

THE HIGH COURT OF SINDH AT KARACHI

Cr. Misc. Application No. 493 of 2022

Date: Order with signature(s) of the Judge(s)

1. For orders on office objection as at A
2. For hearing of main case
3. For hearing of M.A.No. 10436/2022
4. For hearing of M.A.No. 10437/2022

M/s Imran Niazi and Gul Muhammad Farooqui advocates for applicant Mr. Muhammad Jibran Nasir advocate for respondent No.1 Mr. Muntazir Mehdi, Addl. P.G Sindh

Date of hearing: 30.09.2022.

Date of order: 30.09.2022.

SALAHUDDIN PANHWAR, J: The applicant above named has preferred the instant Criminal Misc. Application against the order dated 29.08.2022 passed by learned VII-Additional Sessions Judge/Gender Based Violence Court, Karachi East, whereby, learned trial Court took cognizance on the report submitted under section 173 Cr.P.C by the Investigating Officer in Crime No.159/2022 registered at PS Al-Falah Karachi.

2. Briefly the facts of the case are that Complainant Syed Mehdi Ali Kazmi lodged FIR u/s 364-A PPC read with section 3(1) of Prevention of Trafficking in Persons Act 2018, wherein it is alleged that his daughter Dua Zehra aged about 14 years was enticed away of unknown accused.

3. On conclusion of investigation, the I.O submitted a Final Charge sheet under Section 173 Cr.P.C before the learned trial Court, who through a detailed order, took cognizance of offence under Sections 363/364-A/368/34 PPC, Section (ii)/4 of Prevention of Trafficking in Persons Act 2018 and Section 3/4 of Sindh Child Marriages Restraint Act, 2013 against the applicant and others, hence the applicant preferred the instant Cr. Misc. Application against the impugned order.

4. Learned counsel for the applicant contended that the learned trial Court has failed to take into consideration the statement of alleged abductee whereby she denied the accusation of kidnapping/abduction or enticing her; that learned trial court has also failed to consider the fact that marriage

was solemnized outside the Sindh Province, hence application of Sindh Child Marriage Act, 2013 is misconceived; that the offence under Section 363/364-A PPC are misapplied as the alleged abductee is above 14 years of age as opined by Special Medical Board; that no evidence regarding commission of an offence under Section 3(ii) and 4 of Prevention of Trafficking in Persons Act 2018 is available on record; that learned trial Court has also wrongly assumed the jurisdiction of the offence under Anti Rape (Investigation and Trial) Act, 2021; that the impugned order has been passed without jurisdiction and in haste manner without applying the judicious mind, therefore, it is prayed that the impugned order may be set aside. In support of his contentions, learned counsel has relied upon cases of *Arif Ali Khan and another vs. The State and 6 others* (1993 SCMR 187), *Hussain Ahmad vs. Mst. Irshad Bibi and others* (1997 SCMR 1503), *Hakim Ali and another vs. Province of Sindh through Secretary and 10 others* (PLD 2009 Karachi 278) and *Syed Paryal Shah vs. Behram Ali and 3 others* (2012 P.Cr.L.J 189).

5. On the other hand, learned Addl. P.G duly assisted by learned counsel for the complainant have supported the impugned order by stating that the learned trial Court has rightly took the cognizance of the offence, therefore, they sought dismissal of instant CrI. Misc. Application. In support of his contentions, reliance is placed on the cases of *Mian Munir Ahmad vs. The State* (1985 SCMR 257) and *Dr.Sher Afaqn Khan Niazi vs. Ali S. Habib and others* (2011 SCMR 1813).

6. Heard and perused the record.

7. Admittedly, Section 561-A Cr.P.C provides inherent jurisdiction to this Court, however, such powers can certainly not be so utilized as to interrupt or divert the ordinary code of criminal procedure as laid down in the procedural statute and the same are to be rarely exercised only to secure the end of justice so as to seek redress of grievance for which no other procedure is available.

8. Before diving into the merits of the case, it would be pertinent to mention that applicant filed writ petition [CP. No.4477/2022] for quashment of FIR, being relevant order dated 18.08.2022 passed in the above said petition is reproduced herewith:-

“Through this petition petitioner seeks quashment of FIR 159/2022 which has already been challaned before the concerned trial Court and the petitioner has alternate remedy before the learned trial Court and as such this petition is not maintainable in the constitutional jurisdiction of this Court which is hereby disposed of.”

9. Besides, in the instant case, the learned counsel for the applicant has contended that no offence is made out against the applicant and the learned trial Court inter-alia erroneously took the cognizance of the offences through the impugned order without appreciating the law and the material available on the record, therefore, the same is required to be set aside. Learned counsel for the applicant has admitted that before approaching this court under section 561-A, Cr.P.C directly, he has not approached the trial Court for getting the applicant’s early acquittal under section 249-A/265-K, Cr.P.C. The law is well settled by now that after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigors of the trial then the law has provided him a remedy under sections 249-A/265-K, Cr.P.C. to seek his premature acquittal if the charge against him is groundless or there is no possibility of conviction. Reliance is placed on the case of **Director General Anti Corruption v. Muhammad Akram (PLD 2013 SC 401)**. Learned counsel for the applicant though argued at length but he was not able to controvert the above legal position. The case law relied upon by the learned counsel for the applicant is distinguishable from the facts of the instant case, hence not applicable in the present case.

10. The upshot of above discussion is that since learned trial Court has taken cognizance of the case, therefore quashment of proceedings directly by this Court would amount to interruption in ordinary legal course particularly in presence of alternate remedy available to the applicant in terms of section 249-A/265-K, Cr.P.C. Consequently, this criminal miscellaneous application being not maintainable is hereby dismissed.

11. These are the reasons for the short order announced on 30.09.2022.

JUDGE