

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Criminal Miscellaneous Application No.S-342 of 2022

Applicant	:	M/s. Habib Sugar Mills Pvt. Limited through Mr. Ashfaqe Nabi Qazi Advocate
Respondents	:	The State, through Mr. Irfan Ali Talpur Assistant Prosecutor General, Sindh.
Date of Hearing:	:	30.01.2025
Date of Decision:	:	30.01.2025

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- Through this application under section 561-A Cr.P.C., the Order dated 27.04.2022 has been assailed which was passed by the learned Additional Sessions Judge-III Shaheed Benazirabad in Civil Revision No.11 of 2021, '*Abdul Majeed v. Asghar D. Habib and another*' emanating from Order dated 19.05.2021 passed by learned Judicial Magistrate-II Nawabshah in Criminal Miscellaneous Application No.05 of 2020 under section 133 Cr.PC filed by Respondent No.3.

2. Learned counsel for the Applicant pleaded that the learned Sessions Judge lacked jurisdiction and became *functus officio* once the matter was dismissed by it through an earlier Order dated 09.08.2021. On the other hand, learned Assistant Prosecutor General supported the impugned Order.

3. Heard learned counsel and the learned law officer and perused the record. The application under section 133 Cr.P.C. was filed by Respondent No.3 against applicant's alleged disposal of waste water from its factory being injurious to health. Such allegations were challenged on the grounds *inter alia* that the matter was already addressed at various forums including the Provincial Ombudsman, the Deputy Commissioner Shaheed Benazirabad, the learned District & Sessions Judge Shaheed Benazirabad, the Superintendent of Police, the Taluka Municipal Officer and the Taluka

Municipal Chairman of District Shaheed Benazirabad. The Applicant has also filed documents to establish that M/s. Habib Sugar Mill is functioning since 1962 and the distillery since around 1963-1964. That an operative Environmental Management Plan was also prepared in 2010 which covered all environmental issues to ensure compliance of all the provisions of law governing environment protection. Per learned counsel a waste-water Treatment Plant was also constructed and installed in the Mill which is operating and satisfies the National Environmental Standards whereas the subject water tanks are at a distance of around 3 to 4 kilometers from the village of the complainant for treatment process whereby water is discharged into a *nala* to avoid any environmental issue. Applicant has also filed documents to establish that Deputy Director Environmental Agency Regional Office Hyderabad is also paying regular visits to ensure fulfilment of the statutory requirements.

4. Perusal of the record reflects that earlier also, identical applications under section 133 Cr.PC were filed against the same Mill bearing Cr.Misc.Application No.28 of 2018 by one Abdul Wahab Ansari who later on also approached the High Court under Article 199 in CP No.D-1434 of 2011, wherein Mukhtiarkar Revenue was appointed as Local Commissioner to inspect the site and report from concerned SHO Police Station B-section Nawabshah were also called. Both such Reports negated the allegations against the applicant and the petition was accordingly dismissed vide Order dated 26.09.2018. Record further reflects that in the present case also, an application for appointment of Local Commissioner to inspect the site was made which was allowed vide Order dated 18.02.2021 and Report from the concerned SHO was also called, who in his Report dated 25.02.2021 reported that no nuisance has been caused by the applicant but there was some dispute between some local community and the applicant over some agricultural land. The concerned Mukhtiarkar also filed his inspection Report dated 22.03.2021. Considering the above, the application under section 133 Cr.PC was dismissed by the learned Magistrate after hearing the parties.

5. It appears that in the Criminal Revision Application No.11 of 2021 a Statement dated 09.08.2021 was filed by the private Respondent for withdrawal of Revision application and based whereon vide Order dated 09.08.2021 the Revision was ordered to be dismissed as withdrawn by the Court. Learned counsel pleads that once the revision application was dismissed as withdrawn, the learned Sessions Judge had no jurisdiction to pass any further order in the same case, yet the impugned Order dated 27.04.2022 was passed. A study of the subject shows that principle of *functus officio* has been strictly followed in every variety of law, as for

instance, a Magistrate becomes *functus officio* once the Sessions Court takes cognizance of the matter.¹ Upon dropping of proceedings also the Magistrate becomes *functus officio* and lacks power to subsequently issue orders for attachment of property under section 145 Cr.PC.² With respect to powers under section 561-A Cr.P.C. it has been held that although legislature has equipped the High Court with ample inherent power under S.561-A Cr.P.C. however after disposal of a criminal matter, it becomes *functus officio*;³ nor could it review or sit in appeal against its own orders passed in criminal jurisdiction,⁴ except correction of clerical errors. Even under the Constitutional jurisdiction this principle has been followed that after passing of an Order for withdrawal of a petition as not pressed, the Court becomes *functus officio* and correction of the same on merits under section 151 or 152 CPC. was held as not permissible.⁵ Under the sales tax regime once an order is passed even the Board becomes *functus officio* and it has no power to review its own order either section 45-A and such Review Order was quashed by the High Court.⁶ Likewise after announcement of an Award under the Land Acquisition Act the Collector becomes *functus officio* and issuance of ante-dated corrigendum was held as illegal and without lawful authority.⁷ Under the same principle a Rent Controller becomes *functus officio* once rent order is passed and it could not amend or review its order under section 151, 152 or 114 CPC.⁸ It was further held that power under section 21 of the General Clauses Act 1897 was available only as long as the order had not taken legal affect and vested rights were not created in favour of any individual.

6. The above study clearly lays down that once a Court or authority passes a final order and concludes the proceedings be it through withdrawal or on merits, it becomes *functus officio* whereafter any exercise of power touching merits of the issue, would fall beyond the jurisdictional domain of such Court or authority. In the present case, once the Order dated 09.08.2021 was passed whereby the matter was dismissed as withdrawn, the learned Judge became *functus officio* in the matter and therefore it erred by passing the subsequent Order dated 27.04.2022, impugned herein.

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1. 'Munir Ahmad v. State' 1993 MLD 537.
 2. 'Khalida Rehman v. Muhammad Aqil' 1990 MLD 60; 'Muhammad Afzal, S.H.O. V. Abdul Hafeez Qazi' 1986 PCrLJ 1651.
 3. 'Israr Ahmed v. The State' 2022 YLRN 139.
 4. 'Master Gul Hassan V. Government of Sindh' PLD 2015 Sindh 226; 'Iqbal v. The State' 2001 PCrLJ 1634
 5. 'Fatima Sugar Mills Ltd., V. Government of Punjab' 2010 YLR 904.
 6. 'Reckitt Benckiser Pakistan Ltd. V. Federation of Pakistan' 2009 PTD 642.
 7. 'Rana Abdul Rasheed V. Chaudhry Nusrat Ali' 2009 CLC 948.
 8. 'Mumtaz Construction Company V. MFC (Pvt.) Ltd.' 2010 MLD 327.

7. On the other hand, as discussed above, perusal of Reports from the concerned *Mukhtiarkar* and SHO also do not point towards any illegality being committed by the applicant whereas a complete mechanism for protection of environment is also available under the Sindh Environment Protection Authority Act 2014 (SEPA). On factual plaint, it was also recorded in the Mukhtiarkar's inspection Report dated 22.03.2021 *ibid* that on the Northern side of the Mill, water ponds exist which are covered by four side boundary wall out of which, some ponds were being used for storage of water and some were being used for storage of sweet water reserved for the Mill. A treatment plant of the Mill for filtration of wastewater also existed on the site and was seen operational and through covered pipeline, the same was discharged in a nearby drainage *sim nala* which is at a distance from the village, black mud was being stored by the mill in their own land, which area was also covered with boundary wall. Water was being sprayed on the black mud through tubewells which have been installed for that specific purpose. It was clearly reported that no particular incidence of nuisance caused due to water ponds or storage of black mud by the mill to any person was found.

8. Considering the foregoing legal and factual position, the instant Application is allowed and the impugned Order dated 27.04.2022 is set-aside. These are the reasons for my short Order dated 30.01.2025:

“Heard learned counsel for the applicant at length on the grounds of the learned Sessions Court being *functus officio*. Also heard the learned Assistant Prosecutor General. For reasons to follow, the application is allowed.”

J U D G E

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

Criminal Miscellaneous Application No.S-342 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on urgent application
For hearing of main case
For hearing of M.A. No. 4883/2022

30.01.2025

Mr. Ashfaque Nabi Qazi Assistant Advocates for applicant.
Mr. Irfan Ali Talpur APG.

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Heard learned counsel for the applicant at length on the grounds of the learned Sessions Court being *functus officio*. Also heard the learned Assistant Prosecutor General. For reasons to follow, the application is allowed.

J U D G E