

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH**  
**CIRCUIT COURT MIRPURKHAS**

Criminal Miscellaneous Application No. S-473 of 2024  
(*Abdul Shakoor Vs. The State & others*)

---

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
-------------	--------------------------------------

---

Date of hearing & Order 15.08.2024

Mr. Naeem Talpur, Advocate for applicant a/w applicant  
Mr. Dhani Bux Mari, Assistant P.G, Sindh

=

**ORDER**

*Adnan-ul-Karim Memon, J.* The applicant Abdul Shakoor has filed this Criminal Miscellaneous Application under section 561-A Cr. P.C., seeking annulment of Order dated 05-07-2024 passed by the learned Judicial Magistrate-II, Sanghar, in Criminal Case No. Nil. of 2024 whereby FIR No.09 of 2024 under section 365-B PPC r/w Section 3 and 4 of the Child Marriage Restraint Act, 2013, lodged by applicant/complainant Abdul Shakoor, was canceled under the "C" class. The extract of the order is reproduced as under:-

"Investigation officer inspector Wali Muhammad Bhambhro has submitted a final report under section 173 Cr. P.C in crime No. 9/2024 U/S: 365-B,504,34-PPC 3,4 Sindh Child Marriage Restrain Act for its disposal under "C" Class and having got approval from his superior police authority.

I have heard the Investigation officer, learned counsel for the complainant, learned ADPP, and perused the final report u/s 173 Cr.PC and material available in the police file. The final police report submitted by the Investigation officer is in consonance with the material available on record. Therefore, the final report is hereby approved. The FIR is canceled under the "C" Class. The Accused persons are hereby discharged and sureties of the accused persons discharged and their bail bonds stand canceled."

2. Mr. Naeem Talpur learned counsel for the applicant/complainant has attempted to give a brief history of the case and submitted that the daughter of the applicant Miss Maria, a minor (under 16 years old), was abducted on her way to school by the private respondents. The applicant lodged an FIR (First Information Report) with the concerned police Station. The police initially arrested one suspect but showed the others and an unknown accomplice as absconders. Per learned counsel, Miss

Maria and one of the respondents (Ali Raza) filed a joint constitution petition (CP No. D-68/2024) before this court, claiming they were married and this Court allowed Miss Maria to go with Ali Raza, believing that Section 365-B of the Pakistan Penal Code (PPC) was inapplicable in the case due to her statement recorded in Court, which was based on pressure. Learned counsel argued that Section 361 of the PPC applies because Miss Maria is still a minor. He further submitted that the order of this court passed in C.P No. D-68/2024 was inappropriate because her age was not determined when she appeared before this court. However, her ossification test was conducted to determine Miss Maria's age which was/is suspicious on the premise that it mentions an irrelevant case number besides the age of 18/19 years as opined by the Special Medical Board creates doubt for the reason that her educational documents, which were/are part of the police file, could not be seen by the Special Medical Board. He prayed for setting aside the ossification test results and reconsidering Miss Maria's minor status and action to be taken against her abduction. He came hard on the role of Investigation Officer and submitted that the investigating officer filed the Final Summary Report under Section 173 Cr.PC under "C" Class and the learned Magistrate approved the summary report vide impugned order, which is against the law. The learned counsel argued that the Magistrate has not given any cogent reason for agreeing with the police report as he was required to see the factual position of the case as there was/is conflict in the opinion of experts on the subject issue; that the Investigation officer did not re-investigate the matter as per orders of the Magistrate dated 07.05.2024; even the Investigation officer did not verify the documents submitted by the Applicant (Complainant of the case) from the concerned quarters, probably due to either of the two reasons viz, the Investigation officer was incompetent or he had been mixed up with the accused party. He added that the Investigation officer also tried to mislead this court during the proceedings of Criminal Miscellaneous Application No.419/2024 as well as in CP No.68/2024. He emphasized that the age of Miss Maria is less than 15 years old, as she was born on 14.04.2009, which is evident from her B-Form, Educational Certificate, and Passport, which all were prepared/issued before the lodgment of FIR No. 09/2024. He

further submitted that the applicant had placed on record the School Leaving Certificate issued by the Sachal Academy of Education Sanghar in which the date of birth of Miss Maria was/is recorded/mentioned as 14.04.2009 to the Investigation Officer but he ignored deliberately; that the applicant had also submitted the Candidate's Examination Slip for the SSC-1 Examination issued by the Board of Intermediate and Secondary Education Shaheed Benazirabad @ Nawabshah to the Investigation Officer but again he avoided to see this aspect of the case; that the applicant had also submitted the Candidate Enrolment Card of SSC-1 issued by the Intermediate and Secondary Education Shaheed Benazirabad Nawabshah to the Investigation Officer and in the said Enrolment Card, showing the date of birth of Miss Maria to be 14.04.2009. He further submitted that the applicant had also submitted the B-Form/CRC of his daughter Miss. Maria issued by the NADRA authorities on 19.11.2016 to the Investigation Officer and in the said B-Form/CRC, the age of Miss. Maria is recorded as 14.04.2009; that the applicant had also submitted the Passport issued by the Government of Pakistan, to the Investigation Officer, and in the Passport, the age of Miss. Maria is recorded as 14.04.2009 and the said passport was issued on 03.11.2017 and Miss. Maria on that passport had traveled to Saudi Arabia to perform Umrah with her family, however, the Investigating Officer deliberately ignored all these facts as discussed supra and conducted a faulty investigation to favor the accused party involved in the abduction of his daughter. He finally emphasized that documentary proof explicitly shows that Miss. Maria was born on 14.04.2009 and she is now less than 15 years of age all such facts have escaped the eye of the learned Magistrate while passing the impugned Order, though these documents were/are part and parcel of the Police file/police papers; that the learned Magistrate was required to act judicially while going through the case papers and at the time of passing the impugned order, but it seems that he has failed to do so and acted like a Post Office and just stamped/thumb marked the police report, which is not warranted under the law, as such injustice has been done. Learned counsel submitted that the victim daughter of the applicant is underage and cannot perform Nikah, therefore, the offense has been committed under the Sindh Child

Restraint Marriage Act, 2013. Learned counsel has stressed that the 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 further contended 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 still constitutes the offense and would be punishable under the Act 2013 read with Pakistan Penal Code and other enabling provision of law, as such the Trial of the accused is to be conducted by the designated Court under the Anti Rape Law. In support of his contentions, he relied upon the cases of Intizar Hussain v. Hamza Ameer (2017 SCMR 633) and Alishba Bibi v. the State (PLD 2020 Islamabad 28). He prayed for allowing the instant Criminal Revision Application by setting aside the Order dated 05-07-2024 passed by the learned Judicial Magistrate-II, Sanghar in Criminal Case No. Nil of 2024 whereby FIR No.09 of 2024 under section 365-B PPC r/w section 3, 4 of the Child Marriage Restraint Act, 2013 where the FIR has been disposed of as canceled.

3. Learned Assistant PG has supported the impugned order keeping in view the findings of the Special Medical Board, whereby they opined that the age of victim Maria daughter of Abdul Shakoor was/is between 18 to 19 years vide report dated 04.7.2024.

4. After careful consideration of what has been pleaded by the learned counsel for the applicant and meticulous examination of the available record, it appears that the applicant lodged FIR No.09 of 2024 under section 365-B PPC r/w sections 3 and 4 of the Child Marriage Restraint Act, 2013 against the private respondents, which was disposed of under "C" class by the order of the learned Judicial Magistrate vide impugned order dated 05.7.2024, which order is under challenge on the grounds agitated by the applicant as discussed in the preceding paragraphs need not be repeated. As per available record, this Court vide order dated 12.3.2024 in Constitutional Petition No. D-68 of 2024 asked Mst. Maria whether she intended to go to Dar-ul-Aman or to go with her parents where she replied that her family members miserably tortured her and previously they had maltreated other family girls and she had no

intention of going to Dar-ul-Aman, she also refused to go with her parents and showed her eagerness to go with her husband Ali Raza Mari and her custody was given to her husband and allowed to reside wherever she wants. In the meanwhile, the Investigating Officer was directed to protect her. It was further observed in the order that no case under Section 365-B PPC was made out because of the statement of the victim girl and the Investigating Officer was set free to continue further investigation under law. The record further reflects that the trial Court vide order dated 07.5.2024, directed the Investigating Officer to re-investigate the case and the final report be submitted to the trial Court. In the intervening period, this Court vide order dated 24.6.2024 in Criminal Miscellaneous Application No.419 of 2024 filed by one Shadi Khan, observed that despite the submission of "C" class report the learned Magistrate directed re-examination of Miss Maria's age through a Super Medical Board to determine the age of Ms Maria (now). In compliance with the orders, the Special Medical Board conducted the test and determined Miss Maria's age to be 18-19 years. Consequently, Criminal Miscellaneous Application No.419 of 2024 was dismissed as not pressed vide order dated 11.7.2024. Now at this stage, the applicant urges that this test is also flawed because Educational documents (school certificates, birth certificate) were not considered while conducting the ossification test, although they were part of the police file and the police officer allegedly submitted a misleading report and recommended closing the case as "C" Class (no offense). Finally, the Magistrate approved the recommendation and closed the case, arising out of the subject FIR.

5. Primarily, the assertion of the applicant has already been considered by this Court in the aforesaid cases and acceded to the request of Miss Maria to go with her husband, and now the applicant's grievance cannot be re-determined / re-assessed through the instant Criminal Miscellaneous Application, which has finally been set at rest and prima-facie, no further proceedings has been initiated by the applicant by way of appeal before the Appellate Court, therefore, the same grounds cannot be taken into consideration under section 561-A Cr. PC, keeping in view the statement of the victim girl and the report of the Special Medical Board as discussed supra.

6. So far as the question raised by learned counsel for the applicant that under The Sindh Child Marriages Restraint Act 2014, the purported marriage of Ms. Maria' with Ali Raza is illegal on the plea that she has not attained the age of 18 years, suffice it to say that the offenses under the Sindh Child Marriages Restrained Act, 2014 and the Rules 2016 framed thereunder explicitly provide that cognizance of offenses under Sections 3 and 4 of the Act 2014 can be taken by the Judicial Magistrate of the first class and the police has not been set free to take cognizance of the offenses and lodge First Information Report without permission of the Magistrate as the complaint is to be made before the Magistrate under Section 5 of the Sindh Child Marriages Restraint Rules, 2016.

7. Besides, 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 Marriages

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 were 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 Ms. Maria before this Court in the aforesaid proceedings, no further action is required to be taken against the couple and due protection shall be provided to them accordingly as the parties are at daggers drawn, as stated by Miss Maria in her statement before this Court; therefore, she is free to meet with her parents, which is subject to her consent, at any time and no hindrance shall be created by the respondents at all and in case something happens on the part of private respondents, Mst. Maria shall be free to approach SSP concerned for her protection which shall be provided to her upon approach, without fail.

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 interreligious 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. I, 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.

12. Coming to the main case, it appears that the Order dated 05-07-2024 passed by the learned Magistrate is based upon the report submitted by the Investigating Officer under section 173 Cr. P.C., whereby the case was recommended to be disposed of under "C" Class as the Medical Board had opined the age of Mst. Maria is above 18 years. As such, no case under sections 3 and 4 of the Sindh Child Marriages Restraint Act, 2014 was/is made out and the decision of learned Magistrate is concurrent

13. This Criminal Miscellaneous Application is misconceived and is dismissed along with pending applications (if any).

**JUDGE**

*\*Ali Sher\**