

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Cr. Misc. Appln. No.S- 38 of 2025.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
	1.For orders on office objection as flag A. 2.For hearing of main case. <u>3.For hearing of M.A No.628/2025.</u>
<u>05.5.2025.</u>	<p>Mr. Habibullah G. Ghouri, advocate for the applicants.</p> <p>Mr. Aitbar Ali Bullo, D.P.G.</p> <p>Mr. Ayaz Ahmed Faras, advocate a/w respondent No.2.</p> <p style="text-align: center;"><u>O R D E R</u></p> <p><u>AMJAD ALI SAHITO-J.</u>:-Through this criminal miscellaneous application applicant has impugned order dated 29.01.2025 passed by learned 1st Civil Judge and Judicial Magistrate/MTMC/Kashmore in Summary No.4 of 2025 Re: Allah Rakhio v. Ayaz Ahmed wherein I.O of the case submitted police report under Section 173 Cr.P.C and he has disposed of the case under 'C' class.</p> <p>Details and particulars of the FIR are already available in the memo of instant application, same can also be gathered from the copy of FIR attached with the application, hence need not to reproduce the same hereunder.</p> <p>After submitting the report the parties were heard and learned Magistrate passed the following order:</p> <p>“ I have heard the parties at length and perused the material carefully, having given due regards to the orders of the Honourable Courts wherein statement u/s 164 Cr.P.C of abductee was challenged and declared legitimate one, despite that, it is a matter of record that the statement of abductee under section 164 Cr.PC recorded before the court were actually recorded by showing the abductee major of the age of 19 years and the fact as to actual age of abductee was suppressed from the court. The age of abductee was the decisive factor in this case but the same was also not considered by by 1.0 before submission of challan in cancel class.</p> <p>After careful perusal of the case it is evident that the abductee as per her educational documents and CNIC is a minor and prima facie offence is seem to have been committed, Therefore, by. this order I disagree with the report submitted 1.0 in cancel class and hereby take the cognizance of the case against accused persons.</p> <p>I.O is directed to submit positive challan in a manner required by law. The original police papers along with copy of order are hereby sent back to 1.O & SHO P.S Kashmore for compliance.”</p>

Per learned counsel, initially the FIR was registered under Sections 365-B, 452 PPC r/w Section 3/4 of Child Marriage Restraint Act 2013. He submits that 164 Cr.P.C statement of the alleged abductee namely Mst.Afeefa Imam was recorded wherein she has exonerated the accused person by saying that they have not abducted her as such section 365-B and 452 PPC are not applicable in this case. He has also invited attention of the Court towards nikahnama and affidavit of free will so also 164 Cr.P.C of the alleged abductee recorded before learned Magistrate Bahawalpur. In her statement under Section 164 Cr.P.C she has stated that he has contracted marriage with Ayaz Ahmed. He further argued that in fact learned Magistrate did not bother to go through the entire investigation collected by the I.O but on slip shot manner passed order and took cognizance of the offence under Section 365-B and 452 PPC r/w Section 3/4 of Child Marriage Restraint Act 2013.

On the other hand, learned counsel appearing on behalf of complainant duly assisted by learned D.P.G supported the impugned order and states that in fact the accused persons have committed offence of kidnapping of baby Afeefa Imam as such learned Magistrate has rightly taken cognizance of the offence. In support of his arguments, he has relied upon the order dated 13.11.2020 in CP No.D- 2747 of 2020 passed by Division Bench of this Court wherein it has been observed that contracting marriage with a minor girl by accused constitute an offence under Section 365-B PPC. It is appropriate to reproduce the relevant portion of the above order dated 13.11.2020 which reflects as under:

“Once the I.O has completed his investigation, he shall submit the challa in accordance with law as to whether it is the case of kidnapping or offence has been committed under the Sindh Child Marriages Restrain Act, 2013. It is pointed out that allegations for kidnapping and rape have also been made by the sister of the petitioner Sumayya. The I.O shall record the statement of Ms.Sumayya and investigate any allegations of any criminal offence which might arise out of her statement and thereafter investigate the matter and proceed in accordance with law. The petitioner will be allowed to meet those persons to whom she wants to meet with her permission. However, she would not be allowed to meet her alleged husband Awais.”

From face of order relied upon by learned counsel for the complainant, it appears that it was left open for I.O to decide the fate of the case as such case law relied upon is not applicable to this case. Learned counsel for the complainant also relied upon on order dated 16.12.2020 in Civil Petition No.3237 of 2020 Re: Azeema v. Province of Sindh & others, wherein

honourable Supreme Court observed that learned counsel, after making submission, does not press the instant petition as the order dated 13.11.2020 has not been impugned before the Court.

Heard learned counsel for the parties and perused the material brought on record.

Perusal of record reflects that initially FIR was registered by one Allah Rakhio for offence under section 365-B and 452 PPC r/w Section 3/4 of Child Marriage Restraint Act 2013 wherein he has made allegation that one Ayaz Ahmed has contracted marriage with baby Afeefa Imam. After registration of FIR the investigation was conducted and the lady was appeared before learned Civil Judge and Judicial Magistrate, Bahawalpur wherein she has stated that no one has abducted her nor entice for marriage. Subsequently, litigation was raised before Lahore High Court Bahawalpur wherein said application was dismissed. However, I.O of the case agreed with the statement recorded under Section 164 Cr.P.C before learned Magistrate Bahawalpur and submitted police report under Section 173 Cr.P.C (challan) and dispose of the case in "C" class. However, learned Magistrate did not agree with the report and took cognizance of the offence. Section 365-B PPC reveals that whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine.

From the perusal of statement of alleged abductee, which is available at Page No.21 to 25 of the Court file, reflects that she has denied the allegation of abduction and clearly stated that no one has abducted her, therefore, in my humble view Section 365-B and 452 PPC are not applicable to the case of applicants, however, learned Magistrate has taken cognizance of offence.

In view of above, impugned order dated 29.01.2025 is set aside. Case is remanded back to learned Magistrate who after hearing learned counsel for the respective parties and going through the material investigation available on record shall pass a speaking order in accordance with law.

JUDGE

Shabir/P.S