

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-103 of 2013

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Date                      Order with signature(s) of Judge(s)

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For orders as to non-prosecution

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23.01.2013.

Mr. G. M. Bhutto Advocate for petitioner alongwith petitioner.

Mr. Mohammad Iqbal Awan APG along with SI Gulab Channa and SI Noor Ahmed Kharal of PS Gadap Town, SI Mohammad Rasheed of PS Darakshan and SI Hussain Mehdi, SI of P.S Paposh Nagar.

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Through this Constitutional petition, Petitioner Mehwish Mughal has prayed for following reliefs:-

- (a) Declare that the act of the respondents is illegal, null and void having no legal sanctity in the eye of law.
- (b) Restraining the respondents from causing any harassment to the petitioner, her family members and relatives and provide them legal protection.
- (c) To direct the respondent No.6 to handover the custody of Syed Waqar Ali father of the petitioner to the petitioner or alternately this Hon'ble Court be directed to any officer of this Hon'ble Court to make a raid at P.S.Gadap/respondent No.6 for recovery of detainee and set at liberty or if any false FIR has been registered against him he may be released on bail by executing P.R Bond.
- (d) To quash false FIR No.475/2012 registered at P.S Darakhshan and FIR No.99/2012 registered at P.S Paposh Nagar against the petitioner and her family members.
- (e) To direct the respondent No.2 to bound the concerned police stations and other agencies not to register false FIR against the petitioner and her family members without prior permission of this Hon'ble Court.
- (f) Cost of the Petition.
- (g) Any other relief(s) which this Hon'ble Court deems fit and proper.

2. Brief facts, as disclosed by petitioner, are that she had contracted marriage with Respondent No.10. After marriage, petitioner lived in the house of the Respondent No.10. Out of said wedlock three children were born. Petitioner has stated that behavior of the Respondent No.11, the mother of the Respondent No.10 was not good with petitioner. Respondent No.10 always disgraced her and made her life miserable. Her husband Respondent No.10 started maltreatment and mental torture

to the petitioner. On one occasion, petitioner sustained injuries at the hands of her husband. She approached to the SHO P.S Gulshan-e-Maymar for lodging Report, but SHO refused to lodge the FIR and respondent No.10 started causing harassment to the petitioner, and made her life miserable. In the above stated circumstances, petitioner finding no other way filed Family Suit No.1443/2012 for Dissolution of Marriage by way of Khula and recovery of Dowry articles against the Respondent No.10 before the Family Court. On 09.01.2012 at 7:00 PM, Gadap police along with Respondent No.10 entered into the house of the Petitioner's father, arrested father of the petitioner namely Syed Waqar Ali. On 04.10.2012, Respondent No.11 mother-in-law of the petitioner got registered FIR No.475/2012 against the petitioner and her two brothers namely Syed Wahaj Ali and Syed Ali for committing theft.

3. Notices were issued to the Respondents as well as Advocate General Sindh and Prosecutor General Sindh. Comments have been filed by SHO PS Gadap City and SHO P.S Paposh Nagar.

4. Mr. G.M.Bhutto learned counsel for the Petitioner submitted that there is matrimonial dispute between the petitioner and her husband i.e. Respondent No.10. Two FIRs have been lodged by Respondent No.11, the mother-in-law of the petitioner against the Petitioner and her family members. Per counsel the lodging of the FIRs were after the petitioner filed suit seeking Dissolution of Marriage and Recovery of Dowry Articles. Learned counsel further submitted that two FIRs bearing Crime No.475/2012 P.S Darkshan under section 380 PPC and FIR bearing Crime No.241/2012 PS Gadap under Sections 324,506/B,504,337-A PPC have been disposed of in cancel class and challan in Crime No.99/2012 P.S Paposh Nagar under Section 354,506/B,34,337-A(i),34 PPC has been submitted under Section 512 Cr.P.C.

It is further submitted that proceedings may be quashed by exercising powers under Article 199 of the Constitution. In support of the contention, reliance is placed upon case reported as Hakim Ali and another Vs. Province of Sindh through Secretary and 10 others (PLD 2009 Karachi 278).

5. Mr. Mohammad Iqbal Awan APG appeared on behalf of the State, admitted that two FIRs bearing crime No.475/2012 P.S Darakshan u/s 380 PPC and FIR No.241/2012 under section 324,506/B,504,337-A PPC registered at P.S Gadap have been disposed of in the cancel class, whereas case bearing No.99/2012 registered at P.S Paposh Nagar under Sections 354,506/B,337-A PPC has been challaned against father of petitioner and others under Section 512 Cr.P.C. Learned APG recorded no objection for quashment of the proceedings in the above mentioned FIRs except FIR No.99/2012 in which challan has been submitted under Section 512 Cr.P.C and submitted that proper course for the petitioner would be to approach the Trial Court. Complainant/Respondent No.11 despite notices has failed to effect appearance to place his stance on record.

6. We have carefully heard learned counsel for the parties, perused the comments filed by SHOs of P.S Paposh Nagar and Gadap. It is the matter of the record that Petitioner Mehwish Mughal was married to Muhammad Haris Mughal and after marriage differences arose and petitioner filed suit for Dissolution of Marriage and recovery of Dowry articles, thereafter, three FIRs were lodged against the petitioner and her family. Two FIRs bearing Crime No.475/2012 P.S Darkshan under section 380 PPC and FIR bearing Crime No.241/2012 PS Gadap under Sections 324,506/B,504,337-A PPC have been disposed of in cancel class. Case bearing Crime No.99/2012 under section 354-506B-337A PPC has been challaned under Section

512 Cr.P.C, in which father of the Petitioner who appears to be aged about 70 years has been shown as an accused. Learned APG could not point out evidence/material collected against the father of the petitioner and others. Even if the allegations contained in the FIRs mentioned above and other material are admitted even then, no offence is made out against the father of petitioner and her family members. The malafide of the husband and her mother-in-law of the Petitioner who lodged FIRs is palpably floating on the record, as the same were lodged after filing of the suit for Dissolution of marriage by the petitioner. Respondents have caused harassment to petitioner and her family without legal justification. In the background of the events, non-interference of the High Court would tantamount to allow illegality and highhandedness to perpetuate. Rather the High Court would be failing to discharge its obligations as mandated under the Constitution to step in and to prevent the abuse of the process of the Court and to pass an appropriate order to secure the ends of justice. Reliance can be placed upon the case of HAKIM ALI AND ANOTHER VS. PROVINCE OF SINDH THROUGH SECRETARY AND 10 OTHERS (PLD 2009 KARACHI 278). Petitioner's case is fit for quashment of proceedings. Therefore, for the above stated reasons, Petition is allowed, the impugned FIRs and proceedings pending on the basis thereof are hereby quashed and bail bonds stand discharged. Consequently, Constitutional Petition stands disposed of accordingly.

JUDGE

JUDGE

