

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. S-1151 of 2023

Date	Order with signature of Judge
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1. For order on office objection alongwith reply at 'A'
2. For hearing of main case

06.12.2023

Mr. Faisal Ahmed Memon advocate for the petitioner
Mr. Muntazir Mehdi, Additional PG alongwith ASI Ghulam Mustafa PS Mehar and SI Tauheed Ahmed PS Surjani Town Karachi
Mr. Sharafudin Jamali, AAG
Mr. Sajid Ali Gorar advocate for respondents No.5 and 8

Petitioner Kashif Ali Channa has filed this petition on the premise that respondents No.5 to 8 have taken away his wife Mst. Iqra and she needs to be produced before this Court. This court vide order dated 6.11.2023 directed SHO PS Surjani Town Karachi to produce Mst. Iqra, consequently the SHO recorded her statement under section 161 CR.PC wherein she narrated the factum that she has been divorced by the petitioner and now she is living with her parents. She further stated that she has neither been kidnapped nor detained and she is happy with her parents such a statement has been placed on record.

I asked learned counsel for the petitioner that Mst Iqra was no more in illegal custody; but in the custody of her father. He replied that the petitioner is her husband and his marriage is still intact therefore; he has every right to meet his wife. He further submitted that she has not been produced in court and she has been pressurized by her parents to make such a statement as such she may be produced before this Court.

Learned Addl. A.G. assisted by the police officials present in Court submits that no harassment shall be caused to the petitioner and Mst Iqra. His statement is tenable and this petition is liable to be disposed of in terms of the statement of learned AAG.

I have noticed that since the very purpose of filling this petition is over on the premise that the statement of Mst. Iqra has been recorded by the Police on the direction of this Court. It is well settled that proceedings under Section 491, Cr. P.C. are not available to determine whether the petitioner has divorced her wife Mst Iqra, or otherwise, on the contrary as per the statement of Mst Iqra she has been divorced.

Considering the peculiar facts and circumstances of this case, the questions arise which has a direct bearing on the outcome of these proceedings, whether the petition before this Court under Section 491 Cr. P.C is maintainable or whether the learned family court has

jurisdiction to determine the issue of continuation of marriage between the couples or divorce has been effected as per the statement of Mst Iqra.

In view of the foregoing, the controversy as raised by the parties needs to be looked into by the learned Family Court concerned by way of proper proceedings, if approached and the decision thereof shall be made within a reasonable time, keeping in view the subject issue.

In view of the above facts and circumstances of the case, the Petition is disposed of with a direction to the Petitioner to approach the concerned forum for redressal of his grievance in accordance with the law. In the intervening period, the petitioner and Mst Iqra shall not be harassed by the police or anyone, and protection shall be provided to Mst Iqra, particularly by SHO concerned, who will ensure the safety of Mst Iqra with her parents by obtaining their security bond.

For the aforesaid reasons, this Constitutional Petition is disposed of in the above terms.

These are the reasons for my short dated 06.12.2023, whereby the captioned petition was disposed of.

Let a copy of this order to SSP concerned for compliance.

JUDGE

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For the reasons to follow, this Constitution Petition is disposed of with a direction to SHO concerned to protect Mst. Iqra and security bond shall be obtained from the parents of Mst. Iqra for her safety, however, the petitioner shall seek remedy from the Family Court by way of proper proceedings on the issue of alleged divorce.

JUDGE