

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No. 842 of 2024

<i>Date</i>	<i>Order with Signature of Judge</i>
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For orders as to maintainability of instant Crl. Misc. Application as per Court's order dated 22.08.2024.

24.02.2025

Mr. Bassam Khan Dahri, Advocate for the Petitioners.
Ms. Rubina Qadir, Deputy Prosecutor General, Sindh.
Mr. Raj Ali Wahid, Advocate for Respondents No.2 to 4.

ORDER

ALI HAIDER 'ADA'-J:- Through this Criminal Misc. Application, the applicants/petitioners have challenged order dated 24.05.2024 passed by learned Civil Judge & Judicial Magistrate-XVII, Karachi (Central) as the complaint / petition under Section 7 & 5 of the Domestic Violence (Prevention and Protection) Act, 2013, was dismissed by the learned Magistrate and such order was also upheld by the learned revisional Court in Criminal Revision Application No.41 of 2024 vide order dated 02.08.2024.

2. The case of the applicants is that the application filed before the learned Magistrate is based on physical, emotional, verbal / psychological and economical abuse which started from the month of January, 2012 to July, 2021 in different locations, and the applicant/petitioner No.1 was the wedded wife of respondent No.2 and during their wedlock applicants / petitioners No.2 and 3 Isma Rehman and Ifrah Rehman were born but at that time they were 7 to 9 years old irrespectively. The divorce was effected in the month of October, 2021 and then a round of litigations was started.

3. Learned counsel for the applicants/petitioners contends that the learned trial Court passed the impugned order in which observed that so far the offence, if any, was committed, was outside the jurisdiction of

Pakistan as well as no prima facie case has been established. He further contends that Section 188 Cr.P.C and Sections 3 & 4 of PPC be read together, then learned trial Court had jurisdiction to entertain such matter. On the point of prima facie, learned counsel submits that his petition / pleading is very much clear and prima facie case was established and if he may be allowed to lead the evidence, then prima facie case is to be established.

4. On the other hand, learned counsel for respondents submits that question of territorial jurisdiction is very much attractive because section 1 (2) of the Domestic Violence (Prevention and Protection) Act, 2013 shows that it extends to the whole of the Province of Sindh. He further submits that special law prevail general law and before this round of litigation, both parties decided their matter in the office of Superior Court of California In and for the Country of Santa Clara, in which said Court passed the order in favour of respondent No.2 by way of handing over the custody of applicants/petitioners No.2 and 3. He further relies upon order of this Court, which is available at page-435 as well as page-383, in which a petition of Habeas Corpus was turned down and even the interim order which was dismissed by the learned trial Court and was challenged before this Court, as this Court on 20.05.2024 passed the order in favour of respondent No.2 with the observation that the petition is misconceived and not maintainable. Learned counsel further submits that the Family Court also decided the matter in favour of respondent No.2, he further argues on the point that before previous round of litigation even before the Court outside jurisdiction of Pakistan, not a single complaint was filed against respondent No.2 about any domestic violence while the claim of the applicant/petitioner No.1 is that the offence was created since from the period of June 2012 to 2021.

5. Learned Deputy P.G, Sindh supports the contention of learned counsel for the respondents and also contends that learned Courts below decided the matter on merits and such orders are speaking in nature and do not require any interference.

6. I have heard learned counsel for the parties and perused the material available on record.

7. A perusal of record shows that a complaint was filed against the respondent by the hands of applicant/petitioner, in which it was mentioned that applicant/petitioner No.1 sustained a number of injuries but no medical evidence is available on record to support such contention, further even before the Courts of California In and for the Country of Santa Clara, not a single word was stated by the applicant/petitioner No.1 that she was maltreated by the hands of respondent No.2. The children are in sense age even they did not depose any word against respondent No.2 that their father maltreated or committed the act, which is alleged in the complaint, so prima facie, case has not been established, therefore, I am of the opinion that family litigation is to be changed into criminal litigation, such mindset is to be discarded and the petitioner, who filed the litigation, appears to have done so with ulterior motives. In view of the above, instant Criminal Misc. Application is hereby dismissed.

JUDGE

Zulfiqar/P.A