

# IN THE HIGH COURT OF SINDH AT KARACHI

## Constitution Petition No.D-2881 of 2017

### PRESENT:

*Mr. Justice Fahim Ahmed Siddiqui*

*Mr. Justice Amjad Ali Sahito, JJ*

Petitioner : Mst. Zubaida Begum W/o Muhammad Akram through Raja Rashid, Advocate.  
State : Through Ms. Amna Ansari, Addl. Prosecutor General Sindh.  
Date of hearing : 10.01.2019  
Date of decision : 10.01.2019

### **ORDER**

**AMJAD ALI SAHITO, J : --** By this order, we intend to dispose of the instant Constitution Petition filed by the petitioner Mst. Zubaida Begum in FIR No.47/2017 under section 365-B/34, PPC at Police Station Sharifabad, Karachi against the orders dated 27.04.2017 and 01.04.2017 passed by the learned XVIIth Civil Judge & Judicial Magistrate, Karachi Central, the petitioner being aggrieved by the above orders filed the instant petition seeking setting aside the impugned orders and for issuance of direction for fresh report.

2. Brief facts of the prosecution case are that the complainant Mst. Zubaida Begum W/o Muhammad Akram, at about 1350 hours lodged an FIR stating therein that on 16.3.2017 at about 6:00 A.M. after offering prayer the complainant sleep again and when wake up at about 7:30 A.M. and saw her both daughters (1) Anila Kiran aged about 21/22 years and (2) Ayesha Bibi aged about 14 years were missing, she continued to search them, later on she came to know that her both daughters have been

kidnapped/abducted by the persons (1) Danish S/o Suleman and (2) Saad-ul-Haq S/o Inam ul Haq with intention to commit zina, these persons have already committed the instant offence in the year 2016 and on the order of the Hon'ble Court the abductees were recovered, therefore, her life as well as the lives of her both daughters are under dangerous. After lodging the FIR, the Investigating Officer produced the accused persons before the learned Judicial Magistrate where the statements of abductees were recorded under section 164, Cr.P.C. and discharged the accused persons under section 63, Cr.P.C. from the charge.

3. Learned counsel for the petitioner mainly contended that the impugned orders passed by the learned XVIIth Civil Judge & Judicial Magistrate, Karachi Central, is contrary to the facts and circumstances of the case as well as law settled by the Superior Courts; that the learned Judicial Magistrate has not considered the plea of petitioner that one of the abductees, namely, Mst. Ayesha at the time of marriage having age of 14 years, hence respondents No.3&4 have committed the offence under sections 3&4 of The Sindh Child Marriages Restraint Act, 2013; that the learned Judicial Magistrate discharged the accused/respondents No.3&4 under section 63, Cr.P.C. from the charge on 01.04.2017 without considering the facts and circumstances of the case. He lastly prayed that the impugned orders may be set aside and the Investigating Officer may be directed to submit the challan under sections 3&4 of The Sindh Child Marriages Restraint Act, 2013.

4. Conversely, the learned Addl. Prosecutor General Sindh supported the impugned orders.

5. A perusal of the material available on record and considering the arguments advanced by the learned counsel for the petitioner as well as learned Addl. Prosecutor General Sindh emanates that the FIR was registered under section 365-B PPC by the petitioner. The ingredients of section 365-B PPC for which two basic essential are necessary that removal of woman from one place to another place under compulsion through inducement by deceitful means and the object of such removal must be to compel her to marry any person against her will or in order that she could be forced or seduced to illicit intercourse, during course of investigation the Investigating Officer produced both the abductees, namely, Anila Kiran and Ayesha Bibi before the learned XVIIth Judicial Magistrate for recording their statements under section 164, Cr.P.C. Who has recorded their statements under section 164, Cr.P.C. wherein the abductee Anila Kiran disclosed her age 21 years and Ayesha Bibi disclosed her age 19 years, both the abductees denied the allegation of their abduction, but categorically stated that they have performed their Nikah with the respondents No.3&4 and no one has abducted them and they are residing with their husbands/respondents No.3&4. On such statements of the abductees, the Investigating Officer has disposed of the case under Cancel "C" Class and such report was submitted by him before the learned Judicial Magistrate, It is well settled that Magistrate has ample power's under section 173 Cr.P.C to scan the entire material placed before him in shape of summary report by the investigating officer including averments of FIR, statements recorded under section 161 Cr.PC and other material and pass appropriate order by applying his judicial mind either accepting or declining the said report. A bare perusal of the impugned orders transpires that the learned

Magistrate has discussed all the involved aspects and passed the speaking order, which is just and proper.

7. Reverting to the next contention of the learned counsel for the petitioner that at the time of marriage the age of Mst. Ayesha Bibi was 14 years, hence the accused persons have committed the offence under The Sindh Child Marriages Restraint Act, 2013, having no force. From the perusal of statement recorded under section 164, Cr.P.C. of Mst. Ayesha Bibi, she disclosed her age 19 years and in the Nikahnama her age is written 18 years. In such circumstances, it would not be out of place to mention here that the most efficacious remedy for the petitioner would be to file a private complaint against the accused persons. Learned counsel for the petitioner has failed to point out any material illegality or irregularity committed by the learned Judicial Magistrate while passing the impugned orders, as such, does not require any interference.

8. In view of the above, we find no illegality in the impugned orders dated 27.04.2017 and 01.04.2017 passed by the learned XVIIth Judicial Magistrate, Karachi Central. Resultantly, the instant petition is dismissed. However, the petitioner may approach the appropriate forum through a private complaint about the redressal of her grievances, if any, in accordance with law.

9. These are the reasons for our short order dated 10.01.2019.

**J U D G E**

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