

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D - 1012 of 2024

(Mst. Noor Fatima & another Vs. Mst. Samina Begam & others)

Date of hearing	Order with signature of Judge
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Hearing of case (Priority)

1. For hearing of CMA No.3954/2024 (S/A)
2. For hearing of main case

Date of hearing and order. 30-07-2024.

Mr. Daman Ali Leghari, Advocate for the petitioners
Mr. Parmanand, Advocate for respondent No.1
Mr. Imran Mobeen Khan, Assistant PG for the State
Mr. Ghulam Abbas Kuber, Assistant AG Sindh along with
Investigating Officer, SIP Azam Hussain of PS Shaheed Murtaza
Mirani, Khairpur

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ORDER

ADNAN-UL-KARIM MEMON, J: Through this constitution petition, petitioners Mst. Noor Fatima and Fayaz Ali have assailed the legality of FIR No. 253/2024 registered for offence under section 365-B PPC at Police Station Shaheed Murtaza Mirani, District Khairpur, lodged by the mother of the petitioner No. 1.

2. The Petitioner No. 1 present in Court makes a categorical statement that she has contracted marriage with petitioner No. 2 with her consent without force. She further submits that the FIR lodged by her mother against the petitioner No. 2 is false one and liable to be quashed.

3. Investigating Officer present in Court has recorded the statement of the petitioner No. 1 with the narration that she is 18 years age and contracted marriage with Fayaz Ali Ansari in accordance with Muhammadan law; that nobody has kidnapped her rather the FIR lodged by her mother against the petitioner No. 2 and his family members is liable to be quashed and now she wants to live with her husband. The Investigating Officer further submits that

he will submit his investigation report before the learned Magistrate for appropriate order in terms of the statement of the petitioner lady.

4. Learned counsel for the respondent No.1 has placed reliance on the Girls High School paper and submitted that Mst. Noor Fatima was born on 10-06-2009; therefore, she is underage i.e. aged about 15 years and 01 month. He also submitted that petitioner No.2 and his accomplices committed heinous offence by managing the documents to show that the petitioner No. 1 is aged about 18 years; that petitioner No.1 has recently undergone the 9th class exam, as such she cannot be treated to be major to contract marriage without her parents will; that petitioner No.2 is Naib Qasid in the School is not entitled to relief as he has kidnapped the daughter of the respondent No.1 and emphasized that marriage of children under the age of 18 is unlawful and the marriage contract is void *ab initio*. He added that a girl below the age of 16 was/is married in violation of the Act 2013. He argued that the law prohibits sexual intercourse with a child under the age of 16 and even if a child was/is to consent to engage in sexual intercourse, the action of the accused would still constitute the offense and would be punishable under the Act 2013 read with Pakistan Penal Code. He has further contended that under Sections 3 & 4 of the Sindh Child Marriage Restraint Act, it is a cognizable offense. Learned counsel asserted that the Sindh Child Marriage Restraint Act 2013 is a valid law and that section 2(a) of the Act is in line with the Islamic teachings of protecting the rights of children and ensuring their well-being. Per learned counsel setting a minimum age limit provides a reasonable period for girls to complete basic education at least, which normally helps in developing mental maturity in a person. He prayed for the dismissal of the present petition.

5. The aforesaid stance has been denied by the petitioner No. 1 with the narration that the respondent No. 1 has managed the things to show her underage though she is within the age limit to contract marriage having attained the age of puberty.

6. We have heard learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

7. Primarily, this is a free and democratic country, and once a person becomes major he or she can marry whosoever he/she likes; if the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is they can cut off social relations with the son or daughter, but they cannot give threats or commit or instigate for acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities will see, that if any boy or girl who is major undergoes inter-caste or inter-religious marriage with a woman or man who is major, the couple is neither harassed by anyone nor subjected to threats or acts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action will be taken against such person(s) as provided by law. However, the above observation is without prejudice to the legal rights of the parties, if any, pending before the competent Court of law; so far as the issue of underage if any is concerned the same shall be taken care of by the competent forum under the law. Because of the above the captioned petition can be disposed of with the direction that the petitioner No.1 is at liberty to live either with her husband or her parents and no person shall be permitted to interfere in her peaceful living. In case, any disturbance is caused to the petitioner No.1, she shall approach the concerned Senior Superintendent of Police or Superintendent of Police with a copy of this order, who shall provide immediate protection to her. So far as the issues of underage marriage and other ancillary matters are concerned the same shall be looked into by the concerned Court if approached by the aggrieved party for the reason that the Dissolution of Muslim Marriages Act

1939 recognizes such age as sixteen years (which earlier was 15 years but was substituted as sixteen years by the Muslim Family Laws Ordinance, 1961 (VIII of 1961), which finds a place as Section 13 of the Muslim Family Law Ordinance, 1961 and reads as under:-

(13. Amendment of the dissolution of Muslim Marriage Act, 1939 (VIII of 1939).In the Dissolution of Muslim Marriage Act, 1939 (VIII of 1939) in section 2:-

1. After clause (ii) the following new clause (ii-a) shall be inserted, namely:-

“(ii-a) that the husband has taken any additional wife...

(b) In clause (vii), for the word ‘fifteen’ the word ‘sixteen’ shall be substituted)

8. Further, per Section 271 and 272 of Mulla’s Principles of Muhammadan Law a marriage of a minor (who has not attained puberty) is not invalid for the simple reason that it was brought about by the father or grand-father and continues to be valid unless same is repudiated by that girl before attaining the age of 18 years. Therefore, such act of the father and grandfather is protected by Muslim Laws unless the same is established or proved to be in manifest disadvantage of the minor. Besides, Section 273 of the Mulla’s Principles of Muhammadan Law, provides that the marriage brought about by other guardians is also not *invalid* unless she, resorted to her operation to repudiate the marriage on attaining puberty.

9. At this juncture, it would be significant to refer to the case of Mauj Ali v. Syed Safder Hussain (1970 SCMR 437), wherein the Child Marriage Restraint Act 1929 was an issue while deciding such controversy the Supreme Court held as under:

“It is not disputed that Mst. Musarrat has attained the age of puberty and she had married with respondent No.1 of her own free will. Such a

marriage is valid according to Muhammadan Law. It was urged that such marriage is invalid under the Child Marriage Restraint Act and, therefore, it should not have been recognized by the High Court. This contention also has no force. Since the marriage is valid under the Muhammadan Law, respondent No.1, is the guardian of Mst. Musarrat and the High Court was perfectly justified in allowing her to go with her husband. We are satisfied that substantial justice has been done in this case. We, therefore, do not consider this as a fit case to interfere in our special jurisdiction."

10. There can be no denial to the fact that the 'event of the marriage' is always an event of honor of family particularly, when it is being solemnized without an attempt to keep it secret, therefore, all authorities, otherwise, are entitled to question the validity thereof, should strictly act keeping this aspect in mind and should not act in a manner prejudicial to the honor of such family or girl. The authority should try to first satisfy itself about the genuineness of the information and then decide whether to proceed or otherwise because if at the end of the day, the information is found false or causeless there would be nothing to compensate the loss, sustained by the family complained against. However, in terms of the statement made by the petitioner-girl before this Court, no further action is required to be taken against the petitioner No.2 and due protection shall be provided to the petitioners accordingly as the parties are at daggers drawn.

11. Primarily, this is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes; if the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate for acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the

administration/police authorities will see, if any boy or girl who is major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is neither harassed by anyone nor subjected to threats or acts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such person(s) as provided by law. However, the above observation is without prejudice to the legal rights of the parties, arising out of the marriage of the couple, if any, pending before the competent court of law.

12. In view of the above, this petition is disposed of with a direction to the concerned police to provide legal protection to the couple as and when they approach for such protection, in the meanwhile no further action is required against them and no harassment shall be caused to the couple by the family of the private respondents at any cost. The investigating Officer is directed to submit his investigation report to the learned Magistrate for disposal of the case in terms of the statement of the petitioner lady. The Magistrate shall pass a speaking order after hearing the parties and issue of underage, if any, shall be taken care of in the light of observation recorded hereinabove.

Judge

Judge