

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. S-544 of 2025

Applicant : 1) Muhammad Azeem s/o Khan Muhammad, Jessar
2) Abdul Qayoom s/o Abdul Ghaffar, Jessar
Through Muhammad Hanif Kalhoro, Advocate

Respondents : 1) Irshad Khan s/o Muhammad Panah, Jessar
Through Mr. Gulzar Ali Almani, Advocate

2) D.S.P. Complaint Cell Naushahro Feroze
3) S.H.O. P.S Daras
4) The State
Through Mr. Muhammad Raza Katohar, DPG

Date of Hearing : 27.10.2025
Date of Order : 07.11.2025

ORDER

KHALID HUSSAIN SHAHANI, J. — Applicant Muhammad Azeem, invokes the inherent jurisdiction of this court, calling in question an order dated 09.09.2025 passed by the learned Additional Sessions Judge/Ex-Officio Justice of Peace Moro in a Cr. Misc. Application. No.3340/2025, directing SHO P.S Daras to record the statement of respondent No.1 in pursuance of section 154 Cr.P.C, if from such statement a cognizable offence is disclosed, lodge FIR.

2. The brief facts emerging from the record are that respondent No.1, Irshad Khan, filed Cr. Misc. Application under Sections 22-A & 22-B Cr.P.C before the learned Sessions Judge/Ex-Officio Justice of Peace, Naushahro Feroze against the applicants and other proposed accused persons. The case was subsequently transferred to the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Moro for adjudication. According to the allegations made by respondent No.1 in his application, the applicants being caste fellows were on visiting terms with him, demanded the hand of his daughter Karishma in marriage. That respondent No.1 categorically refused their proposal on the ground that his daughter Karishma was a minor aged about 14 years (birth certificate annexed) and assured them that only upon her attaining majority, her marriage would be contracted. That on 17.08.2025 at about 6:00 p.m., when

respondent No.1 was present at his house along with his son Feroze, nephew Seengar, and minor daughter Karishma, the applicants Muhammad Azeem and Abdul Qayoom came and deceitfully stated that the mother of applicant Muhammad Azeem namely Mst. Ameeran was ill and required the assistance of his daughter for changing her clothes as no other woman was available at home. That believing their words, respondent No.1 permitted his daughter Karishma to accompany them. However, despite the lapse of more than one hour, Karishma did not return, which caused concern to the respondent No.1. That when respondent No.1 along with his son Feroze and nephew Seengar went to the house of applicant Muhammad Azeem, they found that neither his daughter Karishma nor the applicants Muhammad Azeem and Abdul Qayoom were present. Only one Sajjad s/o Muhammad Siddique was available in the house, who upon inquiry about the whereabouts of Karishma, became annoyed, took out a pistol from the fold of his *shalwar*, extended murderous threats to the respondent's party, and forcibly turned them out. The respondent No.1 searched for his daughter and also reported the matter before the SHO P.S Daras. On 21.08.2025, respondent No.1's son Feroze discovered a Facebook video of one Sikandar Ali Buledi of Jamshoro wherein applicant Muhammad Azeem along with minor Karishma was making a statement regarding their purported marriage. That the applicants, in collusion with unknown witnesses and unknown *Nikah Khawan*, got the forcible marriage of respondent No.1's daughter Karishma solemnized, which constitutes an offence under the Child Marriage Restraint Act, 2013. That when respondent No.1 approached the SHO P.S Daras for registration of FIR against the proposed accused persons, the same was refused allegedly due to the influence of the proposed accused persons. The learned Additional Sessions Judge/Ex-Officio Justice of Peace, Moro, after hearing both parties and considering the report submitted by DSP Complaint Cell, Naushahro Feroze, disposed of the application vide impugned order dated 09.09.2025. The learned court observed that the allegations *prima facie* disclose commission of cognizable offences and directed

the SHO PS Daras to record respondent No.1's statement verbatim, and if from such statement a cognizable offence is disclosed, to proceed with registration of FIR in accordance with law.

3. Mr. Muhammad Hanif Kalhoro, learned counsel for the applicants has argued that the impugned order dated 09.09.2025 is violative of Section 6 of the Sindh Child Marriage Restraint Act, 2013, which provides that "notwithstanding anything to the contrary contained in Section 190 of the Code, no court other than the Court of Judicial Magistrate of First Class shall take cognizance of or try any offence under this Act. That the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Moro had no jurisdiction to entertain an application under the Sindh Child Marriage Restraint Act, 2013, as the same falls exclusively within the domain of a Judicial Magistrate of First Class. That the alleged victim Mst. Karishma has contracted marriage with applicant Muhammad Azeem with her own free will and consent as per Islamic law, as evidenced by the *Nikahnama* executed on 20.08.2025, her free will affidavit, and the protection order dated 29.08.2025 passed by the Sessions Judge/Ex-Officio Justice of Peace, Jamshoro. That Mst. Karishma held press conferences published in various newspapers including Daily *Muqami Awaz*, Daily *Azbo*, and Daily World News wherein she categorically stated that she is aged about 19 years and has contracted marriage of her own accord without any coercion. That the learned trial court failed to consider the mandatory provisions of Section 6 of the Sindh Child Marriage Restraint Act, 2013, and also failed to verify the "B" Form of the alleged minor before passing the impugned order. That the learned trial court passed the impugned order without proper verification of evidence and in a hasty and haphazard manner, which is liable to be set aside.

4. Mr. Almani, learned counsel for respondent No.1 has submitted, that the allegations in the application *prima facie* disclose commission of cognizable offences including kidnapping from lawful guardianship under Section 361 PPC, abduction under Section 362 PPC, and offences under the Child Marriage

Restraint Act, 2013. That the birth certificate of Mst. Karishma clearly establishes that she was a minor aged 14 years at the time of the alleged incident on 17.08.2025. That the present proceedings are not in the nature of trial under the Child Marriage Restraint Act but are confined to the limited prayer for direction to register FIR under Sections 22-A & 22-B Cr.P.C, which jurisdiction is clearly vested in the Ex-Officio Justice of Peace. That the question of trial under the Child Marriage Restraint Act would arise separately once FIR is registered and challan is submitted before the competent court having jurisdiction. That it is settled law that when information discloses commission of a cognizable offence, the police is bound under Section 154 Cr.P.C to register an FIR without entering into disputed questions of fact.

5. The learned Deputy Prosecutor General has supported the impugned order and contended that the Ex-Officio Justice of Peace has jurisdiction under Sections 22-A & 22-B Cr.P.C to direct registration of FIR when information *prima facie* discloses commission of cognizable offences.

6. I have carefully considered the arguments advanced by learned counsel for the respective parties, thoroughly examined the impugned order, perused the relevant provisions of law, and studied the case law cited by the parties. The primary questions that arise for determination are:

- i) *Whether the learned Additional Sessions Judge/Ex-Officio Justice of Peace had jurisdiction to entertain and allow the application under Sections 22-A & 22-B Cr.P.C in circumstances where the allegations relate to offences under the Sindh Child Marriage Restraint Act, 2013?*
- ii) *Whether the impugned order is in violation of Section 6 of the Sindh Child Marriage Restraint Act, 2013?*
- iii) *What is the evidentiary value of a minor's statement in Pakistani law?*

7. Before proceeding with the analysis, it is essential to reproduce the relevant provisions of Sections 361 to 365 of Pakistan Penal Code which deal with kidnapping and abduction:

Section 361- Kidnapping from lawful guardianship:

"Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation: The words 'lawful guardian' in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception: This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child or other person."

Section 362 - Abduction:

"Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person."

Section 363 - Punishment for kidnapping:

"Whoever kidnaps any person from Pakistan or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".

Section 364 - Kidnapping or abducting in order to murder:

"Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine".

Section 365 - Kidnapping or abducting with intent secretly and wrongfully to confine person:

"Whoever kidnaps or abducts any person with intent or knowledge that it is likely that such person will be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

8. Section 6 of the Sindh Child Marriage Restraint Act, 2013 categorically provides:

"Jurisdiction under this Act: Notwithstanding anything to the contrary contained in Section 190 of the Code, no court other than the Court of Judicial Magistrate of First Class shall take cognizance of or try any offence under this Act."

This provision creates an exclusive jurisdiction in favor of the Court of Judicial Magistrate of First Class for taking cognizance and trying offences specifically under the Child Marriage Restraint Act, 2013.

9. The Honorable Supreme Court of Pakistan in the landmark case reported as (2024 SCMR 1123) has comprehensively delineated the scope and extent of powers of Ex-Officio Justice of Peace under Section 22-A Cr.P.C:

"Under section 22-A, Cr.P.C, it is not the function of the Justice of Peace to punctiliously or assiduously scrutinize the case or to render any findings on merits but he has to ensure whether, from the facts narrated in the application, any cognizable case is made out or not; and if yes, then he can obviously issue directions that the statement of the complainant be recorded under Section 154, Cr.P.C. Such powers of the Justice of Peace are limited to aid and assist in the administration of the criminal justice system. He has no right to assume the role of an investigating agency or a prosecutor but has been conferred with a role of vigilance to redress the grievance of those complainants who have been refused by the police officials to register their reports. If the Justice of Peace will assume and undertake a full-fledged investigation and enquiry before the registration of FIR, then every person will have to first approach the Justice of Peace for scrutiny of his complaint and only after clearance, his FIR will be registered, which is beyond the comprehension, prudence, and intention of the legislature. Minute examination of a case and conducting a fact-finding exercise is not included in the functions of a Justice of Peace but he is saddled with a sense of duty to redress the grievance of the complainant who is aggrieved by refusal of a Police Officer to register his report."

10. Similarly, in the authoritative judgment reported as (PLD 2007 SC 539), the Honorable Supreme Court has held:

"Only jurisdiction which could be exercised by an Ex-officio Justice of the Peace under S.22-A(6), Cr.P.C. was to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence and if it did then to direct the concerned S.H.O. to record an F.I.R. without going into the veracity of the information in question, and no more. Offering any other interpretation to S.22-A(6), Cr.P.C. would be doing violence to the entire scheme of Criminal Procedure Code, 1898 which could not be permitted."

11. The courts have consistently held that while the evidence of minors requires careful scrutiny, it cannot be rejected outright. The following judicial precedents establish the legal position:

i) In *State through A.G. Sindh v. Farhan Hussain* (PLD 1995 SC 1), the Supreme Court categorically held that the evidence of a child witness is admissible provided the child has the intellectual capacity to understand questions and give rational answers. The Court observed that tender age alone is not a ground to reject the testimony of a minor witness.

ii) In *Ulfat Hussain v. The State* (2010 SCMR 247), the Supreme Court further elaborated:

"We would like to observe that though in principle conviction can be based upon the testimony of an intelligent and understanding child witness yet the Courts have generally preferred to adopt the settled principle of prudence and the rule of care attached to the sole testimony of a child witness despite child's intelligent disposition. We may however, reiterate that the measure of prudence or the level of care would depend upon facts of each case."

iii) In *Kazim Hussain alias Qazi v. State* (2008 P.Cr.LJ 971 FSC), the Federal Shariat Court observed that the statement of a child could have been crucial to determine the facts of the case, and Article 3 of Qanun-e-Shahadat Order, 1984 does not contemplate any specific age limit for a person to be competent as a witness.

iv) In *Muhammad Boota v. State* (2012 P.Cr 545 Lahore High Court), it was held that a victim's or child witness's testimony is admissible in evidence provided the court determines that the witness is capable of understanding the question and providing logical responses.

12. A crucial distinction needs to be drawn between the power to direct registration of FIR under Sections 22-A & 22-B Cr.P.C. and the power to try offences under the Child Marriage Restraint Act. The impugned order does not purport to try any offence under the Child Marriage Restraint Act but merely directs registration of FIR if cognizable offences are disclosed from the statement of the complainant.

13. The jurisdiction under Section 6 of the Sindh Child Marriage Restraint Act, 2013 pertains specifically to taking cognizance and trial of offences under that Act. It does not restrict the Ex-Officio Justice of Peace from exercising jurisdiction under Sections 22-A & 22-B Cr.P.C. for directing registration of FIR when the allegations also disclose offences under the general criminal law, particularly the Pakistan Penal Code.

14. In the present case, a careful examination of the allegations reveals that they prima facie disclose commission of multiple cognizable offences:

- i) Kidnapping from lawful guardianship under Section 361 PPC (if the alleged victim is established to be a minor)
- ii) Abduction under Section 362 PPC
- iii) Offences under the Child Marriage Restraint Act, 2013

15. The learned Additional Sessions Judge/Ex-Officio Justice of Peace was well within his jurisdiction under Sections 22-A & 22-B Cr.P.C. to examine whether the information disclosed cognizable offences and to direct registration of FIR accordingly. The fact that some of the allegations may also constitute offences under the Child Marriage Restraint Act does not oust the jurisdiction of the Ex-Officio Justice of Peace from directing registration of FIR under the general criminal law provisions.

16. While the applicants have produced evidence including Nikahnama dated 20-08-2025, press conference reports, free will affidavit, and protection order dated 29-08-2025 from Sessions Judge/Ex-Officio Justice of Peace, Jamshoro to establish that Mst. Karishma is major and contracted marriage of her own free will, these are matters of evidence that require determination during investigation and trial. At the preliminary stage of directing registration of FIR, the Ex-Officio Justice of Peace is not required to conduct a mini-trial or delve into the truthfulness of conflicting allegations but only to examine whether prima facie cognizable offences are disclosed from the information provided. The central question revolves around the actual age of Mst. Karishma. Respondent No.1 has produced a birth certificate indicating her age as 14 years at the time of the incident, while the applicants claim she is 19 years old based on her own statements and conduct. This fundamental factual dispute can only be resolved through proper investigation involving medical examination, documentary verification, and adjudication by the competent court during trial. Contrary to the absolute proposition that a minor's statement has no value in the eyes of law, the established legal position is more nuanced. The Pakistani courts have consistently held that: i) A minor's statement is not per se inadmissible ii) The competency depends on the minor's ability to understand questions and provide rational answers iii) Such evidence requires careful scrutiny and corroboration iv) The age alone is not determinative of competency. However, in the present case, the determination of whether Mst. Karishma was indeed a minor at the relevant time is itself a disputed question of fact requiring investigation.

17. After extensive consideration of the entire record, applicable law, and judicial precedents, this Court arrives at the conclusion the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Moro, did not exceed his jurisdiction in passing the impugned order dated 09-09-2025. The allegations in the application prima facie disclose commission of cognizable offences under the Pakistan Penal Code, and the Ex-Officio Justice of Peace was competent to direct

registration of FIR under Sections 22-A & 22-B Cr.P.C. The limitation imposed by Section 6 of the Sindh Child Marriage Restraint Act, 2013 pertains specifically to taking cognizance and trial of offences under that Act. It does not restrict the preliminary process of FIR registration when allegations also disclose offences under general criminal law. The conflicting evidence regarding the age and consent of Mst. Karishma requires resolution through proper investigation and cannot be determined at the stage of directing FIR registration. The contention that a minor's statement has no evidentiary value is legally incorrect as established by superior court precedents. However, considering the complexity of the case involving questions of minority, consent, and conflicting documentary evidence, certain directions are necessary to ensure proper investigation and protection of rights of all parties.

18. In view of the above detailed discussion and analysis, this Criminal Miscellaneous Application is dismissed as it lacks merit. However, the following directions are issued to ensure proper and fair investigation:

- i) The operation of the impugned order dated 09-09-2025 shall continue, but the SHO PS Daras is directed to conduct the investigation in a most careful and impartial manner.
- ii) Before registration of FIR, the SHO PS Daras shall ensure proper age verification of Mst. Karishma through medical examination by a Board of Doctors and verification of all available documentary evidence including birth certificate, school certificates, and other relevant documents.

If FIR is registered, the statement of Mst. Karishma shall be recorded in the presence of a female Magistrate with appropriate legal safeguards, and she shall be provided legal aid if required.

- iv) Any offences specifically under the Sindh Child Marriage Restraint Act, 2013, if disclosed during investigation, shall be tried exclusively by the Court of Judicial Magistrate of First Class as mandated by Section 6 of the said Act.
- v) Other offences under the Pakistan Penal Code shall be tried by the court of competent jurisdiction as per the established law. It is further clarified that this order is confined to the limited question of jurisdiction of the Ex-Officio Justice of Peace to direct registration of FIR and does not express any opinion on the merits of the allegations, which shall be determined by the competent trial court based on evidence produced during trial. Office is fasmicile the order to the concerned.

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