

B

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
Const. Petition No.S-1430 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

- 1.For orders on office objection 'A'
- 2.For Katcha Peshi.

10.02.2017

Mr. Farooq Ali Bhutto, Advocate for the petitioners.

Mr. Sardar Ali Shah Rizvi, APG along with SIP Noor Muhammad Jakhro SHO PS Jaggan @ Hamayoo and Syed Samar Abbas Shah DSP SDPO Sultankot.

Miss Shazia Surahio, State counsel.

1. Overruled.
2. The petitioners, by means of instant petition, have sought following relief:-

- a. That this Honourable Court may be pleased to declare the act of respondents as illegal, null and void and against the law, as well as natural justice.
- b. To restrain official respondents not to cause harassment to petitioners and their entire family at the instance of respondent No.4 and private respondents.
- c. That, respondent No.3 may be directed to provide legal protection to the petitioner and entire family of petitioners in accordance with law.

The crux of the petition is that petitioners are brother and sister *inter se* and are residing with their parents within territorial jurisdiction of official respondents. The Petitioner No.2 being *sui juris* has legal and religious right to marry wherever she may intend according to her own freewill and wishes supported by her family and in this regard many proposals for her marriage are available but due to interference of Respondent No.4 with the help of official respondents, her marriage is not being solemnized as the Respondent No.4 intends to have marriage with Petitioner No.2 by force. The Petitioner No.2 being adult and *sui juris* knows her future and all ups and downs of her life, she does not know or like Respondent No.4 yet he is arrogant to have her hand

by all means. It is further stated that whenever the petitioner No.2 or her parents are setting the marriage anywhere, the Respondent No.4 with the help of Respondents No.1 and 2 interferes and threatens to either family not to enter into *nikah* or accept the hand of Petitioner No.2 and on many occasions they have also been maltreated through official respondents and resultantly all the proposals for marriage of Petitioner No.2 have been disturbed and at the moment the Petitioner No.2 has been compelled to sacrifice her future and ego and surrender in favour of Respondent No.4 which the Petitioner No.2 does not want. However, as a last ray to their hope, they have resorted to constitutional jurisdiction of this court by filing instant petition seeking relief in terms of prayers captioned above.

Notices were issued to the respondents and in response thereto Respondents No.1 and 2 have filed their statements dated 10.2.2017 in which they have stated that the petitioners have never approached them and as and when they may approach them, they will be provided legal protection and not be harassed. It is further stated that the Respondent No.4 is Pak Army soldier therefore, exerts illegal pressure upon family of the petitioners by producing certain letters from his superiors only to move law machinery in his favour against the petitioners. The petitioners counsel has focused on an application annexed with the petition as Annexure-A at page-13 duly endorsed by Respondent No.3 marked to Respondent No.1. In spite of that Respondents No.1 and 2 being in league with Respondent No.4 instead taking action against Respondent No.4 are threatening the petitioners with threat to give hand of Petitioner No.2 to Respondent No.4 else the petitioners and their family members would be put under boiled water as the police retains/possess certain powers to get them implicated in false criminal cases or even cause their murder by showing their fake encounter with police.

Mr. Sardar Ali Shah Rizvi, APG and Miss Shazia Surahio, State counsel present in Court have stated that the police officials present in Court have been directed and they have undertook in their respective statements that they would provide legal protection to the petitioners and their family and would not harass them and shall act strictly in accordance with law.

The copy of comments filed by official respondents have also been supplied to the counsel for the petitioners who after going through the same has shown his satisfaction but reiterated his submissions that specific directions be issued to the respondents particularly the Respondent No.3 to keep eagle's eye upon movements of Respondents No.1,2 and 4 who are acting illegally and are causing disturbances in the routine life of the petitioners for which the petitioners are protected under the esteemed constitution of Islamic Republic of Pakistan, 1973 and the respondents have no right to interfere in the private affairs and personal life of the Petitioner No.2 or any citizen enjoying the citizenship under the umbrella of esteemed constitution.

Undisputedly petitioners are the citizen of the country and are enjoying equal rights by virtue of Articles 4, 9, 14, 24, 25, 34 and 35 of the esteemed Constitution of Islamic Republic of Pakistan, 1973. The State is under obligation to provide legal protection to every citizen including the petitioners under the law and it is also well settled principle of law that the constitutional rights are higher than the legal rights conferred by law.

In this regard the word 'life' was defined by the Honourable Supreme Court of Pakistan in the case of Ms. Shehla Zia and others v. WAPDA reported in PLD 1994 SC 693 and has held as under:-

"13. According to Oxford dictionary, 'life' means state of all functional activity and continual change peculiar to organized matter and specially to the portion of it constituting an animal or plant before death and animate existence."

"In Black's Law Dictionary, 'life' means that state of animals, humans and plants or of an organized being, in which its natural functions and motions are performed, or in which its organs are capable of performing their functions. The interval between birth and death. The sum of the forces by which death is resisted..... "Life" protected by the Federal Constitution includes all personal rights and their enjoyment of the faculties, acquiring useful knowledge, the right to marry, establish a home, and bring up children, freedom of worship, conscience, contract, occupation, speech, assembly and press."

"The Constitutional Law in America provides an extensive and wide meaning to the word 'life' which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law. In the present case this is the complaint the petitioner's have made. In our view the word 'life' constitutionally is so wide that the danger and encroachment complained of would impinge fundamental right of citizen. In this view of the matter the petition is maintainable."

In the circumstances, the case of harassment is made out, consequently, the petition is allowed as prayed for. The official respondents are directed to act strictly in accordance with law and provide legal protection to the petitioners and their family members till the marriage of Petitioner No.2 is solemnized at her choice. If necessary, the police picket may also be provided to the petitioners for stipulated period. The official respondents particularly, respondents No.1 to 3 are directed to keep eagle's eye over the movements of Respondent No.4 to 6 particularly the Respondent No.4 (soldier of Pakistan Army) and Respondent No.3 may ensure the protection of the petitioners and their family.

In view of the above, the petition stands disposed of in the above terms. Let copy of this order be sent/faxed to SSP Shikarpur for compliance as well as communication/correspondence with concerned Army

Headquarter wherever the respondent No.4 is serving so that his superiors may also keep eagle's eye upon his activities and movements. —————

Judge
2-17

Abd H. Qutub