

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.231 of 2022.

**Ghazala Asjad
VS**

Assistant Commissioner/Sub Divisional Magistrate (City) and another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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23.12.2022.

**Mr. Jamil Hussain Qureshi, Mr. Nawizish Ali and Mr.Qaiser Mansoor, Advocates for the Petitioner in their respective petitions.
Mr. Dawood Iqbal, State Counsel.
Mr. Muhammad Mansoor Abbasi and Ch. Imtiaz Ahmed Gujjar, Advocates for the Respondent No.2 in their respective petitions.**

The learned counsel for the Petitioners have submitted their arguments including that under the preamble of the Family Courts Act, 1964 read with Section 20 thereof , it is the Family Court that has the powers of a Judicial Magistrate to try any offence under the Muslim Family Law Ordinance, 1961. He further submits that Executive Magistrate has no power in such regard in view of the provisions of the Family Courts Act, 1964 as aforesaid. Furthermore, Executive Magistrate is not legally trained and even

otherwise exercising of powers by him in respect of family matter is unconstitutional and in violation of concept of separation of Executive and Judiciary.

2. On the other hand, the learned State Counsel relies upon Section 5 of the Family Courts Act, 1964, which provides that under Sub-

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Section 2 a Family Court shall only exercise its powers in respect of the offences under Part-II of Schedule, whereas the Schedule does not include any offence under the Muslim Family Laws Ordinance, 1961 and is restricted to certain offences under PPC. He further explained that Section 20 of the Family Courts Act, 1964 provides powers of the Judicial Magistrate, whereas Family Courts Act, 1964 has been amended in Punjab to explicitly include offences under the Muslim Family Ordinance, 1961, however, no such amendment has been made to the relevant law as applicable in ICT. He therefore argued that to the extent of ICT there is no provision in law, which can be relied upon by a Family Court to take cognizance of the offences

mentioned in the Muslim Family Laws Ordinance, 1961. In order to support his submission, he has also highlighted the fact that the Muslim Family Law was promulgated in 1961 despite the fact that at such time the Family Courts Act, 1964 was not in existence and therefore, prior to the promulgation of the latter Act, it was Executive Magistrates, who were trying such offences, however, he seeks further time to assist the Court with regard to the powers of Executive Magistrate and the relevant law under which they are appointed.

3. To come up for further arguments by State Counsel as well as counsel for the Respondent

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No.2 in both the petitions and rebuttal for the Petitioners' counsel.

4. Relist on 25.01.2023. The matter shall be taken up 10:00 a.m.

(SAMAN RAFAT IMTIAZ)
JUDGE