

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

C.P. No. D – 3507 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
<u>06.02.2018.</u>	Mr. Muhammad Hashim Leghari, Advocate for the petitioners. Petitioners present in person. Mr. Wafa Nawaz Shar, Advocate for respondents No.5 to 7. Mr. Muhammad Ismail Bhutto, A.A.G. along with SIP Najamuddin Nizamani on behalf of SSP Hyderabad, and ASI Shoukat Ali Police Station Mangli, District Sanghar.

Petitioners have appeared before this Court. Petitioner No.1 Mst. Misbah states that she being major has contracted marriage with petitioner No.2 out of her free will and choice against the wishes of her family members which has antagonized her family members and resultantly her father has lodged an F.I.R. being crime No.94 of 2017 at Police Station Mangli, District Sanghar, against petitioner No.2 and his other relatives under section 364-A, 458, 34 PPC, alleging abduction of petitioner No.1 by petitioner No.2 and his family members.

Petitioners are present in person. They have stated that they are living together as husband and wife under valid Nikahnama. During the course of arguments we have specifically asked the question from petitioner No.1 whether she wanted to go with her parents but she replied in negative. We again asked the question from petitioner No.1 regarding her age to which she disclosed that she is aged about 18 years and in this connection she has filed photo copy of her CNIC showing her age as 18 years.

It is stated by learned counsel for the private respondents that Mst. Misbah by entering into Nikah with petitioner No.2 has violated the provisions of Sindh Child Marriage Restraint Act, 2013. According to him she is under age, therefore, she is not entitled to marry with petitioner No.2.

Learned A.A.G. and A.P.G. present submit that since the question raised by learned counsel for the private respondents are disputed question of facts which cannot be undertaken in this Constitution Petition.

Under the circumstances, we are of the view that the disputed questions of facts have been agitated by the private respondents which cannot be undertaken in this petition under Article 199 of the Constitution of Islamic Republic of Pakistan.

Since the petitioners are present in Court. They have claimed that they entered into marriage under valid Nikahnama which is available on record as annexure 'B'. Therefore, I/O of the case under crime No.94 of 2017, Police Station Mangli, District Sanghar, is directed to record the statement of Mst. Misbah under section 161 Cr.P.C. in the office of learned A.A.G. and produce the copy of the same before this Court as well as concerned Magistrate. The I.O is further directed to submit report before the concerned Magistrate for passing the appropriate order. Till then no arrest shall be made in F.I.R. No.94 of 2017, Police Station Mangli, District Sanghar.

As far as the arguments of Mr. Wafa Nawaz Shar, counsel appearing for the private respondents is concerned suffice to say that the plea of underage of Mst. Misbah which has been denied by the petitioner No.1 and her counsel, is a disputed question of fact which cannot be undertaken through this Constitution Petition. However, the respondents are at liberty to approach the appropriate forum for redressal of their grievances.

The police officials present in court are directed to provide protection to the lives and property of the petitioners and make sure that there should not be caused any harassment to the petitioners.

The petition stands disposed of in the above terms.

JUDGE

JUDGE

A.