

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-4269 of 2025

(Esha and another v. Province of Sindh and 04 others)

Date

Order with signature of Judge(s)

Before:

**Muhammad Karim Khan Agha, J.**  
**Adnan-ul-Karim Memon, J.**

**Date of hearing and order: 09.09.2025**

Mr. Hamayoon alias Soorat Ali Khan, advocate for the petitioners, along with the petitioners.

Mr. Ali Nasir Baloch, advocate for respondent No.5.

Mr. Ali Safdar Depar, AAG, along with SIP/IO Meharban Ali Kolachi PS, A Section Ghotki.

## ORDER

**Adnan-ul-Karim Memon, J.** Through this petition, the petitioners seek the following relief(s):-

- a) *That, this Hon'ble Court may be pleased to quash the FIR viz. Cr. No.243/2025, under Section 3/4 Sindh Child Marriage Act 2013 of PS A-Section Ghotki, further may be pleased to direct the respondent No.4 not to submit the challan till final disposal of this petition.*
- b) *To provide the legal protection by the hands of the private respondents and others to the petitioners.*

2. In this case, petitioner Esha, an adult, has married petitioner Hamza Raheem of her own free will. Her family, specifically respondent Nabi Bux, is upset about the marriage. It is alleged that he has filed a false police report (FIR No. 243/2025) under the Child Marriage Act, 2013, claiming Esha was kidnapped. The petitioners' counsel argues that because Esha is an adult, who is also present in Court and has recorded her statement before the Investigating officer, refuting the claim of her kidnapping, as such, the FIR is illegal and baseless. He asserts that Esha has the constitutional right to choose her own life partner and was not abducted. The counsel also points out that a previous kidnapping FIR (No.219/2025) was already filed against the petitioners and was subsequently quashed by this Court's order dated August 12, 2025. The petitioners' counsel argued that the investigating officer acted in bad faith by failing to inform the lower Courts about this Court's previous order. This allowed him to get a second FIR registered and to submit a new report under Section 170 of the Cr.PC. The counsel pointed out that it is illegal to submit two separate reports for the same crime, especially since one case was already closed as "C Class" while the other is now proceeding under a different section.

3. The counsel for respondent No.5 argues that the current petition should be dismissed for several reasons. First, the petitioners have not used the proper legal channels by going to the Judicial Magistrate first. Second, the petition lacks evidence, as petitioner No.1 has not provided any documents proving she is an adult. The counsel claims she is a minor, citing a birth certificate and Form B that show she was underage at the time of the marriage on July 14, 2025. Finally, the counsel states that the current FIR, which was registered under a Court order, is not for kidnapping but for violating the Sindh Child Marriage Restraint Act, 2013. He argues that marrying a minor is a criminal offense, and the act cannot be justified as a "freewill" marriage. He prayed for dismissal of the petition.

4. The Assistant Advocate General states that on July 15, 2025, a kidnapping case (FIR No.219/2025) was filed by the petitioner No.1's grandfather, Nabi Bux Gujjar, against the petitioner and others. The investigation led to the petitioner No.1's statement being recorded on August 12, 2025, after which the case was classified as "C Class." Separately, on August 4, 2025, another case (FIR No. 243/2025) was registered by court order against the petitioner No.2, for violating the Child Marriage Act, 2013. The investigation, which is now complete, included verifying the petitioner's age through school and Union Council records. These documents show that petitioner No.1 is under 18. All the accused are currently absconding, and the case has been submitted for a formal charge. The petitioner No.1's statement for this case was also recorded on August 12, 2025.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The key question here is whether these are two separate crimes or a single, continuous one.

7. Two First Information Reports (FIRs) cannot be registered for a single, continuous offense. However, if the two reports relate to distinct and separate crimes, they can both be registered. The principle that only one FIR can be registered for a single crime is rooted in the law. The Supreme Court of Pakistan has consistently held that multiple FIRs for the same incident are not permissible, as it would constitute double jeopardy and an abuse of the legal process. This is to prevent harassment of the accused and to ensure the investigation is focused and fair.

8. Initially, an abduction case (FIR No.219 of 2025 under Section 365-B of the PPC) was closed as a "C Class" case after the alleged victim, Isha, denied being kidnapped. However, her grandfather Nabi Bux, successfully had a new FIR registered. He filed an application with the Justice of Peace, who, under Section 22-A (6) (1) Cr.P.C., directed the police to register a new FIR No.243 of 2025. This second FIR number 243 of 2025, was lodged under the Sindh Child Marriages

Restraint Act, 2013, based on the same allegations. The Court determined that Isha's birth date (September 27, 2007) made her a minor at the time of the marriage, thus making the act a cognizable offense under Sections 3, 4, and 5 of the Act. The Court ruled that her consent was immaterial because a minor's consent does not legalize an act prohibited by law. Despite the new FIR being registered and a trial report submitted, the learned prosecutor, in a scrutiny report dated September 8, 2025, has opined that the case be disposed of as "C Class," citing the girl's statement.

9. The Supreme Court of Pakistan has clarified this matter in several landmark judgments. The most relevant case is *Tariq Bashir and 5 others v. The State* (**PLD 1995 Supreme Court 34**). In this case, the Court held that while a second FIR for the same "cognizable offense" is not maintainable, if the two FIRs relate to different offenses that arise from the same incident, they may be registered. The Court emphasized that a second FIR is only barred if it is based on the same information, involves the same parties, and concerns the same offense. Another crucial case is *Tariq Bashir v. The State* (**1995 SCMR 1345**), where the Supreme Court reiterated that if subsequent events or the discovery of new offenses come to light, a second FIR or a supplementary report can be filed.

10. The argument of the respondents' counsel against the marriage based on the Sindh Child Marriages Restraint Act, 2013, is that Ms. Esha is under 18. However, under the Dissolution of Muslim Marriages Act, 1939, as amended by the Muslim Family Laws Ordinance, 1961, the minimum legal age for marriage is 16. This is stated in Section 13 of the Ordinance, which explicitly substituted "fifteen" with "sixteen" in Section 2(vii) of the 1939 Act. Under Muslim Law, specifically Sections 271, 272, and 273 of Mulla's Principles of Muhammadan Law, the marriage of a minor is not automatically invalid. If a father or grandfather arranged the marriage, it remains valid unless the girl repudiates it before turning 18. Marriages arranged by other guardians are also not invalid unless the girl chooses to repudiate them upon reaching puberty. These acts are protected under Muslim law unless they are proven to be clearly against the minor's best interest.

11. In the case of *Mauj Ali v. Syed Safder Hussain* (**1970 SCMR 437**), the Supreme Court ruled that a marriage is considered valid under Islamic law if the girl has reached puberty and marries of her own free will. The Supreme Court found that the Child Marriages Restraint Act did not invalidate such a marriage. As the marriage was valid under Islamic law, the Court recognized the husband as the girl's guardian and allowed her to live with him, concluding that justice had been served. However, in the present case, since the marriage has been consummated and the couple is living together happily, no further action should be taken against them. The investigative officer's report to the Magistrate should be converted into to "C Class" with a protection order. This exercise shall be undertaken by the Magistrate forthwith.

12. In a democratic country, an adult has the right to marry whomever they choose, regardless of caste or religion. While parents may disapprove and sever social ties, they are not allowed to threaten, harass, or commit violence against the couple. Therefore, the Court has directed law enforcement to ensure that no adult couple who has entered an inter-caste or inter-religious marriage is harassed or threatened. Anyone who engages in such behavior, or instigates it, must be prosecuted and face legal consequences. This order, however, does not affect any existing legal proceedings regarding the validity of the marriage or the issue of the couple's age.

13. The concerned authorities must handle marriage cases with great care and respect for the families involved, as marriage is an honorable event. Before taking any action, they should verify the information to avoid causing irreparable harm to the family's reputation. Since petitioner No.1 Esha's statement to this Court, as well as before the investigating officer, has cleared the couple, no further action should be taken against them, and they should be provided with protection.

14. In view of the above, this constitutional petition is disposed of with a direction to the concerned police to provide legal protection to the couple as and when they approach for such protection. In the meantime, no further action is required against them, and no harassment shall be caused to the couple by the family of petitioner No.1 at any cost. A copy of this order is to be sent to the Sessions Judge Ghotki, who will then guide the concerned Magistrate to ensure compliance.

Judge

Head of Const. Benches