

**ORDER SHEET**

**HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

C.P No.D-04 of 2026

*[Muhammad Essa v. Province of Sindh and others]*

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(S)</b>
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1. For order on M.A No.11/2026 (U/A)
2. For order on office objection (s)
3. For order on M.A No.12/2026 (Exemption)
4. For hearing of main case

**01.01.2026**

Mr.Arbab Ali Jinjh, Advocate for the petitioner

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1. Granted.

2to4. The petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking directions against the official respondents for protection, prevention of alleged harassment, arrest of nominated accused in FIR No.85 of 2025 registered at Police Station Khahi, District Sanghar and further seeking restraint against respondent No.4 (learned Civil Judge & Judicial Magistrate, Chachro) from recording the statement of Mst. Mariat under Section 164 Cr.P.C.

Briefly stated, the petitioner claims that he contracted marriage with Mst. Mariat on 07.07.2025 with her free consent as per Muhammadan Law. It is alleged that the father of Mst. Mariat had earlier acknowledged the marriage in Criminal Misc. Application No.761 of 2025 before the learned Sessions Judge, Umerkot. The petitioner further asserts that he and Mst.Mariat had filed Constitution Petition No.D-911 of 2025 before the High Court of Sindh at Karachi, wherein directions were issued to the police authorities for their protection. According to the petitioner, despite such protection, certain private respondents

allegedly abducted Mst.Mariat at gunpoint, resulting in registration of FIR No.85 of 2025 under Sections 458, 364, 365-B, 337-H(ii), 337-A(i), 147, 148, 149 PPC and Section 3 of the TIP Act, 2018 at Police Station Khahi. It is further alleged that the private respondents tortured Mst.Mariat, circulated her videos on social media and subsequently produced her before the learned Civil Judge & Judicial Magistrate, Chachro, for recording her statement under Section 164 Cr.P.C. The petitioner claims that Mst.Mariat is pregnant and therefore could not have filed a suit for dissolution of marriage, which according to him is "illegal". On these assertions, the petitioner seeks wide-ranging directions, including restraining the learned Magistrate from recording the statement of Mst.Mariat and directing the police to arrest the nominated accused and hand over custody of Mst.Mariat to the petitioner.

Learned counsel for the petitioner contends that the private respondents are influential persons who are continuously harassing the petitioner and preventing the police from performing their lawful duties. He submits that the police are not arresting the nominated accused nor recovering Mst.Mariat. He further argues that the family suit filed by Mst. Mariat is illegal due to her alleged pregnancy and that the learned Magistrate should be restrained from recording her statement under Section 164 Cr.P.C.

After hearing learned counsel and examining the record, it is evident that the reliefs sought by the petitioner are neither maintainable nor justiciable in constitutional jurisdiction for multiple reasons.

Firstly, the petitioner seeks to restrain a judicial officer (respondent No.4) from performing statutory functions under the Code

of Criminal Procedure. It is settled law that constitutional jurisdiction cannot be invoked to interfere in judicial proceedings of a competent court, nor can this Court issue directions controlling the exercise of judicial discretion of a Magistrate acting under the Cr.P.C.

Secondly, the petitioner seeks directions for arrest of nominated accused in an FIR. The investigation is the exclusive domain of the police and this Court cannot supervise, direct or over-control the manner in which investigation is to be conducted, except in extraordinary circumstances of mala fide or patent illegality, none of which are demonstrated here.

Thirdly, the petitioner seeks custody of an adult woman through constitutional jurisdiction. The law is unequivocal that an adult Muslim woman is *sui juris* and her liberty cannot be curtailed nor can her custody be handed over to any person, including a spouse, without her own free and voluntary statement recorded before a competent court.

Fourthly, the petitioner's assertion that Mst.Mariat cannot file a family suit due to pregnancy is legally misconceived. The Family Courts Act, 1964 does not impose any such restriction. The validity or maintainability of a family suit cannot be adjudicated in a constitutional petition.

Fifthly, the petitioner has already availed remedies before other forums, including earlier constitutional petition, whereby the legal protection already extended to the Petitioner and said Mst.Mariat. The present petition appears to be an attempt to indirectly influence ongoing criminal and family proceedings, which is impermissible.

Sixthly, the allegations of harassment are vague, unsubstantiated and unsupported by any complaint made to the competent police

authorities. Mere apprehension, without cogent material, does not justify issuance of directions.

However, in the interest of justice, it is clarified that if Mst. Mariat is produced before any competent Magistrate, the learned Magistrate shall record her statement strictly in accordance with law, ensuring that she is examined in an atmosphere free from influence, pressure, or coercion; her statement reflects her free will and her liberty and dignity are fully protected. The Magistrate shall proceed independently and uninfluenced by any observation in this order.

For the foregoing reasons, the instant petition is misconceived, not maintainable and devoid of merit. Accordingly, the petition is **dismissed** in *limine* along with pending miscellaneous application.

**JUDGE**

**JUDGE**

AHSAN K. ABRO