

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

**C.P.NO.S-953 of 2016**

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DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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*Date of Hearing* : 22.02.2018.

*Date of Order* : 22.02.2018.

**Mr. Abdul Hameed Jamali, Advocate for petitioner.**

**Mr. Wali Muhammad Jamari, Assistant A.G.**

**ORDER**

**AGHA FAISAL, J:** The subject petition was instituted in

June 2016, wherein the following relief was sought:

- “(a) That this Honourable Court may be pleased to direct the respondent No.4 to get recover the abductee Mst. Meena from the private respondents No.5 to 7.*
- (b) That respondents No.2 and 3 may be directed to take action and bound the respondent No.4 to get recover the detainee Mst. Meena from the wrongful confinement of the respondents No.5 to 7.*
- (c) That respondents No.5 to 7 may be directed to produce the detainee before this Honourable Court after production/recovery the detainee Mst. Meena may be set at liberty.*
- (d) That other relief which this Honourable Court deemed fit.*

2. The petitioner contended that his daughter Mst. Meena had been abducted on 13.08.2013 by the respondents No.5 to 7 and that in respect thereof he had lodged FIR in Crime No.46 of 2013 before the Police Station Daur District Shaheed Benazirabad, which proceedings according to the memorandum of petition remained pending.

3. The comments were in regard hereof were filed on behalf of the respondents No.3 and 4, vide a statement dated 06.02.2016. It may be

pertinent to reproduce the relevant content of the said comments filed by the respondent No.4:

*“It is further submitted that later on alleged abductee Mst Meena d/o Abdul Kasrim Brohi w/o Ghulam Rasool Shar filed C.P.No.D-165/2015 before the Honourable High Court of Sindh, Circuit Court Hyderabad against petitioner Abdul Karim and local Police, prayed therein that she had contracted marriage with Ghulam Rasool s/o Ghulam Hyder Shar with her own free will, consent and accord without consent of her father Abdul Karim Brohi and prayed for seeking legal protection and quashing FIR No.46/2013 U/S 365-B, PPC of P.S Daur regarding her alleged abduction. It is further submitted that alleged abductee Mst. Meena Bibi had contracted love marriage with Ghulam Rasool s/o Ghulam Hyder Shar with her own free will and consent, without consent or her father Abdul Karim Brohi and petitioner Abdul Karim Brohi wants to get her back. It is assured to the Honourable Court that each and every action will be taken as per law.”*

4. A further report was filed by the respondents No.3 and 4, vide a statement dated 23.05.2017, and it may also be pertinent to reproduce the relevant portions thereof in seriatim:

*Comments of Respondent No.3*

*The SHO Police Station Daur furnished his report, wherein he reported that on 18.8.2013 Petitioner Abdul Karim s/o Taj Muhammad Brohi had lodged case FIR No.46/2013 U/S 365-B PPC of Police Station Daur regarding abduction of his daughter Mst. Meena Bibi against accused Liaquat s/o Mahi Mari (2) Qurban s/o Liaquat Mari (3) Shahid s/o Shah Bux Mari r/o Star Colony Daur (private respondents No.05 to 07). ASI Raza Muhammad Khoso of Police Staton Daur had registered and carried-out investigation of above case. During course of investigation efforts were made for the arrest of accused persons nominated in the FIR and recovery of alleged abductee Mst. Meena d/o Abdul Karim Brohi but could not be succeeded. However, the case was finally sent up before the Honourable Court of law having jurisdiction, for trial under proceeding 512 Cr.P.C vide challan charge sheet No.33 dated 6.9.2013. However, the above case was acquitted by the Honourable 2<sup>nd</sup> Addl: Sessions Judge, Shaheed Benazirabad vide judgment 17.12. 2016.*

*The SHO Police Station Daur has further reported that later on alleged abductee Mst Meena d/o Abdul Karim Brohi w/o Ghulam Rasool Shar filed C.P.No.D-165/2015 before the Honourable High Court of Sindh, Circuit Court Hyderabad against petitioner Abdul Karim and local Police, wherein she*

*prayad that she had contracted marriage with Ghulam Rasool s/o Ghulam Hyder Shar with her own free will, consent and accord without consent of her father/petitioner Abdul Karim Brohi and prayed for seeking legal protection and quashing FIR No.46/2013 U/S 365-B PPC of P.S Daur regarding her alleged abduction. The above C.P. is still pending adjudication before the Honourable Court of Sindh, Hyderabad as per record of this office.*

*That in view of above detailed submission it is submitted that alleged detainee Mst. Meena Bibi d/o Abdul Kasrim Brohi w/o Ghulam Rasool Shar had contracted love marriage with Ghulam Rasool s/o Ghulam Hyder Shar with her own free will, consent and accord. However, without consent or her father Abdul Karim Brohi. The petitioner Abdul Karim Brohi wants to get her back, hence he filed instant subject C.P. before this Honourable Court with false and fabricated allegations with regard to alleged detention of his daughter Mst. Meena Bibi w/o Ghulam Rasool Shar just to putting pressure upon his opponents, in order to get her back on force without her will and wish. However, there is no truth with regard to the allegations of alleged detention of Mst. Meena d/o Abdul Karim Brohi w/o Ghulam Rasool Shar.*

#### Comments of Respondent No.4

*It is further submitted that the undersigned has assumed the charge as SHO Police Station Daur with effect from 18.12.2016. However, the perusal of record of Police Station Daur shows that on 18.08.2013, petitioner Abdul Karim s/o Taj Muhammad Brohi had lodged case FIR No.46/2013 u/s 365-B PPC of Police Station Daur regarding abduction of his daughter Mst. Meean Bibi against accused (1) Liaquat s/o Mahi Mari (2) Qurban s/o Liaquat Mari (3) Shahid s/o Shah Bux Mari r/o Star Colony Daur (private respondents No.5 & 7). ASI Raza Muhammad Khoso of Police Station Daur had registered and carried out investigation of above case. During course of investigation efforts were made for the arrest of accused persons nominated in the FIR and recovery of alleged abductee but could not be succeeded. However, the case was finally sent up before the Honourable Court of law having jurisdiction, for trial under proceeding 512 Cr.P.C vide challan charge sheet No33 dated 06.09.2013. However, the above accused was acquitted by the Honourable 2<sup>nd</sup> Addl. Sessions Judge, Shaheed Benazirabad, vide judgment dated 17.12.2016. (Copy of judgment is enclosed herewith for kind perusal).*

*It is further submitted that later on alleged abductee Mst. Meena d/o Abdul Karim Brohi w/o Ghulam Rasool Shar filed C.P.No.D-165/2015 before the Honourable High Court of Sindh, Circuit Court, Hyderabad, against petitioner Abdul Karim Brohi and local police, prayed therein that she had*

*contracted marriage with Ghulam Rasool s/o Ghulam Hyder Shar with her own free will, consent and accord without consent of her father Abdul Karim Brohi and prayed for seeking legal protection and quashing FIR No.46/2013 u/s 365-B PPC of P.S Daur, regarding her alleged abduction. It is further submitted that alleged abductee Mst. Meena Bib had contracted love marriage with Ghulam Rasool s/o Ghulam Hyder Shar with her own freewill and consent, without consent of her father Abdul Karim Brohi and petitioner Abdul Karim Brohi wants to get her back, hence he filed instant subject CP before this Honourable Court with managed allegations to get her back. There is no truth in the alleged allegations of her abduction”*

5. The office objection raised by the learned Additional Registrar, at the time of institution of this petition, was pointed out to the learned Counsel for the petitioner, wherein it was queried as to how the present petition was maintainable without exhausting the appropriate remedy before the learned Court of Sessions. To that effect, the learned Counsel for the petitioner stated that he was not bound by any law to approach to the learned Court of Sessions and that he was within the rights to file the present petition before this Court.

6. The learned A.A.G submitted that the alleged detainee had filed a constitutional petition, CP D-165 of 2015, before this very Court and sought the following relief *inter alia* against the petitioner herein (who was cited as the respondent No. 4 in the said petition):

- a) *That this Honourable Court may be pleased to direct the respondent No.3 not to cause any kind of harassment to the petitioners and their relatives at the instance of respondents No.4 to 7, through themselves, their agents, assignees, subordinates, or through any other agency in any manner.*
- b) *That this Honourable Court may be pleased to cancel FIR No.46/2013 U/s. 365-B PPC of Police Station Daur District Shaheed Benazirabad as false and liable to be cancelled.*
- c) *Any other relief which this Honourable Court deems fit and proper may please be awarded to the petitioner.”*

7. The learned A.A.G drew the Court's attention to the affidavit filed by the alleged detainee in support of the aforesaid petition, the contents whereof are reproduced herein below:

*“ I, Mst. Mina Bibi wife of Ghulam Rasool d/o Abdul Kareem, muslim, adult, Resident of Kachi-Abadi, Hussainabad, Hyderabad, do hereby state on oath as under:*

- 1. That, I am petitioner No.1 in the above matter, as such am well conversant with the facts of the matter.*
- 2. That, present affidavit and accompanying petition have been drafted and filed under my instructions and contents thereof may be treated as part and parcel of this affidavit for the sake of brevity.*
- 3. That, I have not been abducted, kidnapped, enticed or subjected to zina, by any one, but I myself left the house of my parents with my free will and consent and then solemnize Nikah with petitioner No.1 according to Sharia.*
- 4. That, life and liberty of mine, my husband and his relatives are in danger at the hands of respondent No.2 and if he is not restrained, we will suffer an irreparable loss and injury.*
- 5. Whatever stated above is true and correct to the best of my knowledge and belief.*

8. The learned AAG pointed out that the aforesaid affidavit was sworn by the alleged detainee before a commissioner for taking affidavits and in the presence of her legal counsel.

9. It was also pointed out by the learned A.A.G that the referenced petition, filed in January 2015, was withdrawn by the petitioner on 18.02.2016.

10. The learned A.A.G also drew the Court's attention to a Criminal Acquittal Appeal No.S-201 of 2016 and stated that the said appeal had been filed by the petitioner against the respondents No.5, 6 and 7 herein.

11. It was demonstrated that this matter pertained to the same FIR, as referred to in the memorandum of petition herein being Crime No.46 of 2013, and it was stated that after lodging of FIR, accused Liaquat, Qurban and Shahid were arrested and challan was submitted before the competent Court. However, the learned trial Judge acquitted the said accused in the above case, hence the appeal.

12. Therefore contrary to the statement made by the petitioner in the memorandum of petition that the criminal proceedings originating from FIR bearing Crime No.46 of 2013 was still pending before the Court of the learned 2<sup>nd</sup> Additional Sessions Judge, Shaheed Benazirabad, it was apparent that the said proceedings had not only been dismissed but also an appeal had been preferred there against by the petitioner.

13. The learned A.A.G also drew the Court's attention to the order dated 16.12.2016 passed in the aforesaid Criminal Acquittal Appeal No.S-201 of 2016, wherein it was recorded as follows:

*"4. Learned Counsel for appellant submits that both the courts below have not considered the evidence adduced by the prosecution. He further submits that this is a case of misreading and non-reading of evidence produced by the appellant. He further submits that the trial court has not applied its judicial mind while evaluating the evidence available on record in correct direction. Issue notice to respondents and Deputy prosecutor General Sindh. Meanwhile call R&Ps from the trial Court."*

14. It was contended by the learned A.A.G that the present petition was prima facie in contradiction of the facts, as apparent from the record, and also in due dissonance with the law.

15. The learned A.A.G further contended that the issue of whether or not the private respondents were culpable of the allegations made there against was already pending before this Court in Criminal Acquittal

Appeal No.S-201 of 2016, and therefore the assumption of jurisdiction in these proceedings was unmerited.

16. The learned A.A.G further stated that the learned Counsel for the petitioner has not advanced a single cogent reason as to why a remedy was not sought before the learned Court of Sessions prior to institution of the subject petition before this Court.

17. The learned A.A.G stated that the allegations made by the petitioner with respect to his daughter / alleged detainee have already been controverted by a sworn affidavit of the daughter herself, the contents whereof have already been reproduced supra. It was argued that permitting the present petition to perpetuate would militate against the interests of justice.

18. The Court heard the arguments of the learned Counsel at considerable length and had also reviewed the record available.

19. It is considered just and proper to seek guidance from the binding and persuasive authorities of the superior Courts in this regard.

20. The august Supreme Court of Pakistan had held in the case of *BASHIR AHMAD V/S. ZAFAR-UL-ISLAM & OTHERS*, reported as *PLD 2004 Supreme Court 298*, that extraordinary jurisdiction is preserved only for extraordinary situations and such power must be exercised with utmost caution only in exceptional cases and not as a matter of routine.

21. This Court has also expounded upon this issue on numerous occasions and one such instance was in the case of *FAROOQ V/S.*

MST. ZAHABA BIBI & 02 OTHERS, reported as 2004 P.Cr.L.J 907, and the relevant passage therein is reproduced herein below:

*“The petitioner instead of contesting the matter before the Sessions Court has approached this Court under the Constitutional jurisdiction, making several pleas which are untenable at this stage as the matter already seized with the District Court under the Habeas Corpus jurisdiction which jurisdiction is unfettered in respect of illegal and improper custody of a person. The plea of the petitioner that he being the father has not kept the custody illegally is a matter of Habeas Corpus wherein the matter with regard to the illegality and improper custody would be determined by the concerned District Court. The petitioner has invoked the constitutional jurisdiction of this Court under Article 199(b)(1) of the Constitution, challenging the legality of proceedings before the Sessions Judge under Habeas Corpus jurisdiction which is without exhausting the adequate remedy available under the law under Article 199(1) of the Constitution as the powers under Article 199 is subject to the Constitution on the satisfaction that no other adequate remedy is provided by law whereas under the Habeas Corpus jurisdiction under section 491, Cr.P.C., the matter is seized with the District Court and therefore, this petition is dismissed in limine.”*

22. In the recent case of *WALEED KHANZADA VERSUS THE STATE*, reported as 2017 YLR Note 444, this Court has maintained as follows:

*“In the case of Muhammad Farooq v. Ahmed Nawaz Jagirani, it has been held by the Honourable Supreme Court of Pakistan that:*

*“Exercise of jurisdiction under section 561-A, Cr.P.C. by the High Court is akin to the exercise of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973; exercise of such jurisdiction is not to be exercised in routine and or as a matter of course merely because such jurisdiction is available and or could be exercised. Exercise of inherent jurisdiction is dependent on non-availability of alternate and efficacious remedy and or existence of some extraordinary circumstances warranting exercise of such jurisdiction by-passing such alternate remedy by the High Court. Another rule of propriety, that has evolved by precedent law must not lost sight is that where two Courts have coextensive or concurrent jurisdiction, than the propriety demands that jurisdiction of Court of the lower grade is to be invoked in the first instance.”*



11. *The remedy under section 561-A, Cr.P.C. is not an alternate and or substitute for an express remedy as provided under the law in terms of sections 435 to 439, Cr.P.C. and or sections 249-A or 265-K, Cr.P.C., as the case may be. One cannot be allowed to bypass and or circumvent the ordinary remedy in normal course of the event. In the case of Maqool Rehman v. State (2002 SCMR1076) in paragraph 6 thereof it was held that ‘normally, High Court does not exercise inherent jurisdiction unless there is gross miscarriage of justice and interference by the High Court seems to be necessary to prevent abuse of process of court or to secure the ends of justice. Jurisdiction under section 561-A, Cr.P.C. is neither alternative nor, additional in its nature and is to be rarely invoked only to secure the ends of justice so as to seek redress of grievance for which no other procedure is available and that the provisions should not be used to obstruct or direct the ordinary course of Criminal Procedure. This kind of jurisdiction is extraordinary in nature and designed to do substantial justice. It is neither akin to appellate nor the Revisional Jurisdiction.’*

*In another case of Bashir Ahmed v. Zafarul Islam reported in PLD 2004 SC 298 it has been held by the Honourable Supreme Court of Pakistan that:*

*“22. Using the powers under section 561-A, Cr.P.C. to determine the fate of a criminal case is thus a serious departure from the normal course and needless to say that any deviation from the normal path is always pregnant with risk of being led astray. Such a deviation can, therefore, never be ordinarily advisable. Extraordinary circumstances must always been shown to exist before a choice could be made to abandon the regular course and instead to follow an exceptional route. Mere claim of innocence by an accused persons could never be considered sufficient to justify such a departure because if this was so permitted then every accused person would opt to stifle the prosecution and to have his guilt or innocence determined under section 561-A of the Cr.P.C. The result would be decision of criminal trials in a summary and a cursory manner rendering the trials as a superfluous activity and the trial Courts as a surplusage. This never was and could never have been the intention of the law maker in adding section 561-A to the Code. Reference may be made to Sheikh Mahmood Saeed and others v. Amir Nayaz Khan and another (1996 SCMR 839), Malik Salman Khalia v. Shabbir Ahmad, D&SJ, Karachi and another (1993 SCMR 1973) AND Mst. Sarwar Jan v. Ayub and Gulab (1995 SCMR 679).*

23. *The correct import of provisions of section 561-A, Cr.P.C. may be summarized as under:*

- (i) The said provision should never be understood to provide an additional or an alternate remedy nor could the same be used to override the express provisions of law;*
- (ii) the said powers can ordinarily be exercised only where no provision exists in the Code to cater for a situation or where the Code offers no remedy 'for the redress of a grievance';*
- (iii) inherent powers can be invoked to make a departure from the normal course prescribed by law only and only in exceptional cases of extraordinary nature and reasons must be offered to justify such a deviation; and*
- (iv) in the matter of quashing criminal proceedings, the trial must ordinarily be permitted to take its regular course envisaged by law and the provisions of section 561-A, Cr.P.C. should be invoked only in exceptional cases for reasons to be recorded. "*

23. The upshot of the above discussion is that there is no cavil to the proposition that this Court does have jurisdiction to intervene in such matters, however such jurisdiction could only be assumed in extraordinary or exceptional circumstances. In the present matter no case for assumption of such jurisdiction appears to have been made out.

24. The learned Counsel for the petitioner has not advanced any argument as to why he did not approach the Court of Sessions prior to institution of the present proceedings.

25. The learned Counsel for the petitioner has also been unable to satisfy this Court that how these proceedings could be maintained during the pendency of criminal acquittal appeal No.S-201 of 2016, when the subject matter appears to be the same.

26. The learned Counsel for the petitioner has also not been able to controvert the sworn affidavit of the alleged detainee, filed in C.P.No.D-165 of 2015, in view of the admitted fact that, in the said petition, the alleged detainee sought protection from the harassment apprehended *inter alia* at the hands of the present petitioner.

27. The learned Counsel for the petitioner has also failed to address the issue of laches as the present petition was filed in June 2016, whereas the alleged abduction was stated to have taken place in 2013.

28. In view of the foregoing and in consonance with the ratio laid down by the pronouncements of the superior Courts, it was concluded by this Court that this petition was not maintainable and hence the same was dismissed in Court earlier this morning vide short order dated 22.02.2018, which stipulated as follows:

*“Heard learned Counsel for the parties. For the reasons to be recorded later on, this petition is dismissed.”*

29. These are the reasons for the short order, dated 22-02-2018, wherein the instant petition was dismissed.

30. It is stipulated that the observations made herein are of a tentative nature and shall have no impact upon the determination of any dispute between the parties before any forum of appropriate jurisdiction in due consonance with the law.

**JUDGE**