

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
C.P.No.D-410 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For orders on office objection
- 2. For hearing of MA-1860/17
- 3. For hearing of main case.

27.08.2019.

Mr.Atif Imran Khuwaja, advocate for petitioner.
Mr. Muhammad Iqbal Qassar, advocate for respondent No.3
Mr. Muhammad Ismail Bhutto, Additional Advocate General.
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The facts in brief necessary for disposal of instant constitutional petition are that the petitioner and the private respondent remained in wedlock and they were blessed with baby Mehawish and there arose dispute between them over custody of baby Mehawish. They approached the Guardian court having jurisdiction to regulate custody of their baby Mehawish. In the meanwhile, the petitioner allegedly with help and abetment of others attempted to abduct her daughter baby Mehawish by maltreating and threatening the private respondent of murder. The private respondent reported the incident to the police but his FIR was not recorded and he then by way of filing an application under Section 22-A & B Cr.P.C sought for direction against SHO PS Khoski to record his FIR. Such directions were issued by learned IInd Additional Sessions Judge / Ex-officio Justice of Peace Badin by way of his order dated 08.02.2017, which is impugned by the petitioner before this court by way of instant constitutional petition.

It is contended by learned counsel for the petitioner that the FIR could not be ordered to be recorded against the mother for intending to abduct her daughter and directions for recording his FIR were sought for by the private respondent malafidely only to deter the petitioner from pursuing the Guardianship application before the court having jurisdiction. By contending so, he sought for setting aside the impugned order.

Learned A.A.G and learned counsel for the private respondent by supporting the impugned order have sought for dismissal of instant constitutional petition by contending that the petitioner was intending to have his daughter by abducting her without having a recourse of law and such act constitutes cognizable offence.

We have considered the above arguments and perused the record.

Admittedly, the petitioner and the private respondent had remained in wedlock and they were blessed with daughter baby Mehawish. The dispute between them over custody of baby Mehawish had been pending adjudication before the court having jurisdiction. In that situation, the petitioner being mother was hardly having a need to have put an attempt to abduct her daughter baby Mehawish. In these circumstances, the contention of learned counsel for the petitioner that the directions for recording of his FIR were sought for by the private respondent malafidely only to deter the petitioner from pursuing guardianship application before the court having jurisdiction could not be lost sight of.

In case of ***Rai Ashraf and others vs Muhammad Saleem Bhatti and others (PLD 2010 Supreme Court 691)*** it has been held by Hon'ble apex Court that;-

“Application for registration of FIR had been filed with mala fide intention---High Court had erred in law to exercise discretion in favour of applicant---Constitution petition was not maintainable as disputed questions of fact could not be decided in constitutional jurisdiction---Supreme Court set aside impugned order in circumstances.”

Consequent upon the above discussion, the impugned order is set-aside.

JUDGE

JUDGE

Ahmed/Pa,