

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

1. C.P.No.S-501 of 2017.

2. C.P.No.S-654 of 2017.

DATE

ORDER WITH SIGNATURE OF JUDGE

13.06.2017.

Mr. Shahnawaz Brohi, Advocate for the petitioner.

Mr. Ali Abbas Memon, State Counsel alongwith Inspector Sohail Sarwar Jamali on behalf of SSP Hyderabad, Ghulam Sarwar SHO PS: Baldia and ASI Islamuddin PS: Market, Hyderabad.

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Comments filed, taken on record and copy thereof supplied to other side.

In C.P.No.S-501/2017, petitioner Mst. Samina contends that she, being *sui juris*, has contracted marriage with Shahbaz Khaskheli on her own free will, without any pressure, coercion and consent of her parents. It is appears that through such petition (CP No.S-501/2017), the petitioner sought protection which, *per petitioner*, was not being provided by the police though *otherwise* the police is under *undeniable* obligation / duty to provide such *protection* as and when complained by an *individual* as per law; whereas C.P.No.S-654/2017 is filed by mother of Mst. Samina namely who contended therein that on 03.03.2017 respondent Shahbaz Ahmed(husband of Mst. Samina), abducted her in her presence, hence she sought production of detinue Mst. Samina as well protection.

2. By order dated 20.04.2017 passed by this Court in C.P.No.S-654/2017, respondent No.4 in that petition, was directed that:

“In the event that petitioner approaches SHO PS: Baldia, Hyderabad / respondent No.4 and a cognizable offence is made out he shall register an F.I.R. A copy of this order shall be sent by fax to the said SHO for compliance and petition was disposed of.”

Thereafter, contempt application was filed by the petitioner against police officials that they have not lodged her F.I.R. Pursuant to that, the concerned police officials are present and contend that because of pendency of C.P.No.S-501/2017, through which petitioner seeks protection, they have not recorded the statement of Mst. Aashin Bibi, mother of Mst. Samina.

At this *juncture*, I would not hesitate in saying that S.H.O is under an *unavoidable* obligation to record statement of *cognizable offence* in relevant book but since provision of Section 154 of the Code *itself* requires '**narration of commission of cognizable offence first**' which *too* within satisfaction of Officer-in-charge of police station who *otherwise* is supposed to be *differentiating* authority into cognizable offence or *otherwise* at relevant time (police station). This Court is conscious of the fact that in developed countries if someone has illicit relation with an under 18 boy or girl or any marriage is contracted that person is called as **Pedophile** and those societies are discouraging the act of **Pedophile** , but here we have different scenario and if a girl attains age of puberty can enter into marriage; whenever a *girls* denies to have been abducted and further claims to have *lawfully* married then mere words of *other* person, how high-so-ever may be in *relation*, would not turn it (claim of marriage) into an *offence* (abduction). There are many petitions in which F.I.Rs under section 365-B PPC are being challenged by the couples on the plea that they have contracted marriage on their own free will and such F.I.R is lodged which *this* Court even had quashed solely on words of the *alleged* abductee. The restrictions, imposed by the ***Child Marriage Restraint Act***, are in field, which provides only punishment but to *those* cases alone which *squarely* fall within four corners of such Act.

Without prejudice to the application of Child Marriage Restraint Act, I can't avoid endorsing concern that this Court is dealing with those petitions with regard to protection which *otherwise* is *right* of every person and *duty* of

police. Such like petitions normally disposed of with directions for necessary protection but it has also been an *irony* that no proper mechanism and record is there so as to avoid *murders* of such couples in name of '**honour**' or pretext of '**Karo-Kari**'. It is the responsibility of State to set a mechanism with regard to protection of those girls. Such direction is also issued by this Court in the case of Rehmat Bibi v. SHO, Karan Sharif PLD 2016 Sindh 268, wherein report was called with regard to filing of such type of petitions by the women who were seeking protection; as per report almost 800 petitions were filed within two years before decision on that petition. Accordingly, directions were issued to the Province of Sindh and I.G.P. Sindh to set up safe houses as well to initiate mechanism to bring an *end* to a parallel system i.e **JIRGAS**. However, it is *alarming* that concept of the '**safe-house**' and '**object**' thereof has not been given due *light* which seems to be the only cause and reason of constant filing of such *like* petition(s). In such situation when in the period of adolescence girls enter into the contract of marriage and they in, some cases, students of Metric or Intermediate classes who *either* are found wondering for *protection* or even are reported to have been *victims* of so-called '**honour**' by declaring them as '**karo-kari**' in *illegal* **JIRGAS**. Apparently there is no guarantee about their future career and finance independence; after their *otherwise* lawful act of contracting such marriages, particularly when their *own* blood-relations like mother, father and other near relatives become their enemies and even choose to lodge F.I.Rs with twisted rather *false* facts hence *prima facie* they *even* have no safe places to live and pass their happy lives. I can't prevent myself in saying that such *age* also some time make the girls to contract marriage with strangers, without knowing the back ground/living of other partner and in case of dispute or on any reasons, they cannot return to their parents, where they should go or from they shall seek help which *otherwise* is neither within *spirit* of Injunction of Islam nor in laws of the lands hence needs *proper* education for which every one of us must react. In short, the *objective* which

was highlighted in the case of Rehmat Bibi supra seems to have not attained what it *aimed* hence requires a *little* hammering again.

Under these circumstances, before passing final order it would be just and proper to call reports from Principal Bench, Bench at Sukkur and all Circuit Courts with regard to details(Number) of petitions (DB/SB) filed by the girls on the issue of free will marriage seeking quashment of F.I.R(s) or for protection within two years. Additional Registrars of Bench at Sukkur,Larkana and this circuit Courts shall ensure that such reports are filed within five (05) days.

Besides, issue notice to I.G. Sindh as well Home Secretary Sindh. They shall provide details of such F.I.Rs, lodged under section 365-B PPC and their results if any within last five (05) years. They should also come forward with a better mechanism to avoid wondering of such *couples* in Courts for what they are *otherwise* entitled i.e protection and an action against any *harassment to life* by blood-relations *even* which (mechanism) should also include providing of such *facility* at very local level. The report should also show *proper* functioning of '**safe-houses**' and *record* of approaches at such place and disposal thereof. They shall also set up better mechanism to keep the record of the girls who, while acting against wishes of their *parents* in this male-dominant, approaches the Court or Police with complaints of apprehensions of their being murdered in name of '**honour**' or pretext of '**Karo-Kari**' because it is *otherwise* the responsibility of the State to look after that girls who intend to pass their *own* lives, being one of the *fundamental rights*, as insisted by Article 9 and 20 of Constitution. Such report shall be filed before the next date of hearing.

Copy of this order shall be communicated through all modes including fax to Home Secretary Sindh, Secretary Women Development Department, Government of Sindh and I.G.P. Sindh for information and compliance.

To come up on 20.06.2017 at 11:30 a.m. Issue notice to A.A.G. Office shall fix all the petitions/applications u/s 561-A Cr.P.C. wherein the petitioners (girls) are seeking protection or quashment of FIR u/s 365-B PPC.

JUDGE

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