

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitution Petition No.D-995 of 2024
(Mst. Kiran & another Vs. P.O Sindh & others)

1. For Orders on officer objection.
2. For hearing of CMA No. 3905/2024 (Stay)
3. For hearing of main case.

Date of hearing and order. 30-07-2024.

Mr. Muhammad Yaseen Khaskheli advocate for the petitioners.

Mr. Maqsood Ahmed Simair advocate for the respondent No.7.

Mr. Ghulam Abbas Kubar, Assistant Advocate General a/w
I.O/ASI Ahmed Ali Simair PS Baiji Sharif, SHO PS Mirwah.

Mr. Shafi Muhammad Mahar, Deputy Prosecutor General,
Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J: Petitioners Mst. Kiran and Gul Hassan have approached this Court for annulment of FIR No. 59/2024 registered for offence under section 506/2, 365-B, 452 and 3 TIP PPC of Police Station Baiji Sharif District Sukkur on the premise that petitioner No. 1 Mst. Kiran contracted marriage with petitioner No. 2 Gul Hassan by exercising her right of free will after swearing her affidavit of free will before the learned Judicial Magistrate NARA where her statement under section 164 Cr.P.C was recorded on 20-06-2024.

2. Petitioner No. 1 submits that her father Ali Anwar with malafide intention has lodged the FIR No. 59/2024 and now she apprehends danger to their lives at the hands of private respondent. She further states that she being sui-juris has contracted valid marriage with petitioner No. 2 on her own accord and free will and denies the allegation of her abduction at the hands of petitioner No. 2.

3. Investigating Officer present in Court has recorded the statement of petitioner No. 1 Mst. Kiran with the narration that she had contracted marriage with petitioner No. 2 on 14-06-2024 and intends to recommend the case to the concerned Magistrate for disposal in accordance with the law and as per statement of the petitioner No. 1.

4. The Police officials present in Court also submit that they will not cause any harassment to the petitioners. Respondent No. 7 is directed to furnish personal bond in the sum of Rs. 100,0000/- with the Additional Registrar of this Court to the effect that he and his family will not cause harm to the petitioners.

5. Learned counsel for the respondent No. 7 has argued that the girl is underage and cannot perform Nikah. In support of his contention he has relied upon his statement dated 30-07-2024 supported by the Order dated 11-05-2022 passed by this Court and photocopy of primary School Leaving Certificate of petitioner No. 1, therefore the offense has been committed under the Sindh Child Restraint Marriage Act 2014. Learned counsel for the respondent has emphasized that marriage of children under the age of 18 is unlawful and the marriage contract is void *ab initio*. He added that a girl below the age of 16 was/is married in violation of the Act 2013. He argued that the law prohibits sexual intercourse with a child under the age of 16 and even if a child was/is to consent to engage in sexual intercourse, the action of the accused would still constitute the offense and would be punishable under the Act 2013 read with Pakistan Penal Code. He has further contended that under Sections 3 & 4 of the Sindh Child Marriage Restraint Act, it is a cognizable offense. Learned counsel asserted that the Sindh Child Marriage Restraint Act 2013 is a valid law and that section 2(a) of the Act is in line with the Islamic teachings of protecting the rights of children and ensuring their well-being. Per learned counsel setting a minimum age limit provides a reasonable period for girls to complete basic education at least, which normally helps in developing mental maturity in a person. He prayed

for the dismissal of the present petition. The aforesaid stance has been denied by the petitioner No. 1 with the narration that the respondent No. 7 has managed Government Boys Primary School Nauraja by showing that she was educated girl though she is illiterate. She further states that the statement of the learned counsel for the respondent No. 7 is false to the extent of placing on record a fake primary School Certificate dated 31-08-2021 which is of Boys School and on the face of it, this is a fake document. If this is a position of the case, let Additional Registrar of this Court to obtain the verification of this Primary School Certificate from the concerned School and submit his report for appropriate orders.

6. We have heard learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

7. Primarily, this is a free and democratic country, and once a person becomes major he or she can marry whosoever he/she likes; if the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is they can cut off social relations with the son or daughter, but they cannot give threats or commit or instigate for acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities will see, that if any boy or girl who is major undergoes inter-caste or inter-religious marriage with a woman or man who is major, the couple is neither harassed by anyone nor subjected to threats or acts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action will be taken against such person(s) as provided by law. However, the above observation is without prejudice to the legal rights of the parties, if any, pending before the competent Court of law; so far as the issue of underage if any is concerned the same shall be taken care of by the competent forum under the law. Because of the

above the captioned petition can be disposed of with the direction that the married couples are at liberty to live together and no person shall be permitted to interfere in their peaceful living. In case, any disturbance is caused to them, they shall approach the concerned Senior Superintendent of Police or Superintendent of Police with a copy of this order, who shall provide immediate protection to them. So far as the issues of underage marriage and other ancillary matters are concerned the same shall be looked into by the concerned Court if approached by the aggrieved party for the reason that the Dissolution of Muslim Marriages Act 1939 recognizes such age as sixteen years (which earlier was 15 years but was substituted as sixteen years by the Muslim Family Laws Ordinance, 1961 (VIII of 1961), which finds a place as Section 13 of the Muslim Family Law Ordinance, 1961 and reads as under:-

(13. Amendment of the dissolution of Muslim Marriage Act, 1939 (VIII of 1939).In the Dissolution of Muslim Marriage Act, 1939 (VIII of 1939) in section 2:-

1. After clause (ii) the following new clause (ii-a) shall be inserted, namely:-

“(ii-a) that the husband has taken any additional wife...

(b) In clause (vii), for the word ‘fifteen’ the word ‘sixteen’ shall be substituted)

8. Further, per Section 271 and 272 of Mulla’s Principles of Muhammadan Law a marriage of a minor (who has not attained puberty) is not invalid for the simple reason that it was brought about by the father or grand-father and continues to be valid unless same is repudiated by that girl before attaining the age of 18 years. Therefore, such act of the father and grandfather is protected by Muslim Laws unless the same is established or proved to be in manifest disadvantage of the minor. Besides, Section 273 of the Mulla’s Principles of Muhammadan Law, provides that the marriage brought about by other guardians is also not *invalid* unless she, resorted to her operation to repudiate the marriage on attaining puberty.

9. At this juncture, it would be significant to refer to the case of Mauj Ali v. Syed Safder Hussain (1970 SCMR 437), wherein the Child Marriage Restraint Act 1929 was an issue while deciding such controversy the Supreme Court held as under:

"It is not disputed that Mst. Musarrat has attained the age of puberty and she had married with respondent No.1 of her own free will. Such a marriage is valid according to Muhammadan Law. It was urged that such marriage is invalid under the Child Marriage Restraint Act and, therefore, it should not have been recognized by the High Court. This contention also has no force. Since the marriage is valid under the Muhammadan Law, respondent No.1, is the guardian of Mst. Musarrat and the High Court was perfectly justified in allowing her to go with her husband. We are satisfied that substantial justice has been done in this case. We, therefore, do not consider this as a fit case to interfere in our special jurisdiction."

10. There can be no denial to the fact that the 'event of the marriage' is always an event of honor of family particularly, when it is being solemnized without an attempt to keep it secret, therefore, all authorities, otherwise, are entitled to question the validity thereof, should strictly act keeping this aspect in mind and should not act in a manner prejudicial to the honor of such family or girl. The authority should try to first satisfy itself about the genuineness of the information and then decide whether to proceed or otherwise because if at the end of the day, the information is found false or causeless there would be nothing to compensate the loss, sustained by the family complained against. However, in terms of the statement made by the petitioner-girl before this Court, no further action is required to be taken against the couple and due protection shall be provided to them accordingly as the parties are at daggers drawn.

11. Primarily, this is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes; if the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is they can cut off social relations with the son or the daughter, but they cannot give

threats or commit or instigate for acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities will see, if any boy or girl who is major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is neither harassed by anyone nor subjected to threats or acts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such person(s) as provided by law. However, the above observation is without prejudice to the legal rights of the parties, arising out of the marriage of the couple, if any, pending before the competent court of law.

12. In view of the above, this petition having served its purpose is disposed of with a direction to the concerned police to provide legal protection to the couple as and when they approach for such protection, in the meanwhile no further action is required against them and no harassment shall be caused to the couple by the family of the private respondents at any cost. The investigating Officer is directed to submit his investigation report to the learned Magistrate for disposal in terms of the statement of the petitioner lady. The Magistrate shall pass a speaking order after hearing the parties and issue of underage, if any, shall be taken care of in the light of observation recorded hereinabove.

JUDGE

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