

## ORDER SHEET

**IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD**

Cr. Misc. application No. S-08 of 2023

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DATE	ORDER WITH SIGNATURE OF JUDGE
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**23.01.2023**

For orders on office objections.  
For hearing of main case.

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Mr. Nisar Ahmed Channa Advocate for applicant.

Mr. Muhib Ali Leghari Advocate files Power on behalf of private respondent[s].

Ms Safa Hisbani A.P.G. for the State.

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**KAUSAR SULTANA HUSSAIN, J.-** Through this criminal Miscellaneous Application the applicant has assailed the legality and propriety of the order dated 31.12.2022, passed by the Judicial Magistrate-X Hyderabad, on a final report under Section 173 Cr.P.C. submitted by the I.O in Crime No.283 of 2022 under section 365-B, 34 PPC of Police Station Husri, for disposal of the FIR in "C" class, whereby the learned Magistrate while disagreeing with the opinion of the Investigating Officer has ordered for reinvestigation of the case by constituting JIT within 15 days without fail.

2. The details and particulars of the case are already available in the application, same could be gathered from the impugned order, hence, needs not to reproduce the same hereunder.

3. It is contended by the learned Counsel for the applicant that the impugned order passed by the learned Magistrate is against the law and facts; that during course of investigation the I.O. recorded statement of alleged abductee Shrimati Maya under section 161 Cr.P.C. and produced her before the learned Magistrate who has recorded her 164 Cr.P.C. statement wherein she has categorically deposed that she has neither been abducted nor kidnapped. She further deposed that she has contracted marriage with Mohan Lal by exercising her right of free will without any pressure or coercion and that she is residing happily with her husband Mohan Lal.

4. Learned counsel for the respondent/complainant supported the impugned order by arguing that the complainant has mentioned in the FIR that his daughter Maya is aged about 14/15 years, therefore, he submits that she cannot solemnize marriage to a person who is already married which is against the Hindu Religion and Sindh Hindu Marriage Act 2018.

5. Learned A.P.G. appearing for the State adopted arguments of learned counsel for the applicant further submits that since the star witness of the case crime No.283 of 2022, has denied her alleged abduction, therefore, there is no need to further investigate the matter and the report submitted by the I.O. under section 173 Cr.P.C. recommending the case for disposal of 'C' class is in accordance with law and do not call for any interference by this Court.

6. Heard learned counsel for the parties as well as learned A.P.G. appearing for the State. Perusal of record shows that after registration of the F.I.R No.283 of 2022 registered at Police Station Husri for alleged abduction of Shrimati Maya by the applicant Mohan Lal, the investigation was carried out by the I.O of the case, who had recorded statement of alleged abductee Shrimati Maya under section 161 Cr.P.C. and also produced her before the Magistrate where her statement under section 164 Cr.P.C. was recorded [annexure 'C' page 31]. Investigating Officer present in court files Certificate of Dr. Sanober Sahito regarding determination of age of Shrimati Maya who has opined as under:-

**OPINION.**

The expert Radiological opinion given by Radiologist Department of Radiology @ LUH Hyderabad, the bony age of Maya w/o Dr. Mohan is about 18 to 19 years (Eighteen to Nineteen years).

7. It is relevant to mention here that section 173 Cr.P.C. provides that after completion of investigation, the incharge of Police Station shall submit report through Public Prosecutor before the concerned Magistrate and if the Magistrate finds that there is sufficient evidence against the accused then he has power to take the cognizance of the offence, furthermore if, the Magistrate is of the view that the proper investigation, has not been conducted and required further investigation then, he can direct the officer incharge of the

police station to make further investigation. In the instant case, the Investigating Officer has completed the investigation and after recording the statement of alleged victim in terms of section 161 Cr.P.C. as well as statement in terms of 164 Cr.P.C. wherein she has categorically denied the allegations of her abduction. So far the question of age of the alleged victim appeared in the impugned order, only the medical opinion can be relied in this regard and as per opinion of the Medical Officer, she is aged about 18 to 19 years, hence, the offence in terms of section 9 of the Anti-Rape (Investigation and Trial) Act, 2021 is not constituted. In view of section 190 Cr.P.C. if, a Magistrate after taking cognizance of offence if an offence is triable exclusively by a Court of Session, without recording any evidence sent the case to Court of Sessions for trial. In case of **'MUHAMMAD NASIR CHEEMA v. MAZHAR JAVAID and others'** [PLD 2007 Supreme Court 31], wherein the Hon'ble Supreme Court of Pakistan has held:

*“The only provision relating to the subject which is available in the Code of Criminal Procedure is section 173 which commands expeditious conclusion of the investigations and further ordains that on conclusion of every investigation, the concerned S.H.O. shall submit a report of the result thereof in the prescribed manner to the Magistrate competent to take cognizance under section 190, Cr.P.C. No powers vests with any Court including a High Court to override the said legal command and to direct the S.H.O. either not to submit the said report (mentioned as challan in the Police Rules and also in the impugned order) or to submit the said report in a particular manner i.e. against only such persons as the Court desires or only with respect to such offences as the Court wishes. The impugned order can also not be sustained because, as has been mentioned above, the challan in question stood already submitted in Court and was thus beyond to reach of the concerned S.H.O.”*

8. Furthermore, as stated above the offence with which accused are booked, the alleged victim has categorically negated the same in her statement under section 161 Cr.P.C. as well as 164 Cr.P.C. In view of above facts and circumstances of the case, this criminal miscellaneous application is allowed. The impugned order dated 31.12.2022 passed by the learned

Magistrate-X, Hyderabad, is set-aside. However, the plea taken by the respondent that in Hindu custom there is no concept of second marriage to be solemnized, therefore, he is set at liberty to approach before appropriate forum in accordance with law, if so advised.

JUDGE

A.