

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Constitution Petition No.D-4971 of 2024

Date	Order with signature of Judge
------	-------------------------------

Before:- Mr. Justice Salahuddin Panhwar
Mr. Justice Adnan-ul-Karim Memon

Date of hearing:- 29.10.2024

Mr. Jehanzaib advocate for the Petitioners.

Mr. Nasir Raza Rind advocate along with Respondent No.7.

Mr. Mumtaz Ali Shah APG

Mr. Jan Muhammad Khuro AAG along with Police Inspector Muhammad Nawaz, SIP Muhammad Sabir Khoso Investigation Officer of PS Jhoke and SIP Abdul Khalique of PS Bulri Shah Karim.

ORDER

Adnan-ul-Karim Memon, J: Petitioners Mst. Sara and Sajjad Ali have approached this court, seeking direction to the police officials not to cause harassment to them at the behest of private respondents No. 7 to 10, they also seek annulment of FIR No. 45 of 2024 registered for offences under section 365-B, 506/2 and 34 PPC of PS Jhoke Sharif, District Sujawal.

2. Petitioners are present with their counsel. It is inter alia submitted that Petitioner No.1 Mst. Sara had contracted marriage with Petitioner No.2 Sajjad Ali against the wishes of her parents. It is further contended that the maternal uncle of petitioner No.1 namely Rasool Bux was unhappy with such marriage and he approached SHO PS Jhoke Shairf District Sujawal where FIR bearing crime No. 45 of 2024 under section 365-B, 506/2 and 34 PPC was lodged against the petitioner No.2 and his relatives. Petitioner No.1 apprehends that petitioner No.2 and his relatives may be arrested by the police in a false case.

3. Today respondent No.7 has approached this court and narrated his ordeal that petitioner No.1 is under age and is unable to contract marriage with petitioner No.2 in terms of the Sindh Child Marriages Restraint Act 2013.

4. Statement of Mst. Sara has been recorded by the Investigating Officer wherein she claims that she is adult and neither she has been abducted by anyone else nor coerced by the petitioner No.2 however she has contracted valid marriage with petitioner No.2

and the FIR lodged by her uncle is false and fabricated one which may be quashed.

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

6. Petitioner No.1 claims to be an adult and legally married to Petitioner No.2. However, the respondents dispute this claim.

7. The counsel for the private respondent argues that the marriage is illegal under the Sindh Child Marriages Restraint Act 2013. He further states that the Magistrate may be directed to look into the issue of under age of the petitioner No.1 and her ossification test may be conducted. We are not in agreement with him on the premise that the Dissolution of Muslim Marriages Act of 1939 recognizes the age of 16 as the legal age for marriage. Section 13 of the Muslim Family Law Ordinance, 1961 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. According to Mulla's Principles of Muhammadan Law, a marriage of a minor performed by her father or grandfather is valid unless she repudiates it before 18. Even a marriage arranged by other guardians is valid unless the minor repudiates it on attaining puberty. 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 by the Supreme Court.

9. The competent court of law is required to see the validity of the marriage carefully, considering the family's honor. If the information is found to be false, the family should not be unnecessarily harmed. However, as petitioner No.1 has made a statement before the court, no further action is required against the couple, and they should be protected, for the simple reason that adults have the right to marry whomever they choose, regardless of caste or religion. Parents may disapprove but cannot resort to threats or violence. Police authorities must protect such couples and prosecute those who harass or threaten them. However, this does not

affect the legal rights of the couple or any underage issue before the court, if any, is pending.

10. The police official present in court must submit a summary report to the magistrate, who will decide the case based on the petitioner's statement. The police should protect the couple if they seek help. No further action should be taken against the couple, and their family should not harass them.

11. In view of the statement of the parties, the private respondents are directed to furnish an indemnity bond of Rs.500,000/- each before the Nazir of this Court for the aforesaid purpose

12. In view of the above, this Constitutional Petition is disposed of

JUDGE

JUDGE

Shafi