

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C.P No.S-235 of 2024

Date	Order with signature of Judge
1. For orders on office objections	
2. For hearing of main case.	

08.04.2025

M/s. Manzoor Hussain Larik and Waqar Ali Phulpoto,
Advocates along with Petitioner
Mr. Ahmed Ali Shahani, AAG along with ASI Ghulam Akber of
P.S. "B" Section, Khairpur
Respondents No.4 to 06 are present in person

Zulfiqar Ahmad Khan: Through this petition, the petitioner has impugned the order dated 13.11.2024, passed by learned 1st Civil Judge and Judicial Magistrate, Khairpur, whereby custody of Respondent No.6 i.e. Farwa Batool was handed over to one Imtiaz Shaikh, claiming to be father of Respondent No.4 i.e. Oun Muhammad to whom Respondent No.6 contracted marriage with her own free, however, according to Petitioner/ mother of Respondent No.6, she is minor and aged about 16 years.

It is contended that Respondent No.6 Miss. Farwa Batool is studying in Class-11 and usually come back home, however, on 12.11.2024, she did not come back from Women College, Khairpur, where goes for studies as usual. It came to the knowledge of the Petitioner that her daughter has contracted marriage with Respondent No.4 with her own free will in the month of February, 2024 but it was disclosed on 12.11.2024, when the Respondent No.6 produced by ASI Afzal along with LPC Naghma of P.S. 'B' Section before the Court of Incharge 1st Civil Judge and Judicial Magistrate-I, who after recording her 164 Cr.P.C statement and handed over her custody to Respondent No.5/ Imtiaz Shaikh, allegedly father of her husband namely Oan Muhammad while no proof having been shown to the Court.

Learned Counsel for the Petitioner submits that Petitioner approached the concerned Magistrate and requested that

custody of minor Farwa Batoool may be handed over as she is under-age but her request was not considered by the concerned Magistrate, who passed the impugned order, which is illegal and void as Respondent No.6, being minor, is not competent to enter into marriage despite of that Respondent No.4 & 5 in collusion with each other tempted Respondent No.6 to enter into irregular and lustful relationship.

M/s. Amjad Ali Maitlo & Syed Shahbaz Shah, advocates filed power on behalf of Respondents No.4 to 6 and submit that Respondent No.6 is sui-juris, knows ups and downs of her life, hence learned Magistrate rightly passed the impugned order by handing over the custody of her father-in-law as there is apprehension of life to her husband to appear before the Court.

Arguments heard. Record perused.

Upon examination of the available record, it has come to light that Respondent No.6 allegedly contracted marriage with Respondent No.4 on 03.02.2024. In support of the said marriage, an affidavit of free will has been placed on record, annexed as Annexure-C and available at page 21 of the file. In that affidavit, Respondent No.6 has declared her age to be 18 years, thereby presenting herself as major at the time of solemnization of the marriage. However, upon verification of her official documents, it is revealed that the B-Form Certificate issued by the National Database and Registration Authority (NADRA) records her date of birth as 19.08.2008. Consequently, it is established that Respondent No.6 was approximately 16 years of age on the date of the purported affidavit of free will and, by falsely changing age of the minor, she was forced in marriage. This discrepancy clearly reflects a misrepresentation of age in the affidavit of free will, and the actual age of Respondent No.6 at the relevant time squarely brings the matter within the purview of Section 4 of the **Child Marriage Restraint Act, 2013**, which prohibits the solemnization

of marriage of a female below the age of 18 years and prescribes penalties for all individuals involved in facilitating such a marriage.

Suffice it to say that the decision of the learned Magistrate in passing an order whereby the custody of the minor was handed over to her father-in-law, rather than her lawful guardian under the circumstances, raises serious legal and procedural concerns. The said order appears to be not only contrary to established principles governing the custody of minors but also in clear violation of the protective intent and spirit of the Child Marriage Restraint Act, 2013. Such an act effectively undermines the statutory safeguards available to minors and warrants the urgent attention of this Hon'ble Court. In such circumstances, impugned order dated 13.11.2023 is hereby set-aside. Respondent No.4 & 5 are taken into custody and remanded to jail under provisions of the above Act. Such conduct of these individuals is not only illegal but un-social and aims to create public disorder. Custody of Respondent No.6 Farwa Batool is handed over to Darul-Aman, Sukkur till further orders of the competent Court.

Petition stands disposed of in the above terms.

JUDGE