

Order Sheet
IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR

Crl. Misc. Application No.S- 418 of 2023

Date of hearing	Order with signature of Judge.
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Fresh Case

- 1.For orders on office objections.
- 2.For hearing of main case

17-07-2023

Mr. Abdul Sami Kalhoro, Advocate for the applicant.

On filing of above Crl. Misc. Application under Section 491 Cr.P.C, counsel for the applicant disclosed that the applicant married with Mst. Khalidan and from the wedlock he has son namely Ali Waris, aged about two years but later on Mst. Khalidan obtained Khulla by filing Family Suit No.24 of 2023, but the minor resides with respondents No. 4 to 6, therefore, custody of minor with the respondents No.4 to 6 is unlawful, hence the above application has been filed. He sought time to produce decision of the Family court and today he has submitted certified true copy of order dated 17.06.2023, passed in the above Family Suit vide which Khulla was granted to Mst. Khalidan.

2. Heard learned counsel on the point of maintainability of above application.

3. The Family Court while passing order dated 17.06.2023 at para- 2 mentioned that Mst. Khalidan (mother of minor/detenue) took away dowry articles along with her mother and brothers and respondent No.4 in above application is real brother of Mst. Khalidan, therefore, minor is in the custody of brother of Mst. Khalidan, who admittedly

resides with her parents, therefore, custody of minor son with a mother could never be unlawful being natural guardian.

3. Apart from this, the age of minor son is admittedly two years falling within the definition of Hizanat, as para- 352 of the Muhammadan Law provides that a mother is entitled to custody of a male child until he has completed the age of seven years, therefore, custody of minor with his mother at the age of two years is not unlawful. However, the applicant being real father of the minor may exhaust remedy by filing application before the Guardian & Wards Court to seek custody of the minor. Reliance is placed upon the case of *Mst. Fozia alias Farzana v. SSP, District Jamshoro and others* **(2021 P.Cr.L.J 1753)**. Consequently, instant Crl. Misc. Application does not lie under Section 491 Cr.P.C and the same is dismissed in limine.

JUDGE

Ahmad