

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.D-2513 of 2017

DATE ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection
2. For orders on M.A 9304/17
3. For Katcha Peshi.

Present:

MR. JUSTICE NAIMATULLAH PHULPOTO
MR. JUSTICE SHAMSUDDIN ABBASI

Date of hearing: 28.05.2018.
Date of Announcement of order: 31.05.2018.

Mr. Muhammad Sachal R. Awan, Advocate for petitioner.
Mr. Mangal Meghwar, Advocate for respondents No.4 & 5.
Shahzado Salim Nahyoon, D.P.G for the State.
Mr. Ch: Bashir Ahmed Gujjar, Assistant A.G.

O R D E R

SHAMSUDDIN ABBASI, J: Petitioner has impugned order dated 01.08.2017, passed by learned Illrd Additional Sessions Judge / Ex-Officio Justice of Peace, Hyderabad, passed on an application u/s. 22-A and 22-B, Cr.P.C, whereby S.H.O P.S Cantt. was directed to record the statement of applicant (Respondent No.4 Sajad Hussain) and if from such statement cognizable offence is made out then the F.I.R. to be registered under relevant sections against accused persons.

2. After issuance of notices, respondents No.3,4 and 5 have filed their comments.

3. It is mainly contended by learned Counsel for petitioner that impugned order for registration of F.I.R. against petitioner was illegal, without justification and lawful authority. He further contended that petitioner had contracted marriage with respondent No.5 (Mst. Shumaila) with her consent and he had placed on record copies of affidavit of freewill Annexure-D, Page-17, and nikahnama Annexure-E, Page-19 which was executed on the same day in presence of witnesses and nikahkawan. He further contended that

respondent No.5 (Mst. Shumaila) has disclosed that prior to this nikah, she was already married with Sajad Hussain (respondent No.4) from whom she obtained divorce and she produced divorce deed dated 10.11.2015, which is also annexed as Annexure-C, Page-15. Learned Counsel for petitioner further contended that the petitioner and respondent No.5 were living normal life but when petitioner came to know that respondent No.5 had still link with ex-husband (respondent No.4) on that petitioner restrained respondent No.5 to disconnect with respondent No.4, but petitioner could not succeed. Finally, he pronounced divorce to respondent No.5 on non-judicial stamp paper dated 10.06.2016. Learned counsel for petitioner further contended that petitioner was shocked when notice was served to him of the application u/s. 22-A & B Cr.P.C filed by respondent No.4 against him under the allegation that petitioner alongwith other proposed accused has managed false and fabricated documents of Divorce Deed dated 10.11.2015. The petitioner after serving notice has filed objections on the application where he produced affidavit of freewill of respondent No.4, nikahnama and divorce deed alongwith his reply before the learned court but the learned court ignored all the factual position based on documentary evidence and directed respondent No.3 (S.H.O P.S Cantt.) for registration of F.I.R. He further contended that it is for Family Court to adjudicate the controversy between the parties but learned Ex-Officio Justice of Peace without lawful authority has issued directions to respondent No.3 for registration of F.I.R. and impugned order is illegal, void, null and against the natural justice. He further contended that the petitioner being a respectable person apprehends his disgrace and humiliation at the hands of police due to impugned order and he has no other alternate remedy except invoking the constitutional jurisdiction of this Court.

4. Learned Counsel for respondent No.4 and 5 has contended that respondent No.5 was abducted and illegally detained by petitioner

(Muhammad Hussain). It is further argued that petitioner has managed affidavit of freewill as well as nikahnama of respondent No.5 with petitioner. He further contended that neither respondent No.5 has sworn any affidavit of freewill before any notary public nor before any court and he has placed a copy of statement of respondent No.5 (Mst. Shumaila, which was recorded by learned Sessions Judge, Hyderabad on 21.06.2016, which is reproduced as under:-

“ I am married wife of applicant Sajjad Hussain Khokhar. At the time of incident I alongwith my husband were residing at Tando Thoro, Hyderabad. About 02-months back when I left my house to purchase some commodities. I was alone when I was kidnapped by Muhammad Hussain and 02/03 other persons. They took me in a Car towards Karachi and kept me in illegal confinement at Karachi. He used to maltreat me. Thereafter he brought me at Hyderabad. Again he took me to Karachi, where I remained with him for about 01-month. Today morning the mother of said Muhammad Hussain brought me and left me at the door of the Court and appeared here before this Court. Applicant Sajjad Hussain Khokhar is my husband from whom I also got an issue namely Ghulam Murtaza aged about 08-months. Now I want to go with my husband.”

Learned Counsel for respondents No.4 and 5 has contended that respondent No.4 had never divorced respondent No.5 and divorce deed was managed by petitioner and stamp paper was attested by Advocate Mr. Shoukat Ali Pathan of said Talaknama / Divorce Deed and S.H.O had recorded statement of Advocate Mr. Shoukat Ali Pathan in which he had not admitted / recognized his signature over divorce deed No.3753 dated 10.11.2015 and during enquiry S.H.O failed to trace out stamp vendor which is fake, forged, managed and fabricated. He further contended that respondent No.5 Mst. Shumaila is legally wedded wife of respondent No.4 and the petitioner had managed and fabricated all these documents with ulterior motive.

5. Respondent No.5 present in court has categorically stated that she is wife of Sajjad Hussain (respondent No.4) and out of said wedlock, they have born two issues. Couple were present in court and stated that petitioner is blackmailer, cruel and dangerous person, who has launched a cruel attack on them and petitioner has made their lives miserable.

6. Learned D.P.G has supported the order passed by learned Illrd Additional Sessions Judge / Ex-Officio Justice of Peace, Hyderabad and stated that petitioner has managed fake and false documents in order to blackmail the couple. There is no wrong in the order.

7. Heard learned Counsel for respective parties as well as learned D.P.G and perused the material available on record.

8. Learned Sessions Judge / Ex-Officio Justice of Peace, issued directions to S.H.O for registration of F.I.R. against the petitioner mainly on the ground that petitioner has managed false and fabricated Divorce Deed dated 10.11.2015 and S.H.O has conducted enquiry into the allegation and submitted report to the learned court which appraised that S.H.O recorded statement of Advocate Mr. Shoukat Ali Pathan in which he did not recognize his signature on divorce deed and burden lies on the petitioner who produced divorce deed and learned court has rightly held in the order which is reproduced as under:-

“S.H.O is directed to record the statement of applicant and if such statement is found to be of cognizable offence, then the F.I.R. is to be registered under relevant sections against the person who did wrong and not against any innocent one. However, no arrest shall be affected unless there is any incriminating material available against the proposed accused. In case the F.I.R. is registered and on investigation it is proved as false, then concerned S.H.O may initiate proceedings under section 182, Cr.P.C against applicant. Application stands disposed of accordingly.”

We believe that during investigation, investigation officer, shall collect evidence to ascertain the truth.

9. It is well settled position that disputed facts cannot be resolved in Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Here in this case, in one hand petitioner has produced copies of affidavit of freewill of respondent No.5, nikahnama, divorce deed dated 10.11.2015 and divorce deed dated 10.06.2016 and on the other hand respondents No.4 and 5 have categorically denied all these facts / pleas

taken by the petitioner in this petition. We rely on a case of Iftikhar Ali Haidri V/s National Telcom Co. and others reported in 2009 YLR 1331. In the case of Rai Ashraf and others v/s Muhammad Saleem Bhatti (PLD 2010 SCMR 691), it has been held that disputed question of facts could not be decided by High Court in constitutional jurisdiction. We see no any illegality in the order passed by learned Illrd Additional Sessions Judge / Ex-Officio Justice of Peace, Hyderabad in which learned court has provided safeguard to the petitioner that no arrest shall be affected unless there is incriminating material available against the proposed accused. In case the F.I.R. is registered and on investigation if it is proved as false then concerned S.H.O may initiate proceedings u/s. 182, Cr.P.C against applicant. Hence, we see no any illegality in the order and maintain the same with direction to S.H.O P.S Cantt. that he shall not arrest any accused in this F.I.R. until and unless he collects any tangible material against accused to connect them in the case.

For the above stated reasons, aforesaid Constitution Petition is without merit and the same is dismissed.

JUDGE

JUDGE

