

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

Criminal Misc. Application No.S-513 of 2024
(*Sabhago Vs. S.S.P Sanghar and others*)

DATE ORDER WITH SIGNATURE OF JUDGE

Date of hearing and Order 26.09.2024

Mr. Kirshan Kumar Bheel, advocate for the applicant a/w applicant.
Mr. Dhani Bakhsh Mari, Assistant P.G Sindh.

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ORDER

Adnan-ul-Karim Memon, J. The applicant Sabhago has filed this Criminal Miscellaneous Application under section 561-A Cr. P.C to overturn the order passed on August 30, 2024, passed by the Ex-Officio Justice of Peace/Additional Sessions Judge-I Sanghar, whereby, he has dismissed the applicant's request to register a police case against private respondents. An excerpt of the order is reproduced as under:-

"I have heard the learned advocate for the applicant, proposed accused No.1 in person and perused the record. The applicant has mentioned in the application that the proposed accused namely Naseer Ahmed son of Qadir Bux Brohi and others have kidnapped to his daughter namely Birjo. The proposed accused No. 1 (Naseer Ahmed) appeared voluntarily, who has stated that age of Sht. Birjo is 22 years, who has changed her religion and embraced Islam with new name as Aisha and she has contracted love marriage with proposed accused (Naseer Ahmed). He has further stated that Mst Aisha (Birjo) is his legally wedded wife, no any offence has been taken place, and he and his said wife also filed a Cr.Misc. Application No.1516/2024 U/S 22-A&B Cr.P.C, for protection against the applicant Sabhago and others, which application was allowed by the Court of Additional Sessions Judge Shahdadpur on 28.08.2024. The SHO PS Perumal has submitted report, in which he has mentioned that the proposed accused Kashif Shah is an advocate, and Birjo (daughter of applicant) has embraced Islam, and contracted marriage with proposed accused No.1 (Naseer Ahmed Brohi), such photocopies of certificate about embracing of Islam by Birjo/Aisha, free will affidavit and Nikahnama are available on the record. Needless to say that the applicant has shown his address in the application as Village Ghulam Qadir Narejo Taluka & District Sanghar, and made party to SHO PS Perumal in the same application. He has mentioned in the application that the offence took place in his village, and he has produced his CNIC with No.44202-6945877-8, in which name of his village is mentioned as Village Ghulam Qadir Narejo near Kandyari. He has not mentioned name of Taluka in the application, where he is residing, while his residential address is mentioned in his CNIC as Muhammad Uris Mari, Phuladiyo, Taluka Khipro, which his address is not mentioned in application filed by him, and Phuladiyo is situated within another District Mirpurkhas. From the above discussion, it appears that the applicant has concealed real facts, who has not approached to the Court with

clean hands. In a case reported in 2013 P.Cr.L.J 813, the Honourable Apex Court has observed as under:-

Criminal Procedure Code (V of 1898)

"--Ss. 22-A, 22-B and 154----. Powers of justices of piece to issue direction for registration of case. Scope. Malafide of applicant/complainant--- non discloser/suppression of facts by the applicant/complainant---. Ex-Officio Justice of Piece not to allow application U/Ss 22-A and 22-B Cr.P.C in a mechanical manner and should ply his mind as to whether the applicant had approached the Court with clean hands or it was stained with malice."

In above circumstances, it appears that the applicant has not made out case of a cognizable offence, and this is not a fit case to issue appropriate directions to the concerned Police authorities for registration of FIR against the proposed accused persons, therefore, the instant application filed by the applicant is hereby dismissed."

2. Learned counsel for the applicant has argued that the applicant's daughter was abducted by a group of individuals and that the police failed to properly investigate the matter. He argued that the police officers involved failed to submit their reports as usual, suggesting a lack of due diligence; that the accused forcibly abducted the applicant's daughter; that the trial court dismissed the application on jurisdictional grounds, despite the applicant and the accused residing in the same locality; that the applicant's daughter is a minor, but the trial court did not consider her age or the NADRA record; that the trial court's order is against the law, equity, and principles of natural justice; that the trial court did not consider the facts, grounds, and documentary evidence presented by the applicant; that the accused committed a cognizable offense, but the police failed to register a FIR; that the applicant has the right to register a complaint at the concerned police station, but the police refused to do so; that the order is liable to be set aside due to the trial court's illegality; that the trial court's order seems to be based on presumption rather than assumption or personal observation; that the trial court passed the order in a hasty manner without considering all the evidence; that the order is against the norms of justice and principles of natural justice; that the order seems to be based on surmises of conjunction; that the applicant will be seriously prejudiced if the application is not granted; that the Ex-Officio Justice of Peace has the authority to observe the nature of the offense and direct the SHO to register a case. Based on these grounds, the applicant is requesting that this court set aside the trial court's order and direct the police to register the FIR.

3. I have heard the learned counsel for the parties present in court and perused the record with their assistance.

4. From the impugned order it appears that the daughter of applicant Sh. Birjo is an adult however that aspect is denied by the applicant by producing the NDRA certificate. It further appears that Sh. Birjo has changed her religion to Islam and is now called Aisha and now Aisha has contracted a love marriage with Naseer Ahmed. Naseer Ahmed claims that Aisha is his legally wedded wife. As per order Naseer Ahmed and Aisha have filed Cr. Misc. Application No. 1516/2024 U/S 22-A&B Cr. P.C for protection against the applicant Sabhago and others. The application was allowed by the Court of Additional Sessions Judge Shahdadpur on 28.08.2024.

5. So far as the question raised by the learned counsel for the application that under The Sindh Child Marriage Restraint Act 2014, the purported marriage of Ms. Asha with Naseer Ahmed is illegal on the plea that she has not attained the age of 18 years, suffice it to say 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)

6. 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.

7. 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 4 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.”

8. 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 Asha before the trial 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.

9. 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 interreligious 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. I, 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 as well as the issue of underage, if any, pending before the competent court of law.

10. In view of the above, this Criminal Miscellaneous Application 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 applicant and/ his family at any cost.

JUDGE

“Ali Sher”