuing direction to lodge FIR against the proposed accused persons therefore instant application is hereby dismissed.*”

5. I have heard counsel for the Applicant and the A.P.G. and perused the record. The argument raised by counsel for the Applicant that the Proposed Accused No. 1 required the consent of the Applicant prior to undertake the Dilation and Curettage (D&C) is completely illogical keeping in view that the Proposed Accused No. 1 is an adult and is responsible for making her own decisions. In addition keeping in mind that the Proposed Accused was estranged from the

Applicant, it cannot be that if the consent of the Applicant was not forthcoming and even if the life of the Proposed Accused No. 1 was in threat she should wait for his consent. The correct course of action on the part of the Proposed Accused No. 1 was to appear before the doctor and if a decision has been made that the situation would *inter alia* threaten her life, she should make a decision to take whatever medical procedure is required, as advised by a medical doctor, without the consent of the Applicant. This is what apparently was done.

6. It is visible on the record that on account of the breakdown of the marriage as between the Applicant and the Proposed Accused No.1, various legal actions are being maintained by both the Applicant and the Proposed Accused No. 1. To my mind, a woman aborting a child is not a decision that any woman can take lightly and on the face of it, the Proposed Accused No.1 went through a proper hospital to be able to obtain proper medical treatment and which when found to be warranted was taken. To implicate all concerned in such circumstances as in the current proceedings is to my mind as stated by the Additional Sessions Judge-I, Kotri a “misuse or abuse of such process.”

7. I have no reason to disagree with the order dated 3 June 2023 passed by Additional Sessions Judge-I, Kotri which I believe has been correctly passed. In the circumstances, this criminal miscellaneous application being misconceived is dismissed with no order as to costs.

**JUDGE**

Irfan Ali