

ORDER SHEET
IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Constitutional Petition No.D-1258 of 2024
(Mst. Asma & another Vs. P.O Sindh & others)

DATE **ORDER WITH SIGNATURE OF JUDGE**

Before
Adnan-ul-Karim Memon, J
Amjad Ali Bohio, J

Date of hearing and Order: 23.09.2024

Mr. Thakur Bhawan Raj, advocate a/w petitioners
Mr. Shahzado Saleem, Additional P.G Sindh
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ORDER

Adnan-ul-Karim Memon, J. The petitioners Mst. Asma and Sikandar have filed this Petition under Article 199 of the Constitution Islamic Republic of Pakistan, 1973, seeking directions to the official respondents not to harass them and quash the proceedings arising out of FIR No.29/2024 under section 365-B, 457, 34 PPC at P.S Chachro, District Tharparkar @ Mithi.

2. Petitioner No.1 is present in court and states that she has contracted Marriage with Petitioner No.2 with her free will and consent. She states that neither she has been kidnapped nor abducted; however, the father of petitioner No.1 has lodged FIR No.29/2024 with malafide intention portraying the drama of her abduction which story is false and managed one and in this regard she has recorded her statement before Investigating officer, however, he is reluctant to cancel the F.I.R without lawful justification.

3. The Investigating Officer is present and has recorded the statement of petitioner No.1 wherein she has reiterated the same facts.investigating officer is directed to submit report of investigation before the Magistatret in terms of the statement of the petitioner no.1.

4. At this stage, the advocate representing the private respondent has submitted that petitioner No.01 is minor and cannot contract marriage with petitioner No.02, which is an offence under the Sindh Child Marriage Restraint Act, 2014. He 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, as discussed supra. He argued that law prohibits the sexual intercourse with a child under the age of 16 years 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 r/w Pakistan Penal Code. He has further contended that under sections 3 & 4 of the Act is a cognizable offense. He added that the Act is valid law and in line with Islamic teachings. 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, as such no protection could be given to the alleged couple. He prayed for the dismissal of the instant petition.

5. We have heard learned counsel for the parties present in Court as well as learned A.A.G on the subject point of law.

6. 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 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 to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not 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 persons 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.

7. So far as the question raised by the learned counsel for the private respondent that under the Act, the purported marriage of petitioner No.01 with petitioner No.02 is illegal on the plea that she has not attained the age

of 18 years, suffice it to say that the Dissolution of Muslim Marriage Act 1939 recognizes such age 16 years, which was earlier 15 years, but was substituted as 16 years by the Muslim Family Laws Ordinance 1961. Further, per sections 271 and 272 of Mulla's Principle 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 grandfather and continues to be valid unless same is repudiated by that girl before attaining the age of 18 years. Before such acts 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 Mulla's principle of Muhammadan Law, provides that marriage brought about by the Guardian is also not invalid unless she resorted to her operation to repudiate the marriage on attaining puberty. At this juncture, it would be significant to refer to the case of *Mouj Ali Vs. Syed Safdar Hussain* [1970 SCMR 437], where the Child Marriage Restraint Act 1929 was an issue.

8. There can be no denial to the fact that the event of the marriage is always an event of honor for the 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 the family or girl. The authority should try to first satisfy 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 No.01 before this Court 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. However, parents of the Petitioner No.01 shall be allowed to meet with their daughter as and when they wish to meet her, which is subject to approval given by petitioner No.01. The petitioner No.02 shall not create any hindrance in such meeting of parents of Petitioner No.01.

9. In view of the above, the petitioners are at liberty to live together and no person shall be permitted to interfere in their peaceful living. In

case any disturbance is caused in the peaceful living of the petitioners, the petitioners shall approach the concerned Senior Superintendent of Police or Superintendent of Police with a copy of this order, who shall provide immediate protection to the petitioners.

10. In view of the above, this petition has served its purpose. Accordingly, the instant petition is disposed of in terms of statement of the Petitioner No.01 recorded by the Investigating Officer, who shall submit his report with the concerned Magistrate for appropriate Order. In the meanwhile, no harassment shall be caused to the petitioners, as well as no arrest shall be made in the subject crime.

11. The instant petition is disposed of along with the pending application.

JUDGE

JUDGE

Ali Sher