

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Cr. Appeal No.S-79 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
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14.06.2017.

Syed Tarique Ahmed Shah, Advocate for the appellant.

Mr. Shahzado Saleem Nahyoon, Assistant Prosecutor General.

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Partly heard learned counsel for the appellant.

During *part* hearing of the matter, an *alarming* attitude of Magistrate surfaced which required to be taken note of first before disposal of instant appeal. It was a case wherein one girl Miss Salma Burdi aged about 12 ½ years approached the police with apprehension that she will be murdered at the hands of her parents, as she intends to marry with one boy of Nizamani tribe. Accordingly, she was produced before the concerned Judicial Magistrate where her 164 Cr.P.C. statement was recorded and she was sent to *Dar-ul-Aman* with direction to produce her again with age certificate; Subsequently, SHO concerned moved application before the Judicial Magistrate that there is serious threat to the life of girl while producing her from Darul Aman to the Court of that Magistrate; hence on that application learned Magistrate directed: she should not be produced till further order, however medical certificate with regard to her age shall be produced, as well she was permitted to see any one in Darul Amman. Subsequently, on 29.12.2009 there was holiday. Judicial Magistrate, who had issued earlier direction, was on leave and one Mr. Inayatullah Kundhar, was the Incharge of that Court, **who** directed the SHO concerned to produce that girl on the application filed by the father of the girl, but SHO avoided while placing earlier order and showing same apprehension. Despite of that, learned Incharge Magistrate insisted for production of the girl but police authorities approached Sessions Judge, Sanghar by moving Miscellaneous Application No.05/2010 against such order and matter was referred to Additional Sessions Judge, Sanghar. During pendency of that application, again Mr. Kundhar passed specific order on 30.12.2009 with direction to the Incharge Darul Aman to handover the custody of the girl to her parents. Admittedly, she (girl) was not heard before passing such order

and her custody was handed over to her parents. Thereafter, within a month, police on the instruction of Additional Sessions Judge lodged F.I.R. with regard to abduction of that girl; investigation was carried out; trial was conducted; appellant maternal uncle of that girl sentenced to life, but yet no clue is found by the police whether she is still in captivity of her parents or she has been murdered. It is surfaced, that during trial father of the said girl died as natural death whereas her mother is absconding.

The record reflects that there is no fresh report with regard to production of that girl or efforts taken by the police during this stipulated period. The manner in which the *girl* was not heard before ordering her custody to be given to those against whom she had *categorically* shown her apprehension of *life* is not only strange but against all *known* principles of *administration of justice*. It was never appreciated that the moment a *girl* steps-out of the house *normally* she is declared as '**kari**' in this area hence such apprehension of the *girl* was quite *justified*. Apparently, this is highhandedness on the part of all concerned who are having authority to keep the custody of the girl and to provide her protection, however, in this case conduct of police is worth appreciating as they tried to place before court genuineness of threat while giving *due* weight to apprehension of words of the *girl*. It appears that repeatedly hectic efforts were taken by police to protect that girl but concerned Magistrate was bent upon to handover the custody of that girl to her parents. Admittedly, he was the incharge Judge and earlier direction was very categorical that she shall not be produced before the Court as there was apprehension that during journey of that transfer from Darul Aman to the Court even with police escort was not safe; however, she was handed over by the Court to her parents and yet it is not clear whether she was murdered or she is in captivity of any other relative or with stranger. Every act of the *judicial officer* must always be in *aid* of administration of justice and should neither result into *failure* thereof and even efforts must always be to have *this* shown to be done. Any *departure* , if comes to notice of this Court, can well be *examined* within meaning of *Revisional Jurisdiction* which is not subject to an application but notice of an *illegality* is sufficient.

Under these circumstances, judicial propriety demands calling of report from SSP Sanghar with regard to recovery of that girl and all efforts taken by the police during this stipulated period i.e. from 2010

to 2017 (seven years) as well learned District & Sessions Judge, Sanghar, who shall submit his comments with regard to this case clarifying as to whether any inquiry was conducted against that incharge Magistrate and what action was taken in the matter, if any. He shall also ensure that R&P of Miscellaneous Application No.05/2010 is produced before this Court before next date of hearing. Copy of this order be sent through fax to District & Sessions Judge, Sanghar and SSP Sanghar for information and compliance.

Adjourned to 20.06.2017 at 09:30 a.m.

JUDGE

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