

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 20 of 2025

(Mst. Sidra v. Province of Sindh & others)

Date of hearing : 17.03.2025

Date of decision : 17.03.2025

Mr. Abdul Baqi Jan Kakar, Advocate for petitioner.
Mr. Sundar Khan Chachar, Advocate for respondents.
Mr. Ali Raza Baloch, Additional Advocate General Sindh.

ORDER

Zulfiqar Ahmad Khan, J. – This petition has been filed by the petitioner (Mst. Sidra), seeking the return of her minor son, Ali Abbas, from the unlawful (snatched) custody of her ex-husband, respondent No.4 (Zaib Hassan), and his family.

2. It is the case of the petitioner that she married to her cousin, respondent No.4, on 22.07.2022. The marriage was arranged with the consent of both families, following a proposal from respondent No.4, due to the illness of his mother, respondent No.6 (Mst. Khalida), who is aunt of the petitioner. At the time of the marriage, respondent No.4 promised the petitioner that he would resolve his family issues amicably. The petitioner, in good faith, agreed to marry respondent No.4. However, despite the agreed-upon dower (*mehr*) of Rs.1,00,000/-, respondent No.4 failed to pay the amount.

3. It is significant to note that, prior to his marriage to the petitioner, respondent No.4 had been married to respondent No.5 (Mst. Hira), who had left him due to matrimonial disputes. A few months after the marriage of the petitioner, respondent No.4 reunited with his first wife, Mst. Hira. After a short-lived period of cohabitation, the petitioner was forcibly evicted from her husband's house by respondents No.4, 5 and 6, without her consent and against her will.

4. On 21.11.2022, while the petitioner was pregnant, respondent No.4 sent a backdated (07.08.2021) divorce deed to the petitioner, despite the fact that their marriage occurred on 22.07.2022. This action was not only legally improper but highly misleading. The petitioner, despite this unlawful divorce, gave birth to a son, Ali Abbas, on 25.04.2023 at Rangers Hospital, Sukkur. The birth certificate, issued by Dr. Tahira Mahar, names the petitioner as the mother of the child. However, on 10.11.2024, respondents No.4 to 6 forcibly took custody of Ali Abbas from the petitioner's residence, with respondent No.4 allegedly threatening the petitioner and her family with a pistol. This unlawful act was followed by an attempt to manipulate the birth records of Ali Abbas to falsely claim that respondent No.5, Mst. Hira, is the mother of the child.

5. Learned Counsel for the petitioner argued that the first marriage of respondent No.4 was solemnized with respondent No.5, Mst. Hira, in August 2018. After their marriage disputes started between them, which ultimately led to the separation of Mst. Hira from respondent No.4. In the meanwhile, respondent No.4 snatched baby Zainab Fatima from her mother (respondent No.5), and she filed an application under Section 491, Cr.PC for her recovery. Subsequently, respondent No.4, due to the illness of his mother, married to the petitioner on 22.07.2022. A few months after this marriage, respondent No.4 reconciled with his first wife, Mst. Hira, and divorced the petitioner on 21.11.2022. At the time of this divorce, the petitioner was pregnant, and she gave birth to a son, Ali Abbas, on 25.04.2023, but the child was unlawfully snatched from his mother on 10.11.2024. Learned Counsel highlighted that the petitioner had filed two applications under Section 491, Cr.PC before the lower Court, seeking the restoration of her son's custody. Despite the dismissal of these applications, the petitioner has continued her legal battle, by now seeking this Court's intervention for the recovery of her son.

6. On the other hand, learned Counsel for the respondents contended that the minor, Ali Abbas, who is currently present before the Court, was born to respondent No.5 at home under the supervision of a midwife. He further argued that the minor received vaccination and that the vaccination card was issued in the name of his mother, Mst. Hira. He contended that the petitioner had changed her statements in her applications under Section 491, Cr.PC, adding number of persons and weapon in the second application who were allegedly involved in the forcible snatching of the child. Learned Counsel further argued that since the petitioner's father was a policeman, the police supported her claim. He emphasized that there are conflicting versions of the facts regarding the birth of Ali Abbas and his custody, with the respondents asserting that the child was born to respondent No.5 and that the birth certificate was issued in her name. He contended that, due to these conflicting claims, the lower Court and this Court, exercising its jurisdiction under Section 491 Cr.PC, cannot engage in a detailed examination or appreciation of evidence. He has relied upon the cases of Muhammad Afzaal v. Sessions Judge, Multan and 3 others (PLD 2008 Lahore 479), Zahid Pervaiz v. Khurram Islam and 2 others (2018 P Cr. L J 613), Muhammad Riaz v. The State and others (2020 MLD 1595), Sumayyah Moses v. Station House Officer, Faisalabad and 3 others (PLD 2020 Lahore 716), Rashid Khan v. Mst. Momna Jadoon and another (2021 MLD 725) and Nisaar Bibi v. Federation of Pakistan through Secretary of Interior, Islamabad and 7 others (2021 YLR 2334).

7. Learned AAG Sindh submitted his written synopsis where he stated that respondent No.4 failed to pay the dower amount to the petitioner, which was agreed upon at the time of marriage. This violation entitles the petitioner to recover the dower amount. He contended that the divorce pronounced by respondent No.4 on 21.11.2022 was invalid as the petitioner was pregnant at that time. According to settled law, a divorce during pregnancy does not take effect until after the child is born, and the

husband is obligated to provide maintenance during this period. He argued that the petitioner is entitled to claim the expenses incurred during the pregnancy and the delivery of her child, as her ex-husband failed to meet his obligations under the law. It is also contended that respondent No.4 failed to register his marriage with the petitioner under the Muslim Family Laws Ordinance, 1961, which mandates the registration of all marriages. The failure to comply with this requirement constitutes a violation of the law. It is also argued that respondent No.4 contracted another marriage without respondent No.5's consent, violating Section 6 of the Muslim Family Laws Ordinance, 1961, which requires the prior approval of the Arbitration Council for a man to marry another woman during the subsistence of his marriage. The most significant legal argument presented is that respondent No.4 unlawfully removed Ali Abbas from the petitioner's custody, constituting kidnapping under Section 361, PPC. He further contended that this unlawful act of taking the child away violated the petitioner's rights as the natural guardian of her child.

8. Learned AAG Sindh stated that the actions of respondent No.4 were in clear violation of the provisions of the Muslim Family Laws Ordinance, the Pakistan Penal Code, and established Family Law principles. He emphasized that the unlawful removal of the minor child from the petitioner's custody amounted to an offense of kidnapping, and the petitioner is entitled to the return of her son under Section 491, Cr.PC, which empowers the Court to issue a writ of habeas corpus in such cases. He has placed reliance upon the cases reported as **1995 MLD 121, PLD 2001 Supreme Court 31, PLD 2002 Supreme Court 273, 2018 P Cr. L J 1328, 2019 P Cr. L J 890 and PLD 2020 Supreme Court 613.**

9. Upon careful examination of the facts and arguments of the parties, it is evident that this case involves a serious violation of the petitioner's rights as a mother and legal guardian of her minor child, Ali Abbas. The

crux of the issue is the unlawful and forcible removal of the child from the petitioner's lawful custody by respondent No.4 and his family, along with the attempt to alter the child's birth records to reflect Mst. Hira as the mother, which amounts to a clear violation of both family law and criminal law provisions.

10. The petitioner, Mst. Sidra, married to respondent No.4 on 22.07.2022 with consent from both families, under the belief that his assurances regarding family issues would be honoured. However, it quickly became apparent that respondent No.4's conduct was inconsistent with his promises. It is undisputed that during the course of the marriage, respondent No.4 failed to meet his obligations, including the payment of the agreed dower amount (*mehr*) of Rs.1,00,000/-, and eventually, divorced the petitioner while she was pregnant. The forcible eviction and subsequent actions of respondent No.4 show a clear disregard for the rights of the petitioner.

11. Respondent No.4 has admitted that while he claims Ali Abbas was born to respondent No.5 in his home, assisted by a midwife named Shahzadi, he also revealed that his other children were delivered in medical centers; specifically, he mentioned the Cure Medical Centre, Sukkur. However, when questioned about the whereabouts of midwife Shahzadi, respondent No.4 stated that she had died. This statement raises serious concerns about the credibility of his claims and suggests an attempt to conceal the true circumstances surrounding the birth of Ali Abbas. The lack of corroborative evidence and the inability to produce a medical record to support his claims about Shahzadi only serve to develop the suspicion that respondent No.4 is deliberately trying to obscure the truth, which, as per the petitioner's medical records, including the birth certificate issued by Dr. Tahira Mahar, is that Mst. Sidra is the biological mother of Ali Abbas, born on 25.04.2023.

12. In addition to the confusion surrounding the birth of Ali Abbas, respondent No.4 was similarly unclear regarding the matter of the agreed-upon dower (*mehr*). Initially, respondent No.4, through his learned Counsel, claimed that the *mehr* had been paid to the petitioner at the time of marriage. However, upon reviewing the photocopy of the *nikahnama* submitted by the respondents' Counsel, it has been revealed that the document clearly states that the *mehr* was to be paid later. Respondent No.4, when confronted with this fact, became contradictory. He initially claimed that the issue of *mehr* had been settled between him and the petitioner's father. Yet, when the petitioner responded that her father had passed away; therefore, respondent No.5 is lying to usurp the *mehr*, respondent No.4 failed to provide any answer. This inconsistency further suggests that respondent No.4 is attempting to cover up the lack of payment of the *mehr* and avoids taking responsibility for his obligations as stipulated in the *nikahnama*.

13. Moreover, learned Counsel for the respondents, while arguing that this Court cannot probe into the details of the matter under Section 491, Cr.PC, illogically suggested that the petitioner's motives were driven by greed; specifically, an alleged desire to obtain a flat or property belonging to respondent No.4. This claim contradicts the respondents' earlier arguments, as it shifts the focus from the actual legal issues regarding the unlawful custody of Ali Abbas to personal, unfounded allegations about the petitioner's intentions. Such a defense is not only irrelevant to the case at hand but also further demonstrates the respondents' attempt to divert attention from their unlawful actions. The inconsistency between the respondents' arguments highlights the lack of a coherent defense and only strengthens the petitioner's position that she is entitled to the return of her son, Ali Abbas, and the compensation of her rights.

14. The claim by respondents that Ali Abbas was born to Mst. Hira, and that the birth records were manipulated by the petitioner is without merit. The certificate from Rangers Hospital, Sukkur, confirms the petitioner as the mother, and no credible evidence has been presented to challenge this fact. The forcible removal of Ali Abbas from the petitioner's custody on 10.11.2024, coupled with the threats and coercion allegedly used by respondent No.4, clearly amounts to a criminal act under Section 361, PPC, which defines kidnapping and provides a legal framework for the protection of the natural guardianship of children. The actions of respondent No.4 constitute a clear violation of the petitioner's fundamental rights as a mother and guardian under both family law and criminal law.

15. The activities of respondent No.4 and his family, particularly the snatching of the child, fall within the ambit of kidnapping and unlawful detention, justifying the intervention of this Court under Section 491, Cr.PC, and this Court has to ensure that justice is served in a timely and fair manner.

16. The record shows that respondent No.5 (Mst. Hira), who is the first wife of respondent No.4, had previously filed an application under Section 491, Cr.PC for the recovery of her daughter, Zainab Fatima. This application was filed when respondent No.5 had been forced to leave respondent No.4's house and was residing at her parent's residence due to the ongoing matrimonial disputes. The contention in her application was that respondent No.4 had unlawfully taken their daughter away from her, and despite repeated efforts, had refused to return her to her lawful custodian, Mst. Hira. This act was a clear indication of respondent No.4's pattern of marrying women, forcibly ousting them from his home, and subsequently snatching their suckling children after birth. These recurring actions reflect a deeply concerning and habitual pattern of behavior by respondent No.4, aimed at denying his wives their lawful rights over their

children. The petitioner, Mst. Sidra, being his second wife, is now experiencing the same pattern of abuse, with her child, Ali Abbas, forcibly taken from her custody. Such behavior highlights not only the respondent No.4's disregard for the legal and moral rights of his spouses but also his consistent violation of family laws meant to protect the welfare and rights of women and children. This pattern of behavior must be addressed thoroughly to prevent further injustices and to uphold the petitioner's lawful claims for the restoration of her child.

17. In light of the foregoing, it is clear that the respondent No.4's actions were unlawful and must be rectified. The petitioner, as the biological mother and natural guardian of Ali Abbas, has every right to seek the restoration of custody, and this Court finds that such a claim is both legally and factually justified. Hence, this petition is **allowed** by handing over the custody of the minor child, Ali Abbas, to the petitioner, Mst. Sidra, in Court. Moreover, further observations of this Court are as follows:

- (i) SHO concerned is directed to immediately register an FIR against respondent No.4 for forcibly taking the minor child from the petitioner's lawful custody and for altering the birth records of the child, as per verbatim of the petitioner.
- (ii) SSP concerned is directed to ensure that no harassment is caused to the petitioner by respondent No.4 in future.
- (iii) SHO concerned is directed to make an entry at the Police Station and keep close watch upon respondent No.4 as he is habitual in marrying women, forcibly ousting them from his home and snatching their suckling children after birth, and submit a quarterly report to this Court detailing the activities of respondent No.4.

- (iv) All fraudulent documents related to minor Ali Abbas, which have been submitted by respondent No.4 before the lower Court or this Court, be cancelled and rendered void by the issuing authorities, and such reports be also furnished to this Court, with intimation to the petitioner and respondents No.4 and 5, within thirty (30) days.
- (v) The petitioner is at liberty to file a suit for the recovery of dower, maintenance of herself till the birth of the child, delivery expenses of the child and maintenance of the child, which shall be decided by the concerned Court on merits and strictly in accordance with law.

The petition is **disposed of** in the above terms. Let a copy of this order be sent to the Additional Advocate General Sindh for compliance.

J U D G E

Abdul Basit