

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constitutional Petition No.S-123 of 2025

Constitutional Petition No.S-124 of 2025

DATE	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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- 01. For orders on office objection "A"
- 02. For hearing of M.A No.578/2025 (151 CPC)
- 03. For hearing of main case.

25-08-2025

M/s. Imdad Ali Tunio and Ghulam Muhammad Barejo,
advocates for the petitioner
Mr. Inam Rehman Abro, Advocate for the respondent.

NISAR AHMED BHANBHRO, J.- Apparently the issue in these 02 litigations arise out of para No.2 of the plaint filed by the respondent Saba Gul, before the Family Judge, wherein she claimed that she was pregnant. It was asserted by the petitioner that one month after the marriage she left her house and after passage of such a long time she cannot be pregnant from him, therefore, he sought amendment of the issues and filed an application for referring the plaintiff/respondent No.1 to medico-legal officer for ascertainment of such fact.

2. On filing of such applications the respondent No.1 realized the mistake and filed an affidavit, wherein she categorically stated that the fact of mentioning the pregnancy was a typographical mistake and she was not having any baby from the marriage.

3. Filing of such an affidavit should have set the controversy at rest but to the ego of the parties it was agitated time and again before the appellate court and under the constitutional jurisdiction of this court. During hearing, Article 128 of Qanoon-e-Shahadat Order was referred to the learned counsel for the petitioner wherein it has been held that within 02 years of subsistence of marriage if a child is born it can be a legitimate child subject to any objection by the father. Despite of that the parties were pressing to continue with the litigation.

4. The petitioner is playing with the modesty of a woman which cannot be allowed under Sharia so also the constitutional command and laws enacted by the parliament in Pakistan. A mistake of fact in typing of the pleadings cannot stain the character of a lady or it cannot be taken to douse the thrust of husband who admittedly could not continue with the marriage even for more than a month. This court was of the view that both these petitions be dismissed with heavy cost not below Rs.2 Millions.

5. However when, during the proceedings the counsel for the parties agreed for the disposal of this case in the following terms counsel for the plaintiff/respondent No.1 shall withdraw the suit pending before trial court and he will file a fresh suit with peace of mind containing the real facts therein and the petitioner will thereafter file a written statement and the issues will be framed accordingly. The withdrawal of the suit in any manner will not preclude the respondent No.1 from filing of the fresh suit.

6. This petition stands disposed of with directions to the family judge that in case the fresh suit is filed it shall be disposed of within a period of 03 months from the date of filing by conducting proceedings on day to day basis. It is further made clear to the parties that they should conduct themselves within the bounds of ethics ordained under Sharia and observed by the people of Sindh since centuries. They will not take any step that will harm the dignity of the respondent No.1/plaintiff in the suit because the marriage is always a contract, it is dependent on the wishes of the parties to continue for the time they amicably settle and in case they seek separation, it will never amount to abuse the character of each other. Both these petitions are disposed of in above terms.

JUDGE