

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

C.P No.S- 1819 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For Katcha Peshi.

22.11.2016.

Mr. Muhammad Nadim Tagar, Advocate for petitioner.

Mr. Ali Abbas Memon, State Counsel

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Through instant Constitutional Petition, petitioner is seeking a relief, inter alia, that concerned SHO is refusing to exercise his powers under the law. It is also alleged that nikahnama available at Page 19 of the file, which was purportedly solemnized on 20.06.2016 between one of the daughters of petitioner Mst. Tahira and one Hameed Ali, is a forged document.

Parawise comments have been filed by the learned State Counsel in which allegation leveled in the petition have been denied.

In this petition, the petitioner is also seeking lodging of a FIR under sections mentioned in para-7 of the petition, that is, 420, 468, 471, 474, 500 of P.P.C.

Today, Mr. Muhammad Hassan Chandio, Advocate, has filed vakalatnama on behalf of respondent Hameed Ali, who has been mentioned as proposed accused. Even title of this petition is defective. It is further contended by the learned Counsel for respondent that they have already moved a habeas corpus petition against the petitioner.

In rebuttal, the Counsel for petitioner has relied upon two reported judgments of Honourable Peshawar and Lahore High Courts; 2000 P.Cr.L.J 320 and 2010 MLD 128.

This petition is disposed of with the directions that parties are at liberty to seek their respective remedy before the concerned fora, however, police officials are directed to discharge their functions in accordance with law, that is, in an impartial manner and without patronizing any particular individual.

Notwithstanding the above, it has now become imperative to observe the following:

It is now an unfortunate trend that constitutional jurisdiction is grossly being misused by the parties for settling the score amongst themselves. Usually taking a liberal view, restraining orders are passed on first date of hearing but when respondents' version on subsequent date is heard, then it appears that in many cases Constitutional Petitions are not filed with *bona fide* intentions. It is about time that such type of frivolous litigation should be discouraged and all the more if the relief claimed in the petition can be granted by the forum below or for which under a Statute an exclusive jurisdiction has been conferred upon a Court, then the jurisdiction of that Court should first be invoked. This type of purposeless litigation is consuming a considerable time of genuine litigation and the litigants. At the same time, if the authorities and particularly police discharge its functions in a fair, just and reasonable manner, then such type of cases will automatically be curtailed, as citizens will be getting at least the administrative remedy from the concerned departments, which under the law are duty bound to hear complaints of citizens and deal with such complaints accordingly. The irony is that there are glaring instances which show that the Police Department is not functioning independently but under political influence, which has tarnished its image, notwithstanding that still there are officers who are working with diligence and dignity. Thus there are cases where petitioners are the ordinary citizens and they are left with no option but to invoke the constitutional jurisdiction of the Court with their genuine and *bona fide* complaints; but, these are exceptional ones. One way to arrest such litigation is that if Court reaches the

conclusion that the case/petition is frivolous and ill-motivated, then the same may be dismissed with some penal consequence, *inter alia*, as these petitions are filed on the basis of affidavit, and may expose the petitioner to criminal prosecution. Secondly, the delinquent petitioner, in my considered view, should not be allowed to get away scot-free after setting the law in motion. If such habitual litigants are allowed to go unchecked, then it will encourage them further to file such false cases in future as well.

Thirdly, there is every likelihood that persons filing such cases do not disclose the entire facts and controversy to their counsel/advocates they engage for the purpose. Being officer of the Court it is the duty of an Advocate to make at least some preliminary/basic enquiry from the clients before filing such petitions, in order to avoid any adverse consequences.

JUDGE

Ali Haider