

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.
C.P No. D-6233 of 2021

Dated Order with signature of Judge.

For direction

1. For order on CMA No.16451/2022
2. For order as to maintainability of petition.

16.09.2022.

Mr. Zulfiqar Ali Qureshi, Advocate for the Petitioner.

YOUSUF ALI SAYEED, J- The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution seeking that the Ministry of Interior be directed to issue a Red Warrant through Interpol for the arrest of the Respondent No.3 and that the Federal Investigation Agency be directed to take him into custody upon his arrival in Pakistan. Directions have also been elicited for blocking of the Respondent No.3's CNIC and Passport.

2. The apparent backdrop to the matter is that the Petitioner and Respondent No.3 had contracted marriage on 11.09.2016, which remained in subsistence until its dissolution on 18.12.2018, with one child having been born to them during that period, with the grievance of the Petitioner being that the Respondent No.3 had since settled abroad in the Kingdom of Saudi Arabia along with the minor. However, as it transpires, a custody Order had been obtained by the Respondent No.3 on 09.12.2019 from the Court of Family Judge, Karachi, East vide G&W Application No. 1186/2019 made under Guardian and Wards Act 1890, which itself confers permission for such travel.

3. Learned counsel for the Petitioner submitted that the aforesaid Order had been obtained through misrepresentation and that custody of the minor ought to properly vest with the Petitioner. However, on query posed, he conceded that the Order of guardianship specifically contemplated that the Respondent No.3 could proceed abroad along with the minor, and that the Petitioner had not filed any appeal in the matter nor made any application before the learned Guardian Judge seeking recall of the *ex-parte* order for reconsideration of the matter on merits. He nonetheless sought to rely on the judgment of the Honourable Supreme Court in the case reported as *Shaukat Masih v. Mst. Farhat Parkash and others* 2015 SCMR 731 to argue that this Court could exercise its constitutional jurisdiction so as to grant the relief elicited in the matter.

4. However, in our view, the cited Judgment is completely distinguishable on the facts, as it did not pertain at all to the subject of arrest, as is sought in this instance, and in that case the parties vying for custody were even otherwise the paternal grandfather and biological mother of the minor, with the matter having come up before the Apex Court from a proceeding before the Lahore High Court in the nature of *habeas corpus* pursuant to an Application that had been made by the latter under S.491 Cr.P.C. in ignorance of the Guardianship Certificate in favour of the former that was in the field. It was under the peculiar circumstances of that case where the custody of the minor had changed hands by virtue of the proceedings before the High Court that the Honourable Supreme Court declined to interfere further at the behest of the paternal grandfather; notwithstanding the grant in his favour while setting aside the earlier Guardianship proceedings and leaving the contestants to agitate the matter afresh before the Guardian Judge.

5. However, under the given circumstances, we are of the view that the instant Petition is misconceived as the relief elicited cannot conceivably be countenanced in the face of the guardianship Order subsisting in favour of the Respondent No.3. The Petition thus stands dismissed accordingly along with the pending miscellaneous application.

JUDGE

CHIEF JUSTICE