

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

CP. No. D- 1619 of 2024
[**Mst. Fiza and another v. Province of Sindh & others**]

Before:

Mr. Justice Muhammad Faisal Kamal Alam
Mr. Justice Khadim Hussain Soomro

Petitioners : Through Mr. Ahmed Hussain, Advocate

Respondent-4: Through Mr. Faheem Ahmed, Advocate

Mr. Muhammad Ismail Bhutto AAG. along with Dr. Zain-ul-Abdin AMS Services Hospital Hyderabad, Sumaria Khanzada Law Officer / Assistant Director Darul Aman Hyderabad, Inspector Aamir Hussain Shah for SSP Jamshoro, Inspector Arslan Khan SHO Kotri PS, ASI Hakim Ali Hingoro, I.O PS Kotri.

Date of Hearing : 13.11.2024

Date of Announcement : 21.11.2024

ORDER

MUHAMMAD FAISAL KAMAL ALAM, J.- Petitioners have filed this Petition, inter alia, seeking direction for quashment of FIR in Crime No. 476 of 2024, lodged under Section 3 and 4 of the Sindh Child Marriage, Restraint Act, 2013 [**the said Law**], at Police Station Kotri, District Jamshoro.

2. It is contended by the Petitioners' Counsel that both the Petitioners have contracted a free will marriage which was disapproved by the Respondent No.5, the real mother of the Petitioner No.1 (Mst. Fiza) and thus she lodged a false FIR [*Paragraphs 2 and 5 of the Petition*]. Further contended that the Petitioner No.2 did not abduct or force the Petitioner No.1 for the marriage; the latter apprehends that her Family Members would cause her physical harm.

3. It is necessary to mention the developments taken place on different dates of hearing. On 29.10.2024 this Court sent the Petitioner No.1 to Darul Aman Hyderabad [She being a minor], to be produced on 13.10.2024 at 11:00 a.m; on the said date the learned Counsel for the Petitioner has cited two

unreported Judgments filed with his Statement dated 30.11.2024 (available in record), *whereas*, Respondent No.5 produced the Birth Certificate and School Leaving Certificate of Petitioner No.1, showing that she is only twelve (12) years old; since Petitioner No.1 refused to accompany her mother, she was sent to Darul Aman with direction to the Investigation Officer (I.O) to produce her before the Medical Board for determination of her age. On 7.11.2024, Petitioner No.1 was again brought from Darul Aman, but Medical Report was not filed; therefore, the matter was adjourned for 13.11.2024. Dr. Zainul Abdin – AMS Services Hospital Hyderabad has filed the Report of Medical Board enclosed with the Statement of learned Additional Advocate General Sindh (**dated 13.11.2024**). According to the Report, age of Petitioner No.1 is between 15 / 16 years. The Statement was taken on record.

4. Learned Counsel for the Petitioners has stated that in view of the Judgments filed through his above Statement, handed down in CP No. D- 995 of 2024 (*Asghar Ali v. Federation of Pakistan and others*) and Cr. Misc. Application No. S- 330 of 2021 (*Mst. Najma Begum v. Asghar Hussain and another*), the Petitioners have not committed any offence under the above Said Law, because Petitioner No.1 is not a minor. On the other hand learned Counsel for Respondent No.5 has opposed this Petition and states that the custody of Petitioner No.1 should be handed over to her Parents.

5. It is necessary to observe that on last date of hearing, Ms. Sumaria Khanzada, Law Officer / Assistant Director of Darul Aman Hyderabad also filed a Report regarding the subject case, according to which the Meeting between the inmates and their family are arranged after following a procedure. In the present Case a Letter dated 4.11.2024 was received from the Court of learned Civil Judge and Judicial Magistrate [Kotri], that a Meeting may be arranged between the Petitioner No.1 and Mst. Hasina (Grand-mother), Shafi Muhammad (Uncle) and Muhammad Arif (Father) of Petitioner No.1, which was then arranged between the Petitioner No.1 and above Persons, which concluded peacefully, and no threat (as alleged by the Petitioners' side) was extended to anyone.

6. The two Decisions placed on record by the Petitioners' Counsel in support of his arguments are considered. In the first case (*Mst. Kiran and another v. Province of Sindh and others*) the issue was that it is alleged by the respondent's side that petitioner was under aged when she contracted marriage with petitioner No.2 and hence offence has been committed under the '**Said Law**'. It is held, that the issue of age will be decided by the competent forum

under the law and the Petition was disposed of with the directions that no harassment should be caused to the Petitioners (who have contracted a free will marriage); in the said Decision the Issue was also addressed from the perspective of Dissolution of Muslim Marriages Act, 1939, Muslim Family Law Ordinance 1961 and Sections 271 and 272 from the well-known Book on Islamic Law, viz. Mulla's Principles of Muhammadan Law. **Whereas**, in the second cited Decision (*Munawar Ali Solangi*), the complaint was that SHO has refused to lodge FIR in respect of offence punishable under the Said Law, as, Mst. Anam was under the age of eighteen (18) years at the time of her Marriage. The Case was dismissed by observing that no case for registration of FIR is made out, because, in the earlier round of litigation initiated by brother of the lady, no issue of age was raised and when the FIR was disposed of under 'C' class, the second round of litigation started with this untenable new plea.

7. The two reported Judgments of the Honourable Federal Shariat Court- (*Ali Azhar v. Province of Sindh through Secretary Law, Parliamentary Affairs and Criminal Prosecution Department and 5 others* (PLD 2023 FSC 265) and of this Court, viz. *Ali Azhar v. Arzoo Fatima and 5 others* (PLD 2022 Sindh 01) are also considered, considering the above discussion and the Case Law cited by the Petitioners' Counsel.

In the case of *Ali Azhar [supra]*, *inter alia*, vires of the Said Law is challenged, being violative of the Injunctions of Islam, which was dismissed as misconceived in nature; validating the **Said Law** and ruling that fixing of an age limit to enter into Marriage by the State or a Government is not illegal from the Islamic perspective. It would be advantageous to reproduce relevant paragraph of the Judgment in which discussion is made about majority or balugh and mental maturity (Rushd / رشد)

“In this Ayat, Allah (SWT) explains two preconditions namely (1) majority or Bulugh (بلوغ) and (2) mental maturity or Rushd (رشد) for the guardian of an orphan to handover the orphan his property or wealth when you observe the orphan reaches puberty and when you find emotional and mental rectitude in him or her. This Ayat of the Holy Quran tells us that the ability to keep property and manage other affairs of life does not automatically come with puberty (Bulugh (بلوغ) only, but mental rectitude or mental maturity (Rushd / رشد) is also required. It is something over and above puberty or sexual maturity of a person and is necessary to handle the normal affairs of life. All the classical Muslim Jurists have consensus that sexual maturity (Bulugh (بلوغ) is different from mental maturity Rushd (رشد), therefore, they set different age limit for a normal person to attain mental maturity (Rushd / رشد). Time period to attain sexual puberty and mental maturity may and may not be the same but normally mental maturity comes later than sexual puberty due to many external factors associated with the intellectual and emotional development of a person and formal education is the most important one for the mental development of a human being.”

In the second Decision of *Arzoo Fatima*, the allegation in the FIR was that respondent No.1 (Ms. Arzoo Fatima) was a minor at the time of her Marriage; besides, vires of the Said Law was challenged. It is observed, that the earlier Petition filed by the above Person for quashment of FIR, was disposed of, allowing the Trial Court to decide the Case in which the proceeding emanating from the FIR was pending and Ms. Arzoo was sent to Panah Shelter Home; whereas, the above Petition was dismissed by holding that only the Federal Shariat Court can give a declaration that a particular Law is violative of Injunction of Islam as envisaged in Article 203-G of the Constitution.

8. In view of the above discussion, both the Decisions relied upon by the Petitioners' Counsel are distinguishable from the facts of present case, inter alia, in particular, in view of the Judgment of the Hon'ble Federal Shariat Court, validating the Said Law, which means that in a case, the age of marriage mentioned in the Said Law is to be taken into account. Consequently, this Petition is dismissed, but, with the direction, that learned Trial Court seized of the Lis should decide the same expeditiously, within four weeks from today. Till such time the Petitioner No.1 will remain in Darul Aman and whenever a family member wants to meet her, the Application will be routed through the learned Trial Court as is done earlier (discussed in the foregoing paragraphs). If the learned Trial Court decides that the Marriage is illegal, and custody is to be handed over to the Parents of Petitioner No.1, then, the Trial Court will pass necessary directions, ensuring the life and liberty of Petitioner No.1, **including** [but not limited to], requiring the private Respondents / Parents to submit a good behavior undertaking / Bond before the SSP concerned and a P. R. Bond before the Trial Court; appoint the Child Protection Officer to submit periodical report(s) about the well-being of Petitioner No.1, by visiting her along with a Lady Police Officer.

JUDGE

JUDGE