

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-489 OF 2025

Applicants : 1) Shahid Ali s/o Ghulam Abbas
2) Aijaz Ali s/o Ghulam Abbas

Respondents : 1) Prosecutor General Sindh
2) Learned Additional Sessions Judge, Khairpur
3) Senior Superintendent Police (SSP), Khairpur
4) Station House Officer (SHO) P.S Kot Laloo
5) Mst. Rehana D/o Shareef Ahmed
6) Nisar Ali s/o Ghulam Abbas
7) Inam Ali s/o Ghulam Abbas
8) Mst. Gulshan w/o Sher Muhammad

Present:

- Mr. Ali Hyder, Advocate for the Applicants
- Mr. J.K Jarwar, Advocate for respondent No.05
- Mr. Muhammad Raza Katohar, Deputy Prosecutor General

Date of Hearing : October 27, 2025
Date of Order : November 06, 2025

ORDER

KHALID HUSSAIN SHAHANI, J.— This Criminal Miscellaneous Application under Section 561-A Cr.P.C. has been filed by the applicants seeking to set aside the order dated 08.08.2025 passed by the learned Additional District & Sessions Judge-IV, Khairpur/Ex-Officio Justice of Peace in Criminal Miscellaneous Application No.3423/2025, whereby the learned trial court directed the SHO P.S Kot Laloo to record the statement of respondent No.5 under Section 154 Cr.P.C and register FIR against the applicants and respondents No.6 to 8 if cognizable offence is disclosed.

2. The factual matrix of this case reveals a deep-rooted matrimonial dispute between the applicants and respondent No.5, which has unfortunately been sought to be converted into criminal litigation. The complete background and chronological sequence of events that applicant No.1, Shahid Ali and respondent No.5, Mst. Rehana are husband and wife who contracted marriage according to Islamic law. From their wedlock, four children were born namely:

- Faiza Batool aged about 10-11 years
- Ali Bux aged about 9-10 years
- Mujahid Ali aged about 4 years
- Ali Waris (youngest child)

3. Approximately three months before the filing of the present application, serious matrimonial differences arose between the spouses. The circumstances leading to the breakdown of their marital relationship i.e. respondent No.5 (wife) left the matrimonial home along with all household belongings, including clothes, jewelry, and other essential items belonging to both herself and the minor children, without any apparent reason or prior intimation. Being a dutiful and responsible husband, applicant No.1 approached respondent No.5 and her father to persuade them for her return to the matrimonial home and restoration of normal family life. However, instead of responding positively, respondent No.5 and her father became hostile and aggressive, hurling abuses at applicant No.1 and physically forcing him out of their premises. Subsequently, respondent No.5's father contacted applicant No.1 and demanded that he take custody of the children as they could not afford to maintain them. In these circumstances, applicant No.1 was compelled to take custody of three of his children, namely Faiza Batool, Ali Bux, and Mujahid Ali, while respondent No.5 retained custody of the youngest child, Ali Waris. For the proper care and upbringing of the three children, applicant No.1 entrusted them to the care of his widowed sister, respondent No.8 (Mst. Gulshan), who resides at Village Tandro Nazar Ali. The matrimonial dispute escalated into legal proceedings when respondent No.5 initiated various applications in different courts whereby on 19.07.2025, applicant No.1 and respondent No.8 received information from Police Station Tando Masti that respondent No.5 had filed Criminal Miscellaneous Application No. 347 of 2025 under Section 491 Cr.P.C. before the learned Sessions Judge, Khairpur, seeking custody of the three children who were with applicant No.1. On

23.07.2025, both applicant No.1 and respondent No.8 appeared before the learned Sessions Judge along with the three minor children. The learned court took statements of the minors, heard both parties extensively, and after due consideration dismissed the application vide order dated 23.07.2025, finding that the custody of children with their natural father was not illegal or unlawful within the meaning of Section 491 Cr.P.C. Immediately following the dismissal of her habeas corpus application and apparently in a fit of anger and vindictiveness, respondent No.5 filed Criminal Miscellaneous Application No. 3423/2025 under Sections 22-A & 22-B Cr.P.C. against the applicants and respondents No.6 to 8. In this application, respondent No.5 made the following allegations:

- a. *That on 18.07.2025 at about 08:00 hours, she went to the house of applicant No.1 along with her father Muhammad Shareef to collect her clothes and dowry articles.*
- b. *That the applicants and respondents No.6 to 8, armed with various weapons (pistol, lathi, gun, repeater), came out of the house and threatened her.*
- c. *That applicant No.1 abused her and expressed anger over her filing the application under Section 491 Cr.P.C.*
- d. *That respondents No.6 and 7 (Nisar Ali and Inam Ali) tore her clothes and attempted to kidnap her.*
- e. *That when she raised cries, villagers came running, and the accused persons fled.*
- f. *That she approached SHO PS Kot Laloo for FIR registration, but it was refused due to influence of the proposed accused.*

4. The record reveals a disturbing pattern of malicious litigation orchestrated by third parties against the applicants' family that respondent No.5 is currently residing with one Sajid Ali s/o Ashiq Ali, who has previously attempted to implicate applicant No.1 and his family members in false criminal cases. Criminal Miscellaneous Application No.2444/2025 was filed by the same Sajid Ali before the learned District & Sessions Judge, Mirwah, making similar false allegations against the applicants and their family members. This application was dismissed vide order dated 05.06.2025, with specific findings that it was based on malice and was an attempt to convert family disputes into

criminal litigation. The learned court in that case specifically observed that "applicant wanted to convert his family dispute into criminal litigation" and that "the application is based on malice." Both the local police report and DSP Complaint Cell report categorically contradicted the version of respondent No.5. Local Police Report from SHO PS Kot Laloo clearly stated that the occurrence as narrated by respondent No.5 did not take place and that the matter pertained to a matrimonial dispute between husband and wife. DSP Complaint Cell Report revealed that when both parties were called for inquiry through official messages, they failed to appear, indicating their lack of interest in pursuing the matter. The DSP report concluded that the non-appearance of parties indicated they had lost interest in the inquiry.

5. Despite the clear evidence of malice, the previous dismissal of respondent No.5's habeas corpus application, the contradictory police reports, and the obvious matrimonial nature of the dispute, the learned IVth Additional Sessions Judge/Ex-Officio Justice of Peace, Khairpur, vide impugned order dated 08.08.2025, allowed the application and directed registration of FIR.

6. Learned advocate for applicants submitted that the impugned order suffers from the following patent illegalities and jurisdictional errors. Failure to appreciate that this was a matrimonial dispute being converted into criminal litigation, Disregard of police reports which contradicted respondent No.5's version, Ignoring the pattern of malicious litigation and third-party instigation, Failing to consider the alternative remedies available under family law; Mechanical application of law without considering the peculiar facts and circumstances; there is a matrimonial dispute arising from breakdown of marriage and custody issues, which should be resolved through family courts rather than criminal litigation; respondent No.5 filed the present application immediately after dismissal of her habeas corpus case, clearly indicating malice and vindictive intent rather than genuine grievance; respondent No.5 failed to produce any credible evidence to support her allegations of assault and torn

clothes; the application constitutes abuse of legal process and misuse of criminal law to pressurize the applicants in matrimonial matters.

7. Learned counsel Mr. J.K. Jarwar, appearing for respondent No.4, supported the impugned order on the grounds that the allegations prima facie disclosed cognizable offences of assault, criminal intimidation, and attempt to kidnap; that the Ex-Officio Justice of Peace correctly applied the settled law regarding FIR registration when cognizable offence is disclosed; that the matrimonial dispute does not preclude registration of FIR if criminal acts are committed during the course of such dispute.

8. The learned Deputy Prosecutor General supported the impugned order while acknowledging that family disputes should preferably be resolved through alternative forums.

9. After careful consideration of the arguments, thorough examination of the record, and analysis of the applicable law, this Court finds that the present case presents a classic example of misuse of criminal law in matrimonial disputes. The following detailed analysis reveals the legal and factual position:

10. The Hon'ble Supreme Court of Pakistan has consistently held that criminal law should not be used as a tool to pressurize parties in matrimonial disputes. In *Arif Fareed v. Bibi Sara and others* (2023 SCMR 413), the Supreme Court deprecated the routine exercise of extraordinary jurisdiction by High Courts in family matters and emphasized expeditious disposal through proper forums. The principles established by superior courts regarding family disputes are:

- a. *Family disputes should primarily be resolved through family courts established under the West Pakistan Family Courts Act, 1964*
- b. *Criminal law should not be weaponized in matrimonial conflicts*
- c. *Courts should be vigilant against conversion of civil/family disputes into criminal litigation*
- d. *Alternative dispute resolution mechanisms should be preferred in family matters*

11. The record unambiguously establishes that this is a matrimonial dispute with the following characteristics:
- i) ***Breakdown of Marriage:*** The spouses are living separately due to matrimonial differences.
 - ii) ***Custody Battle:*** The core issue revolves around custody of minor children
 - iii) ***Property Disputes:*** Claims regarding household items and dowry articles
 - iv) ***Maintenance Issues:*** Father's inability to maintain children leading to custody transfer
 - Pattern of Malicious Litigation:*** The chronological sequence of events clearly demonstrates a pattern of malicious litigation:
 - v) ***Immediate Response to Legal Defeat:*** The criminal complaint was filed immediately after dismissal of habeas corpus application on 23.07.2025.
 - vi) ***Third Party Orchestration:*** Involvement of Sajid Ali who has a history of filing false cases against the same family
 - vii) ***Contradictory Versions:*** Failure to maintain consistency in allegations and evidence
 - viii) ***Forum Shopping:*** Attempting multiple legal remedies simultaneously without success
12. A careful scrutiny of respondent No.5's allegations reveals different inconsistencies, lack of corroboration, family dispute and apparent motive. In view of the detailed analysis, clear legal position, and overwhelming evidence of misuse of criminal law in a matrimonial dispute, this Court is constrained to allow the present Criminal Miscellaneous Application, whereby the impugned order dated 08.08.2025 passed by the learned IVth Additional Sessions Judge/Ex-Officio Justice of Peace, Khairpur in Criminal Miscellaneous Application No.3423/2025 is hereby set aside. Office is facsimile the order to the concerned.

J U D G E