

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

CP No. S- 348 of 2020

DATED	ORDER WITH SIGNATURE OF JUDGE
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05.10.2020

For orders on office objection
For hearing of main case

Mr. Shaukat Ali Pathan, Advocate for petitioner

Mr. Wazir Ali Mahar, Advocate for Respondent No.6

Mr. Allah Bachayo Soomro, Addl.A.G

ADNAN-UL-KARIM MEMON, J.- Through this Petition, the Petitioner Mst. Jannat Khatoon has prayed for production of her daughter Mst. Aneela the alleged detainee before this court for recording her statement and setting her at liberty as per her wish.

I have noticed that on the aforesaid subject learned Division Bench of this court has already passed a detailed and elaborative order dated 30.05.2018 in the case of Abdul Hameed & another vs. the Province of Sindh through the Secretary Home Department & 8 others (PLD 2019 Sindh 168), hence the issue requires no further deliberation on my part. An excerpt of the order is reproduced as under:-

“15. The apprehension expressed on behalf of the petitioners regarding the safety of parties contracting free-will marriages and FIR lodged in such cases against the person marrying a woman without the permission of her wali, cannot be ignored. Keeping this apprehension and all other aspects in mind we had passed a short order on 30.05.2018 whereby all these petitions were dismissed with a direction to Ex-Officio Justice of Peace in the following terms: “In all these petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have alleged that they are being harassed by the official and/or private respondents and on the basis of such allegations, they have prayed that protection be granted to them against the respondents. Prior to the filing of these petitions, admittedly none of the petitioners have availed or exhausted the remedy against such wrong by approaching the competent forum provided under the law i.e. the Ex-Officio Justice of Peace. It has been observed that this practice has become very common and at one stage the total number of such petitions was about 20% of the total cases pending before this Court. Not only this, about 2/3rd of the cause list used to have such cases daily for hearing. Due to this reason, the Court was unable to hear important / main cases, both of civil and criminal nature, resulting in an alarming increase in the number of pending cases. In this background, all these petitions were heard at length to decide whether this Court should continue to entertain such petitions at the cost of serious and actual litigation or should an order be passed that such persons should avail their remedy by approaching the competent forum provided by law. It was mainly contented on behalf of the petitioners that cases cannot be filed before the Ex-Officio Justice of Peace if petitioners and respondents reside in different districts, and police officials do not obey if any order for protection is passed by the Ex-Officio Justice of Peace. As regards

their first contention, the person seeking protection can approach the Ex-Officio Justice of Peace of such district where the protection is required by him. Their second contention can also be addressed by the Ex-Officio Justice of Peace himself. Both the learned AAGs as well as both the learned amicus curiae and learned counsel for one of the private respondents have strongly opposed these petitions by contending that such matters should not be filed before this Court as Ex-officio Justice of Peace is the proper forum for such matters according to law and if this Court has concurrent jurisdiction, even then the cases should be filed at the lowest level according to the settled law. Learned counsel for the petitioners, learned counsel for one of the private respondents, learned AAGs and learned amicus curiae have been heard at length.

For the reasons to follow, all these petitions are dismissed with no order as to costs. As an interim measure till the reasons of this short order are handed down office is directed to entertain only such petitions in which: i) the petitioner has already approached Ex-Officio Justice of Peace and his application / complaint has been finally decided by Ex-officio Justice of Peace, provided certified true copy of the final order is filed with the petition ; and ii) F.I.R. has been lodged against the husband in case of free will marriage, provided true copy of the F.I.R. is filed with the petition. etc. Learned Ex-Officio Justice of Peace of all districts are directed that if any order of protection etc. is passed by them in future on an application / complaint of a party, the S.H.O. concerned should be directed by them to submit compliance report to them within seven (07) days.”

It appears from the record that the very purpose of filing this petition is over on the premise that Mst. Aneela has been produced in court and recorded her statement through ASI Ghulam Nabi of PS Sarhad District Ghotki. In the Statement Mst. Aneela has stated that she is living happily with her husband and wants to go with him and does not want to join her parents.

The record further reflects the detainee being sui juris contracted free-will marriage with Fida Hussain and in this regard, she filed Cr. Misc. Application No. 431 of 2020 before 3rd Additional Sessions Judge / Justice of Peace, Mirpur Mathelo for protection which was allowed directing the official respondents to provide protection to the couple. Subsequently, brother of the detainee filed Cr. Misc. Application before 1st Additional Sessions Judge, Ghotiki for recovery and production of alleged detainee which was also disposed of based on the statement of detainee wherein she stated that she was happy with her husband and wanted to go with him. Again her mother filed Cr. Misc. An application under Section 491 Cr.P.C. before this Court of at Sukkur Bench wherein the alleged detainee again appeared and reiterated the statement made by him before 1st Additional Sessions Judge, Ghotki, hence she was allowed to go as per her wish and now again the Petitioner has repeated such application before this Court in which the detainee has been produced by her husband. Her statement was recorded by ASI PS Sarhad district Ghotki in which she has stated that she is living happily with her husband and also wants to go with him.

In my humble view, a writ of habeas corpus is to be issued only when a person concerning whose liberty is involved. Prima-facie, this petition ingeniously filed with an ulterior motive to abuse the process of Habeas Corpus. The process of this Court cannot be misused by unscrupulous persons, in view of the order dated 24.6.2020 passed by this Court at Sukkur Bench. Prima-facie, the question of considering that her daughter is under illegal detention of her husband or private respondents does not arise.

Accordingly, this petition along with the listed application(s) stands **dismissed with no order as to costs**. However, the applicant is at liberty to avail her remedy as provided under the law, if she at all is aggrieved.

JUDGE

karar_hussain /PS*