

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No. S-224 of 2025

Applicant : Ali Sher Kaloo S/o Rabban Khan, Kaloo
Through Mr. Illahi Bux Jamali, Advocate

Respondent Nos.5 & 6 : Through Mr. Mushtaque Ahmed Shah, Advocate

The State : Through Mr. Khalil Ahmed Matilo, DPG and
Mr. Ahmed Ali Shahani, Asst. A.G a/w Inspector
Raja Naveed (SHO P.S Naushahro Feroze) and
ASI Bashir Ahmed

Date of hearing : 29.09.2025
Date of Order : 17.10.2025

ORDER

KHALID HUSSAIN SHAHANI, J.– The present Constitutional Petition has been instituted by Ali Sher Kaloo, the father of the alleged detainee, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, read with Section 561-A of the Code of Criminal Procedure, 1898, being aggrieved and dissatisfied with the impugned order passed by the learned In-charge Sessions Judge Naushahro Feroze. The petitioner seeks appropriate relief for the recovery and restoration of the detainee, Mst. Reshma, aged about 15 years from the alleged illegal custody of respondent No.5, effected through and with the connivance of the official respondents.

2. The facts of the case disclose a deeply troubling sequence of events concerning the alleged illegal confinement and coercion of Mst. Reshma, a minor girl, whose recovery is sought by the petitioner. The record reveals that respondent No.5 had previously instituted an application under Section 491, Cr.P.C, asserting that the detainee was his legally wedded wife. However, during those proceedings, Mst. Reshma unequivocally denied any knowledge of respondent No.5 or the

existence of a marital relationship, whereupon the said application was dismissed on 23.06.2025, with specific directions for her to remain under protective custody at her father's residence.

3. Despite that judicial determination, on 18.07.2025 at about 02:00 P.M, the Station House Officer, Police Station Naushahro Feroze, accompanied by subordinate personnel and private respondents, forcibly entered the petitioner's house while armed with deadly weapons. They allegedly assaulted the family members, causing injuries to Mst. Hafeezaan, and unlawfully apprehended and removed the minor detainee, confining her at the police station. During this unlawful detention, the SHO reportedly subjected her to pressure and intimidation, seeking to compel her to acknowledge respondent No. 5 as her husband.

4. It further transpires that on the following day, 19.07.2025, respondent No.5, with the active connivance and facilitation of the police, forcibly produced the detainee before the learned Sessions Judge, Naushahro Feroze. Owing to her nervous and distressed condition, and under the alleged influence of those present, an order was passed directing that she be sent with respondent No.5. The petitioner contends that the said order was obtained through coercion and manipulation, overlooking her minority and her earlier consistent denials before the court. Given her age, vulnerability, and vacillating statements, it is urged that the detainee was in need of parental protection and not exposure to a stranger who may have enticed or unlawfully influenced her into a purported marriage while she remained a minor and legally incapable of contracting one.

5. The record of proceedings reveals that, following the institution of the present petition, this Court, through a detailed order dated 19.09.2025, examined the respective contentions of the parties and identified the central question for adjudication, namely, the legality of the actions undertaken by the Station House Officer, Police Station Naushahro Feroze, in forcibly entering the petitioner's residence, assaulting female occupants including Mst. Hafeezaan, and unlawfully removing Mst. Reshma, a minor, from her lawful guardianship before producing her in Court. The Court noted that Mst. Reshma had earlier denied the existence of any marital bond with respondent No.5, Jawad Hussain, in proceedings under Section 491, Cr.P.C, culminating in an order dated 23.06.2025, whereby she was set at liberty to reside with her father under protective custody. However, she was subsequently produced before the Incharge Sessions Judge, Naushahro Feroze, on 19.07.2025, where, in apparent contradiction, she claimed to have contracted marriage with respondent No.5 and expressed a desire to live with him. Observing that Section 552 Cr.P.C authorizes a Sessions Judge to order immediate restoration of liberty only upon a complaint made on oath alleging abduction or unlawful detention, this Court found it necessary to ascertain the legal authority or jurisdictional foundation under which the Incharge Sessions Judge recorded the detainee's subsequent statement when no complaint, FIR, or formal proceedings under Section 552 Cr.P.C were pending. Consequently, notices were issued to the then Incharge Sessions Judge, Naushahro Feroze, requiring an explanation as to the statutory basis of his action, while the SHO, P.S. Naushahro Feroze, was directed to appear in person and justify the

unauthorized entry, infliction of injuries, and unlawful removal of the minor detainee, as well as to explain why criminal proceedings for abuse of power should not be initiated against him.

6. At the subsequent hearing on 25.09.2025, the Court recorded the presence of the learned counsel for all parties, the petitioner, the SHO, P.S. Naushahro Feroze, and the alleged detainee Mst. Reshma, along with Jawad Hussain (respondent No.5). The Court also received written comments from the District and Sessions Judge and the 2nd Additional Sessions Judge, Naushahro Feroze, accompanied by the SHO's report dated 25.07.2025. These documents collectively disclosed that ASI Bashir Ahmed Buriro had taken a leading role in producing the detainee before the Sessions Court. In light of these revelations and the specific allegations that ASI Buriro had forcibly entered the petitioner's home, removed the minor girl, and presented her before the learned Sessions Judge, Naushahro Feroze, this Court directed that a show cause notice be issued to him, calling for a comprehensive explanation of the legal authority and compelling circumstances under which he acted. The SHO was further instructed to ensure the personal attendance of ASI Buriro and the presence of the detainee at the next hearing. The report later filed by ASI Bashir Ahmed Buriro was found to be unsatisfactory and legally untenable, raising serious concerns about the commission of procedural illegality and abuse of power.

7. Learned counsel for the petitioner, Mr. Illahi Bux Jamali, submitted that the events in question constitute a gross violation of the fundamental rights guaranteed under Articles 4, 9, 10, and 14 of the Constitution of the Islamic Republic of Pakistan, 1973. The forcible

intrusion by police officers into the petitioner's private residence without a warrant or judicial authorization, the assault on woman, and the unlawful detention of a minor girl amounts to a flagrant misuse of state authority. Counsel contended that no complaint under Section 552 Cr.P.C., no FIR, and no judicial order existed to justify the police action, rendering it entirely without jurisdiction and contrary to due process. The counsel emphasized that Mst. Reshma's status had already been judicially determined through the order dated 23.06.2025, in which she was declared free to reside with her father after denying marriage with respondent No.5. The subsequent production before the Incharge Sessions Judge on 19.07.2025, without any new proceedings or complaint, was therefore illegal, void, and without lawful authority. The sudden reversal in the detainee's statement, given under nervous and coercive circumstances, could not constitute a valid expression of consent, particularly when she was underage and lacked legal capacity to contract marriage or to make binding declarations about her marital status. Counsel argued that the Incharge Sessions Judge exceeded his jurisdiction by recording the statement in the absence of any complaint or proceeding under Section 552 Cr.P.C, as a court of law cannot act *suo motu* in matrimonial matters without formal invocation of jurisdiction. Accordingly, the petitioner seeks (i) the immediate recovery of the minor detainee from unlawful custody, (ii) criminal proceedings against the delinquent police officials for abuse of power and violation of fundamental rights, and (iii) judicial protection of the detainee's person and liberty in accordance with law and the Constitution.

8. Conversely, learned counsel for respondents No.5 and 6, Mr. Mushtaq Ahmed Shah, argued that respondent No.5, Jawad Hussain, is the lawfully wedded husband of Mst. Reshma, producing a *Nikahnama* as proof of a valid marriage contracted under Islamic law and the Family Laws of Pakistan. He contended that the detainee's appearance before the learned Sessions Judge was voluntary, as she had reportedly approached the police station of her own accord, complaining that her parents were forcibly confining her and attempting to arrange another marriage against her will. Her statement before the Sessions Judge, acknowledging the marriage and expressing her desire to live with respondent No.5, was said to represent her free and independent will, untainted by coercion. Counsel submitted that the earlier denial of marriage on 23.06.2025 was made under pressure from her father and family, and that the later statement reflected her genuine consent and emotional preference. He further argued that respondent No.5 was entitled under Section 491 Cr.P.C. and general matrimonial principles to seek recovery of his wife if unlawfully detained by her parents. The actions of the police, he asserted, were undertaken in good faith and in execution of lawful judicial directions, rather than in abuse of power. Counsel maintained that the detainee, being of marriageable age under Islamic law, had the legal and religious capacity to make her own choice of husband, and her marriage could not be invalidated merely on allegations of minority or family disapproval. Accordingly, respondent No.5 seeks dismissal of the present petition, affirmation of the validity of the marriage, and restoration of custody of his lawful wife, consistent with the principles of Islamic jurisprudence and Pakistani family law.

9. Having carefully examined the facts, evidence, and competing legal contentions advanced by both parties, this Court is confronted with a controversy that lies at the delicate intersection of individual liberty, parental guardianship, the State's obligation to protect minors, and the constitutional limits of police authority. The present constitutional petition, instituted by Ali Sher Kaloo, seeks the recovery of his minor daughter, Mst. Reshma, from alleged unlawful custody. The case thus raises grave concerns regarding the conduct of police officials, the propriety of judicial proceedings, and the enforcement of fundamental rights guaranteed under the Constitution.

10. The constitutional foundation governing this matter emanates from Article 199 of the Constitution, which empowers the High Court to issue prerogative writs for the enforcement of fundamental rights when no other adequate remedy is available under ordinary law. This extraordinary jurisdiction is remedial, supervisory, and preventive, designed to uphold the rule of law and provide judicial redress where executive or administrative excess threatens the rights of citizens. The jurisdiction under Article 199 has repeatedly been recognized by superior courts as a constitutional bulwark against executive overreach and arbitrary exercise of power, ensuring that no individual, particularly one vulnerable due to age or gender, remains unprotected from unlawful State action.

11. In the present case, the forcible entry of police officials into the petitioner's home without lawful authority or judicial sanction, the assault upon female family members, and the unlawful arrest and removal of a minor girl constitute acts falling squarely within the

purview of constitutional violation and abuse of police power. Such actions strike at the heart of Articles 4, 9, and 14 of the Constitution, which respectively guarantee the right to be dealt with in accordance with law, the security of person, and the inviolability of human dignity. Consequently, this Court is not merely exercising statutory jurisdiction but fulfilling a constitutional duty to ensure that the forces of law enforcement themselves remain subject to law, and that the liberty and dignity of citizens, especially minors, are preserved against the misuse of public authority.

12. The legal principles governing the protection of minors from abduction and unlawful detention have been consistently established through judicial precedents spanning several decades. In the landmark case of *Mahiuddin Ahmed v. Nabin Muhammad & others* (PLD 1964 Dacca 225), the central ratio *decidendi* was that in criminal prosecutions under Sections 363 and 366 of the Pakistan Penal Code, which deal respectively with kidnapping from lawful guardianship and abduction for illicit or unlawful purposes, the age of the girl is a fact of fundamental and determinative importance, and it is the duty of the Magistrate to conduct a proper judicial inquiry to ascertain her age through reliable evidence before dismissing or deciding such a case. The Court held that reliance solely on the girl's verbal statement asserting that she was "major" (of legal age), without administering oath or requiring corroboration through medical, documentary, or testimonial evidence, constitutes a serious procedural irregularity and miscarriage of justice. The Magistrate's duty is not discharged by mere acceptance of self-serving or unverified statements; rather, he must afford both parties a fair and

adequate opportunity to establish or contest the age. In essence, the High Court affirmed that a judicial determination of age cannot rest upon assumption or declaration but must be supported by proper inquiry, since the age element forms an essential ingredient of the offence under both Sections 363 and 366 PPC. The Dacca High Court held that the Magistrate failed to perform his legal duty by dismissing the complaint summarily on the girl's verbal assertion that she was major, without conducting any inquiry or allowing evidence regarding her age. Such conduct was held to be unsatisfactory and contrary to law.

13. In the case of *Abdul Hamid v. The State* (PLD 1962 (W.P.) Karachi 886) the ratio *decidendi* of this case lies in the interpretation of the words "takes" and "entices" as used in section 361 of the Pakistan Penal Code (PPC), which defines kidnapping from lawful guardianship, and their application to the offence of abduction under Section 366 PPC. The Court laid down that the mental attitude or consent of the minor girl is irrelevant in cases of "taking". The decisive legal test is whether the accused caused the minor to go out of the lawful custody or the keeping of her guardian, regardless of whether the minor went willingly or even requested to be taken. The word "take" means to cause to go, escort, or get into possession, while "entice" implies inducement or persuasion by exciting hope or desire. Therefore, even when a minor girl voluntarily accompanies a man without persuasion or inducement, the man is still said to have taken her within the meaning of Section 361 PPC if she is removed from lawful guardianship without the guardian's consent. The Court emphasized that a minor cannot, by her own will, confer legality upon an act of taking her away, as the law treats the guardian's consent

as decisive. Hence, once the minor is removed from her lawful guardian's keeping, the offence of kidnapping is complete, and if the intent or result involves the likelihood of illicit intercourse, the case falls squarely within Section 366 PPC. The High Court upheld the conviction of the appellant, Abdul Hamid, under Section 366 PPC, finding that he had taken a 14-year-old girl, Mst. Rubab, out of her parents' lawful guardianship to Korangi, where they remained together for three days and illicit intercourse occurred. The Court rejected the defence argument that the girl had gone voluntarily and that the appellant had not persuaded or enticed her. It held that her willingness did not absolve him, since the offence of kidnapping is complete the moment a minor is taken out of lawful guardianship, even at her own request. However, the Court considered the offence to be technical in nature, observing that there was no element of force or abduction in the violent sense, and that the act was completed merely by the technical breach of guardianship. Therefore, while maintaining the conviction under Section 366 PPC, the Court reduced the sentence from five years' rigorous imprisonment to twelve months' rigorous imprisonment, considering the circumstances of the case. The legal principle emerged from that case is that the consent or willingness of a minor is legally irrelevant in determining culpability under Section 361 PPC, and any person who removes a minor from the custody of her lawful guardian, even at her own request, commits kidnapping. Where such removal results in, or is likely to lead to, illicit intercourse, conviction under Section 366 PPC is proper, though the offence may be treated as technical for purposes of sentencing.

14. In the identical case of *Khalandar Saheb* (A I R 1955 Andhra 59) the legal principles emanated were that: the consent, willingness, or mental attitude of a minor is irrelevant in cases of kidnapping from lawful guardianship; the offence is complete once the minor is removed from her guardian's keeping without consent; the word "keeping" must be construed broadly, guardianship persists even if the minor is temporarily away from the guardian's physical presence; the term "seduced" under section 366 IPC bears a broad moral and legal meaning, encompassing any act or inducement leading to illicit intercourse, not merely the first lapse of chastity; the aggravated offence under Section 366 consists of kidnapping combined with the intent or likelihood of illicit intercourse, making it an enhanced and more serious form of the basic offence under Section 361.

15. In the case of *Fozia Petrik v. The State* (2009 MLD 1350 Quetta), the ratio *decidendi* of the case on the issue of age and minority rests on the Court's reaffirmation of the principle that the consent or willingness of a minor female is legally immaterial in determining liability for kidnapping under Section 361 of the Pakistan Penal Code (PPC). The Baluchistan High Court held that when a female is under sixteen years of age, she is deemed a minor within the meaning of Section 361 PPC; therefore, any act of taking or removing her from the lawful custody of her guardian without consent constitutes kidnapping, irrespective of her purported consent or voluntary conduct. The Court further clarified that the determining criterion is the age of the abductee, not her apparent maturity or physical development. Even if a girl has attained puberty or appears mature, the legal test for minority under the PPC is

chronological age, not physiological maturity. The Court explicitly referred to the medical and radiological evidence, which fixed the victim's age at approximately 15 years, and held that she remained a minor in law. Hence, the accused could not rely on her alleged willingness to accompany him or her claim of marriage to evade criminal liability. In addition, the Court emphasized that where the accused asserts the existence of a marital relationship with the abducted minor, the burden of proving the legality of such a marriage lies upon the accused himself. Without credible evidence of a lawful *nikah*, such as production of a *nikah khawan* or marriage witnesses, the plea of valid marriage fails and cannot neutralize the offence of kidnapping or *zina*. The Court underscored that no marriage can legalize illicit cohabitation with a girl who is legally a minor, as she lacks capacity to contract a valid marriage in law.

16. In the case of *Abdul Khaliq v. The State* (1986 SCMR 35) the binding legal principle declared by Shariat Appellate Bench was that the definition of "kidnapping" under Section 361 PPC is incorporated by reference into Section 11 of the Hudood Ordinance, and that any female under sixteen years of age is legally incapable of giving consent to her removal or to sexual intercourse. This rule creates an absolute presumption of incapacity that cannot be rebutted by claims of voluntary participation.

17. In the case of *Alfat Bibi & another v. The State* (PLD 1972 Lahore 121) Lahore High Court laid down a definitive legal principle that the consent of a minor female under sixteen years of age is wholly immaterial in prosecutions under Sections 363 or 366 of the Pakistan

Penal Code (PPC). The Court clarified that when a girl below sixteen years is taken or enticed out of the lawful guardianship of her parents or guardians, the act constitutes kidnapping within the meaning of Section 363 PPC, regardless of her apparent consent or subsequent marriage to the kidnapper. Similarly, the Court emphasized that even in abduction cases under Section 366 PPC, the consent of a minor female abductee is no defence. The accused cannot claim immunity on the basis of a later marriage or the girl's statement exonerating him. Such an approach, the Court reasoned, would effectively amount to granting "a general license for kidnapping girls approaching their fifteenth year," undermining both penal and social safeguards protecting minors. It was held that even where a girl above fifteen years marries her abductor, the marriage does not absolve the accused of criminal liability. The validity of the marriage may be a question of personal law, but it cannot extinguish the penal offence. The Court warned that accepting post-abduction marriage or consent as a defence would result in an "indirect indictment" of multiple punitive provisions, including those under the Penal Code and the Child Marriage Restraint Act, 1929, which criminalizes the marriage of a girl below sixteen. In short, the ratio *decidendi* in the case was that any consent or marriage after kidnapping or abduction of a female under sixteen is legally inconsequential and cannot bar prosecution or quash proceedings under Sections 363 or 366 PPC, as the offences are complete upon the act of removal from lawful guardianship. The Lahore High Court dismissed all petitions seeking quashment of proceedings under Section 561-A Cr.P.C. filed by the accused persons. It held that: the High Court's inherent powers under

Section 561-A Cr.P.C. cannot be used to bypass the normal course of criminal trial or to determine disputed factual issues such as consent or marriage at a pre-trial stage; the alleged marriages and statements of the minor abductees, who were around fifteen years old, could not exonerate the accused from liability under Sections 363 and 366 PPC, since the alleged consent was legally ineffective. The Court further observed that even if the marriage was valid under Muslim law, the husband and his accomplices could still be held criminally liable under penal law for kidnapping or abduction of a minor. Lahore High Court further observed that the fact that a High Court, in collateral habeas corpus proceedings under Section 491 Cr.P.C., had allowed the abductee to reside with the alleged husband did not nullify or render infructuous the ongoing criminal prosecution, as those proceedings did not adjudicate criminal guilt. The key legal principles established from the case of *Alfat Bibi* (supra) are that: Consent of a minor under sixteen years is immaterial for offences under Sections 363 and 366 PPC; Marriage after kidnapping or abduction does not absolve the offender from criminal responsibility; Collateral habeas corpus orders (allowing the girl to live with her alleged husband) do not affect pending criminal proceedings; Section 561-A Cr.P.C. cannot be used to short-circuit a criminal trial or determine disputed questions of fact such as consent or age; Child Marriage Restraint Act (1929) reinforces criminal liability for marrying a girl under sixteen, even if the marriage is not void under personal law.

18. In the case of *Muhammad Azam Vs Muhammad Iqbal & others* (PLD 1984 Supreme Court 95) Shariat Court, wherein the Honorable Shariat Court was pleased to held that;

“...Legal implications-Previous admissions of prosecutrix in favor of valid marriage if proved as voluntarily made particularly when before a Court of law but in proceedings which were normal and genuine, held, will have important bearing-False evidence of previous admissions created by accused in farcical proceedings, if proved, held further, might .be used against accused in negation of plea of valid marriage as permissible under S. 8, Evidence Act, 1872-Trial Court to examine (in circumstances of each case) as to why effort was made to solemnize marriage in secrecy, at odd place in presence of outsiders to exclusion of near ones particularly in cases of "minor" girl of such' tender age that child Marriage Restraint Act, 1929 provided as crime-Laws on various levels of age for marriage and exercise of option of puberty desired to be examined by Court.”

19. These authoritative judicial pronouncements, read conjointly, reaffirm the enduring principle of criminal jurisprudence that the consent of a minor abductee carries no legal efficacy or exculpatory value. Once the element of minority is established, any purported consent, statement, or affidavit allegedly executed by the minor, irrespective of its apparent voluntariness or solemnity, cannot nullify or diminish the statutory protection afforded to minors under the Penal Code or special enactments. In the Province of Sindh, such conduct also squarely attracts the application of the Sindh Child Marriages Restraint Act, 2013 (Sindh Act XV of 2014), which defines a “child” as any person under eighteen years of age and a “child marriage” as a marriage to which either contracting party is a child. The Act criminalizes: the act of contracting a child marriage by an adult male;

the performance, direction, or facilitation of such a marriage; and any parental or guardian involvement in promoting or failing to prevent such a marriage. Accordingly, any assertion of marriage with a person below the age of sixteen or eighteen years cannot extinguish criminal culpability under the Penal Code or under the Sindh Child Marriages Restraint Act, 2013 respectively. The law presumes incapacity in matters of consent and contract for marriage below the prescribed age threshold. The production of a *Nikahnama* by respondent No.5 cannot override these fundamental legal principles. As established in *Alfat Bibi & another v. The State*, even valid marriage, does not absolve accused persons of kidnapping charges when the victim is a minor. The precedents make clear that allowing such documents to defeat prosecutions would create a dangerous precedent effectively licensing the abduction of minor girls.

20. Section 552 of the Code of Criminal Procedure, 1898, embodies a unique statutory mechanism through which the Sessions Judge exercises a summary yet profound jurisdiction to protect the liberty, dignity, and lawful guardianship of females subjected to abduction or unlawful detention. It is reproduced as under:

“552. Powers to compel restoration of abducted females. Upon complaint made to a Sessions Judge on oath of the abduction or unlawful detention of a woman or of a female child under the age of sixteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.”

21. The section's first essential element, the authority of the Sessions Judge, defines both its scope and gravity. The power is personal, non-delegable, and original, resting in a senior judicial officer who can act promptly and authoritatively. Its object is to ensure that urgent cases involving women and minor girls are handled with maturity and discretion, balancing compassion with responsibility. The second element, the requirement of a sworn complaint, operates as both a procedural gateway and a safeguard. Jurisdiction arises only upon an oath-based complaint, ensuring that immediate coercive power is not invoked lightly. This balances the humanitarian urgency of rescue with the need for authenticity, preventing false or malicious applications. The third element, the class of persons protected, reveals a deliberate legislative distinction between adult women and female children under sixteen. The law secures the liberty of the adult woman and the custody of the minor girl. For a woman, the focus is restoration to freedom; for a child, restoration to lawful guardianship. This gender-specific and age-sensitive framing reflects the dual concern of the legislature: the protection of liberty and the preservation of lawful custody. The fourth element, the requirement of abduction or unlawful detention, broadens the scope to include both physical and moral coercion. The term "unlawful detention" extends beyond physical restraint to encompass situations where deception, fear, or domination curtails a woman's freedom. The fifth element, the "unlawful purpose", introduces a qualitative threshold, ensuring that the section applies only where the detention serves an illegal or immoral end, such as trafficking, forced marriage, or sexual exploitation. Its object is to prevent misuse of the

provision in domestic or consensual contexts where no illegality exists, preserving the autonomy of adult women who act of their own volition. The sixth element grants the Sessions Judge the power of immediate restoration, of liberty to a woman and of custody to a minor girl's lawful guardian. The scope of this power is executive and preventive rather than adjudicative, allowing swift recovery without waiting for trial or criminal conviction. Its object is to terminate ongoing harm and to restore lawful control or freedom instantly. Finally, the seventh element endows the Judge with coercive authority to compel compliance, including the use of force when necessary. This transforms the order from a moral declaration into an enforceable directive, ensuring that judicial protection is not merely symbolic but practical and effective. Collectively, these elements form an integrated legal framework that protects women and children from unlawful confinement and moral jeopardy. Each element reinforces the section's overarching objective, to deliver immediate, humane, and effective relief against the violation of personal liberty and lawful guardianship, embodying the criminal justice system's protective dimension in its purest and most urgent form.

22. Section 491, by contrast, establishes a quasi-constitutional jurisdiction in the High Court, and, by delegation under subsection (1A), in Sessions Judges, to issue directions of the nature of habeas corpus for any person illegally or improperly detained in public or private custody. Its object is universal and constitutional, ensuring judicial control over all forms of unlawful restraint and embodying the fundamental principle of personal liberty and due process. Section 100, on the other hand, is procedural and magisterial, empowering a Magistrate of the

First Class to issue a search warrant for persons wrongfully confined under circumstances amounting to a penal offence. Its focus is investigative and preventive, addressing criminal confinement rather than moral protection or constitutional liberty. Thus, Section 552 safeguards female liberty, Section 491 preserves universal human freedom, and Section 100 enforces immediate penal prevention, collectively forming a graduated structure of protection within Pakistan's criminal justice system.

23. The events narrated before this Court disclose a grave perversion of both procedural safeguards under Section 552 of the Code of Criminal Procedure, 1898 and the substantive prohibitions against kidnapping and abduction contained in Sections 359–366 of the Pakistan Penal Code, 1860 (PPC). Section 552 Cr.P.C is a narrowly framed remedial provision designed to enable a Sessions Judge, upon a complaint made on oath, to order the immediate restoration of liberty of a woman or the return of a female child to her lawful guardian where unlawful detention or abduction is alleged. Its object is humanitarian, not matrimonial; it protects liberty, not conjugal choice. It presupposes (i) a complaint on oath, (ii) a finding that the person is under unlawful restraint for an unlawful purpose, and (iii) an order of restoration to the lawful custodian, never the transfer of a minor to a self-proclaimed spouse.

24. In the present case, the first and most serious violation arose from the conduct of the police officers, particularly the Station House Officer and the accompanying ASI, who, without warrant, complaint, or judicial order, forcibly entered the petitioner's dwelling, assaulted the

family, and removed a minor already placed under judicial protective custody. This action was wholly outside the ambit of Section 552 Cr.P.C, which confers no power of entry or search upon the police in the absence of a lawful complaint or direction from the Sessions Court. The act of entering a private home, causing hurt, and seizing a minor amount not to compliance with but to defiance of the Cr.P.C, engaging multiple criminal provisions: Section 452 PPC (house-trespass after preparation for assault), Section 354 PPC (assault on women), Section 342 PPC (wrongful confinement), and most gravely Section 363 PPC (kidnapping from lawful guardianship). The element of coercion and use of force elevates the conduct to abduction under Section 362 PPC, since the minor was compelled by intimidation and deception to leave her guardian's custody. The collusive act of presenting her before the Incharge Sessions Judge the following day under duress and seeking a statement favorable to respondent No.5 further evidences criminal conspiracy and abetment under Sections 120-B and 109 PPC on the part of the police officials.

25. The second violation rests with the In-charge Sessions Judge, Naushahro Feroze, whose recording of the minor's statement and order sending her with respondent No.5 were jurisdictionally void. Section 552 Cr.P.C could not be invoked suo motu; there was no complaint on oath, no verification of age, and no inquiry as to guardianship or legality of custody. The Court thereby exceeded its statutory authority by transforming a protective jurisdiction into a quasi-matrimonial determination, effectively nullifying the earlier Section 491 Cr.P.C order dated 23.06.2025 that had already adjudged the girl to be free and under

her father's guardianship. Such exercise of power without jurisdiction undermines judicial propriety and violates the doctrine that a Sessions Judge under Section 552 Cr.P.C acts only as a restoring authority, not as a tribunal to validate marriages or consent. By permitting a purported husband to remove a minor from protective custody, the Court's act, though perhaps unintended, amounted to facilitating the continuation of an unlawful confinement, contrary to the very object of the section.

26. The third dimension of violation arises from the private parties, particularly respondent No.5 and his associates, whose instigation and collusion with the police resulted in the kidnapping of a minor girl from lawful guardianship. Even assuming a *nikahnama* exists, jurisprudence consistently holds that consent or marriage of a minor under sixteen years is legally irrelevant (PLD 1972 Lahore 121; 2009 MLD 1350; 1986 SCMR 35). The act of taking or enticing such a girl without the guardian's consent constitutes kidnapping under Section 361 PPC, and if done with intent that she may be compelled or seduced to illicit intercourse, it aggravates to abduction under Section 366 PPC. The alleged use of police aid to procure her presence before a court to secure favorable custody further strengthens the inference of a common intention to commit or conceal kidnapping within the meaning of Section 34 PPC.

27. Cumulatively, the episode reveals a three-tiered abuse of authority: (1) Police usurpation of judicial process through warrantless intrusion and coercive removal of a protected minor; (2) Judicial misapplication of Section 552 Cr.P.C, converting a liberty-restoring mechanism into an instrument for transferring custody without

jurisdiction; and (3) Private exploitation of state power to accomplish what the criminal law forbids, possession of a minor under a pretended marital claim. Each act violates the text and spirit of Section 552 Cr.P.C. The correct legal course would have been the registration of a cognizable case under Sections 363/366 PPC, an age-determination inquiry, and protective custody under judicial supervision, rather than the unauthorized transfer of a minor's person on a spurious plea of marriage. The petitioner, if so advised, may pursue appropriate legal recourse under the said statutes or through other competent proceedings in accordance with law.

28. This Court notes with grave concern that the impugned order dated 19th July, 2025 was passed by the Additional Sessions Judge-II, Naushahro Feroze, while functioning as Incharge Sessions Judge during the absence of the learned Sessions Judge. It is, however, incumbent upon every judicial officer, whether substantive or officiating, to act strictly within the limits of jurisdiction conferred by law. The authority under Section 552 Cr.P.C, may be invoked only upon a formal complaint on oath alleging unlawful detention or abduction; no such complaint was pending at the relevant time. The act of recording the minor's statement and ordering her delivery to a private individual, in disregard of the earlier order dated 23rd June 2025, whereby she had been restored to her father's protective custody, was thus wholly without lawful authority and constituted a procedural impropriety of serious magnitude. The District and Sessions Judge, Naushahro Feroze, is therefore directed to ensure that no proceedings are initiated or orders recorded in future except upon proper application, due process, and

clear statutory authority. Judicial officers performing officiating or additional duties shall remain conscious that the legitimacy of judicial action flows not from position but from adherence to law. MIT-II shall formally communicate this direction to the Judge who passed the impugned order, and shall circulate this order to all Judges of subordinate judiciary, subject to approval by the Hon'ble Chief Justice Sindh.

29. Simultaneously, this Court directs the Senior Superintendent of Police, Naushahro Feroze, to immediately initiate disciplinary as well as criminal proceedings against the delinquent officers, specifically, the SHO, Police Station Naushahro Feroze, and ASI Bashir Ahmed Buriro, whose conduct in forcibly entering a private residence without warrant, assaulting female family members, and unlawfully removing and detaining a minor constitutes gross misconduct, abuse of authority, and offences punishable under the Penal Code. The SSP shall submit a detailed report within fifteen (15) days specifying the nature of action taken against the said officials. The custody of the minor, Mst. Reshma, is hereby restored to her father, who shall execute an indemnity bond with Additional Registrar of this Court, ensuring her safety, dignity, and protection from any harm or coercion.

30. This Court reiterates that the protection of fundamental rights and observance of constitutional due process cannot be sacrificed at the altar of administrative convenience or expediency. The rule of law demands unwavering judicial discipline and integrity; every act of public power must find its source in law. This Court shall remain steadfast in guarding citizens against executive excesses and

institutional overreach, ensuring that justice is not only done but manifestly seen to be done. Accordingly, the order dated 19th July 2025, purportedly passed under Section 552 Cr.P.C, by the Additional Sessions Judge-II, Naushahro Feroze (then officiating as Incharge Sessions Judge), is declared void and set aside. Mst. Reshma shall be restored forthwith to the lawful custody of her father. The Deputy Inspector-General of Police, Shaheez Benazirabad (Nawabshah) Range is directed to ensure the immediate compliance of this order. Judicial officers throughout the Province, in cases of female minors, are advised to exercise the powers under Section 552 Cr.P.C with extreme circumspection, remaining mindful of the Sindh Child Marriage Restraint Act, 2013, the scheme of Criminal Procedure Code, and the paramount consideration of the welfare and protection of minors. The respondents are permanently restrained from interfering, directly or indirectly, with the petitioner's lawful custodial rights. No order as to costs. The petition is disposed of accordingly.

J U D G E