

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-687 of 2025

‘Shahid Mehmood vs. Mst. Farah Naz and others’

Petitioner	:	In person
Respondent No. 1	:	Through Mr. Ahmed Khan Khaskheli, Assistant Advocate General
Respondent No. 2	:	Not Present
Date of Hearing	:	22.04.2026
Date of Announcement	:	18.07.2026

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- The Judgment and decree dated 21st March 2024 passed by the learned Family Judge-XIII, West, Karachi, in Guardian & Ward Application No.929 of 2023 and the appellate Judgment dated 19th July 2025 [**impugned Judgments**] passed by the learned Vth Additional District & Sessions Judge, West, Karachi, in Guardian & Ward Appeal No. 79 of 2024, have been assailed in this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. Heard the petitioner-in-person and perused the record. To avoid repetition and for brevity’s sake, the respective contention of the parties will be discussed at the relevant portions in this Order.

3. Briefly, the Petitioner [**husband/ father**] and Respondent No.1 [**wife/ mother**] were married on 3rd February 2012, and the couple was blessed with a daughter on 12.02.2013. Due to matrimonial disputes between husband and wife, the marriage was dissolved on 18.01.2018 vide decree for *khula* passed in Family Suit No. 965 of 2017. The minor has remained in the custody of the mother since her birth. The mother filed Guardian & Ward Application No. 929 of 2023 under Sections 7 & 10 of the Guardian & Wards Act, 1890, seeking a Guardianship Certificate for the minor. In the application, she referred to the minor by the name Noor Shameen. The father, in his objections, alleged that the mother had unilaterally changed the name of the minor from ‘*Mehveen Mehmood*’ to ‘*Noor Shameen*’ by obtaining a Birth Certificate without his consent. After recording evidence and hearing the parties, the learned trial Court rejected the application vide Judgment dated 21.03.2024 and directed the mother not to remove the permanent custody of the minor from Karachi without prior permission of the Court.

4. Despite dismissal of mother's petition, the Petitioner/ father filed Guardian & Ward Appeal No. 79 of 2024 before learned Vth Additional District & Sessions Judge, West, Karachi, which was dismissed vide Judgment dated 19.07.2025, while holding that the grievance of the Petitioner regarding the change of name was already the subject matter of a separate civil suit pending before the learned Ist Senior Civil Judge, Karachi West, and therefore the family Court could not have determined that controversy in the guardianship proceedings, against which, instant petition has been preferred by the father.

5. The main grievance of the petitioner/father is that the minor's name was changed by the mother without his permission, and therefore, both the Courts should have ordered the cancellation of documents based on which such name has been changed. It is alleged by the father that the mother procured a birth certificate by forging his signature, which constitutes fraud, and the Court failed to summon the record of the Union Council or order forensic verification. In this petition, he has prayed for such setting aside of the impugned Judgments, a declaration against change of the daughter's name, directions to NADRA and the Union Council to cancel such documents and damages for emotional distress and financial loss, and directions for the enforcement of his visitation rights.

6. I have heard the Petitioner in person. The learned AAG has also ably assisted in this matter, and I have carefully perused the entire record with his assistance.

7. Firstly, the Guardian & Wards application was not filed by the petitioner but it was filed by the mother/wife, which was rejected. The prayers sought in such application were for the appointment of the mother as the sole Guardian of the minor, which was not allowed by the Court. No prayer in the said application was sought with respect to alleged change of name of the minor. The said G&W Application was not filed by the father. The Judgment passed by the learned appellate Court has been perused, which has also dealt with this issue and has rightly rejected the appeal filed by the father. However, solely for the sake of child's benefit, it is noted here that upon perusal of the trial Court's Judgment, the observations by the learned Family Judge regarding the change of name, were made purely in the context of assessing the conduct and fitness of the mother to be declared as the sole Guardian, and shall not be construed in any manner, as a final declaration of the legal rights of the parties with respect to the documents being relied by the mother. No instance of lack of inherent Jurisdiction or patent illegality could be pointed out by the petitioner, which could attract the exercise of jurisdiction under Article 199 of the Constitution.

8. Secondly, the husband/ petitioner has made a series of allegations against the wife/ Respondent including forgery, perjury, false statements on oath, misleading the Court and allegations of fraud etc. involving complicated and disputed questions of fact, which have already been attended by both the learned appellate Court, and could not be decided in writ jurisdiction of this Court under article 199 of the Constitution.

9. Thirdly, based upon his above allegations, the petitioner has also sought damages for mental torture, etc. in this petition, which are also beyond the scope of jurisdiction under Article 199 of the Constitution, and are accordingly rejected.

10. The fourth aspect for consideration is the fact as already recorded by the learned Court and also confirmed by the petitioner during course of hearing, that the father/petitioner has also filed a Civil Suit No.2211 of 2023 before the learned Senior Civil Judge-I, Karachi West, wherein he has sought declaration regarding the correct name of the minor and the cancellation of the birth certificate and Form-B that were obtained in the name of Noor Shameen.

8. It is important to mention there that while interpreting the cumulative effect of the provisions of section 17 of the Family Courts Act (XXXV of 1964), Rule 6 of the Family Court Rules 1965 and sections 16 to 20 of the Civil Procedure Code 1908, the Honourable Supreme Court of Pakistan in '*Mst. Yasmeen Bibi vs. Muhammad Ghazanfar Khan and others*' (PLD 2016 SC 613) categorically declared that the provisions of Sections 16 to 20, CPC. stood excluded from the proceedings between husband and wife before the Family Court; thus, the question of its territorial jurisdiction would never arise, provided that the Family Court where the wife resides shall have the exclusive jurisdiction over all such matters. The Court further observed that even in a case where immovable property was involved, and even irrespective of the location of such property involved, the same would also be tried and would fall within the exclusive domain of the Family Court where the wife resides, to pass a decree in relation to such property. The following excerpts from the Judgment authored by His Lordship Justice Dost Muhammad Khan shed light on the basic objectives for providing such special treatment to females and children, and also provide clear guidelines to deal with such matters:

“11. Keeping in view the clear and manifest intention and object of the Legislature by drastically amending the provisions of the Family Courts Act, a Division Bench of the Peshawar High Court, after elaborately dealing with the same held that, "by now, the Family Court alone has exclusive jurisdiction to deal with all the matrimonial disputes of whatever nature, irrespective of territorial jurisdiction, provided that the Family Court where the wife resides shall have the jurisdiction to entertain such suits/claims [see. Muhammad Tariq v. Mst. Shaheen (PLD 2006 Peshawar 189)]. The view held by the Division Bench of the Peshawar High Court was not set aside by the Supreme Court thus, the same had attained finality and has got strong persuasive effects, which cannot be lightly ignored.

12. Keeping in view the agonies of the parties, particularly the wife, in matrimonial disputes to curtail the mischief of delay and to shorten the life of litigation in such cases, the Law and Justice Commission of Pakistan recommended to the Federal Government and all the Provincial Governments to establish Family Courts in each District and Tehsil Headquarter, which shall be preferably presided over by a female Judge so that the wives who are not well acquainted and familiar with the court proceedings are provided maximum protection and friendly environments.

14. It is demonstrably clear from these drastic amendments made in the Family Courts Act including the new provisions added therein, that the Legislature was well aware of the miseries and plight of the wives, seeking relief through the obsolete law then in vogue thus, to minimize the same not only all matrimonial disputes were brought under one and the same umbrella of the Family Court but also provided for the target date, both for

the Family Court and for the Appeal Court, by which such cases shall be decided conclusively. The jurisdiction and powers of all other courts thus stand excluded in these matters much less Civil Court therefore, pushing one or the other party to the Civil Court would be in clear violation of the mandatory provision of the law on the subject and would amount to reverse the efficacious remedies available to them under the new scheme of law.”

11. Lastly, these are not proceedings in appeal, but Constitutional jurisdiction has been invoked under Article 199 of the Constitution, which can only be availed if it is established that the impugned Judgment suffers from some inherent lack of jurisdiction. Such Constitutional jurisdiction cannot be used as a substitute for a second appeal, as was held in **‘Syed Mazhar Imam Rizvi v. Mst. Yasmin Bano and 2 others’** (2009 MLD 935); and **‘Muhammad Hussain Munir v. Sikandar & others’** (PLD 1974 SC 139).

12. The scope of interference by this Court under Article 199 of the Constitution in family matters which have been decided concurrently by two courts below is much narrower than the scope of an appeal. Neither can it be treated as an appeal over findings of fact recorded by the Courts below, nor can it be used to disturb such findings only because a different view could be taken of the same evidence. Constitutional jurisdiction may be invoked only where there is a jurisdictional defect, a clear violation of law, or such a clear misreading/ non-reading of evidence as to result in a patent miscarriage of justice. Regarding concurrent findings on facts by two Courts below, even the Honourable Supreme Court in **‘Ehsan-Ul-Haq v. Shahnaz Begum and others’** (1991 SCMR 362) refused to interfere with findings of the Family Court, where no good ground existed for interference. In the present case, concurrent findings of two courts below that the dowry articles, including gold ornaments of Respondent No.1 remained in the possession and control of the Petitioner's side, are well supported by the record. These findings are not perverse, not contrary to evidence, and do not reflect any misreading of material evidence.

13. For all the reasons recorded above, this Court finds no force in this petition. The judgments of the Courts below do not suffer from any jurisdictional error, material irregularity, or violation of fundamental rights that would justify the exercise of the extraordinary jurisdiction of this Court under Article 199 of the Constitution.

14. Before parting with this Judgment, exercising jurisdiction in *loco parentis* and in the best interests of the child herself, I find it necessary to make a few observations on the most unfortunate aspect of this litigation. While hearing the father in Court and upon perusal of the record, it is evident that a bitter and protracted legal battle has ensued between the parents, including the allegations and counter-allegations of fraud, forgery, perjury, and misrepresentation, which are being exchanged at multiple forums in multiple proceedings. The father of the child appears to be at daggers drawn with her mother. Due to the complete severity of relations and communication between the parents, the child is completely disturbed at her sensitive and formative age. Extensive Research and Studies conducted around the world¹ on the adverse impact of inter-parental conflicts on their

child have concluded that if parental conflicts are not resolved privately and within a shorter period, the children suffer psychological distress with increased risk of developing fear, anxiety, sadness, depression, insecurity, instability, emotional dysregulation, mood swings and impulsivity. This ultimately hampers the overall psychological adaptation and brain development of the child. Studies further confirm that parental conflict, culminating in a divorce, has a direct adverse impact on their child's mental health in multiple ways. When such a dispute enters the litigation phase, the miseries of the child are added manifold, and the trauma leaves permanent scars on the psychological health and personality of the child. In such a toxic and confrontational atmosphere, the child needs to be provided with a secure and protected environment, from direct exposure to such hostilities between the parents.

15. In the instant case, the disputes between the parents have reached a toxic level, to the extent of disturbing the welfare, mental health and overall development of the child. The petitioner fails to realise that continued litigation regarding the very name/ identity of the minor can have a highly disturbing impact (with respect to her own identity in her mind) and ultimately on the very mental development of the minor and which may create a situation of identity crisis within the child, which can heighten feelings of intense self-doubt, confusion, and questioning one's own identity in the society. The more unfortunate aspect is that the pending litigation itself can be more damaging for the child. Hence, for the sake of their own child, one of the parents will have to exercise patience and restraint, and considering that the petitioner is the real father of the child, it is expected that he will be the one to bow and forego, for the larger interests of the child, else in this tug of war between the couple, the child may become the ultimate loser. **The psychological welfare of the child is more important than the legal victory in this case.** It is therefore sincerely expected that the father will exercise due restraint and forbearance in his litigation pursuits, for the sole benefit of his own daughter, as discussed above in detail.

This Constitutional Petition is therefore dismissed, with pending application, with no Order as to costs.

J U D G E

1. Mediation Role of Parenting Behavior: By Dr. Stephanie Hess; Impact of Parental Conflict on Children's Mental Health: Rocky Maharjan; Parental Conflict: Outcomes and Interventions for Children and Families, by Reynolds, Jenny, and others; In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce. Johnston, Janet, et al.; 7 Rules to Protect Your Children from Marital Conflict, by Athena Staik; Institute for Family Studies.