

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP No. D-5865 of 2024

(Mst. Mehwish and another v Province of Sindh & others)

Date Order with signature of Judge

Before:-

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

Date of hearing:- 25.11.2024

Mr. Abdul Shakoor Mirbhar advocate for the Petitioners along with the petitioners.

Mr. Manzoor Hussain Soomro advocate for respondent No.5 along with respondent No.5

Mr. Sagheer Ahmed Abbasi Assistant A.G along with SIP/I.O Mehrban Ali of PS A-Section Ghotki, Sindh

ORDER

Adnan-ul-Karim Memon, J: Petitioner No.1 Mehwish and Petitioner No. 2 Shahzaman have approached this court, seeking direction to the police officials not to harass them at the behest of private respondents, they also seek withdrawal of FIR No. 462 of 2024 registered for offenses under section 452,365-B, 382 PPC of PS A-Section Ghotki.

2. Petitioners are present with their counsel. It is inter alia submitted that Petitioner No.1 Mehwish had contracted marriage with Petitioner No.2 Shahzaman against the wishes of her parents. It is further contended that the father of petitioner No.1 Hakim Ali /respondent No.5 was unhappy with such marriage and he approached SHO PS A-Section Ghotki, where FIR No. 462 of 2024 registered for offenses under section 452,365-B, 382 PPC was lodged against the petitioner No. 2. Petitioner No.1 apprehends that petitioner No.2 and his relatives may be arrested by the police in a false case. The petitioners relied upon the statement dated 25.11.2024, recorded by the Investigating Officer wherein she claims that she is an adult and neither she has been abducted by anyone else nor coerced by petitioner No.2, however she has contracted valid marriage with petitioner No.2 and the FIR lodged by her father/ respondent No. 5 is false and fabricated one which may be quashed.

3. Learned counsel for the private respondents has filed the objection and submitted that petitioner No.1 is a minor and studying in class XI at Government Girls Higher Secondary School Ghoki, whereas petitioner No.2 is a peon in Education Department and has three children from her previous wife and there are also complaints against him, he however emphasized that the Supreme Court has ruled that marrying a minor girl does not make the marriage valid, but the adult husband or those who solemnized the marriage may be held criminally liable. He stressed that the Supreme Court has also ruled that there is no mathematical formula to

calculate the welfare of a minor, as it is an all-encompassing concept that includes the child's physical, mental, and emotional well-being. The learned counsel has highlighted 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.

4. In response to the averments of the respondents petitioner No.1 has put her appearance and has taken the stance that she was/is sui juris and competent to enter into a marriage contract with petitioner No.2. Their grievance is that official respondents in connivance with the private respondents, are harassing them and interfering in their matrimonial affairs, without lawful justification. The counsel for the petitioners refuted the claim of private respondents on the ground that respondent No.5 has disclosed in the F.I.R. the age of petitioner No.1 as 16/17 years as such his statement cannot be relied upon. Learned counsel has referred to the statement of petitioner No.1 dated 25.11.2024 coupled with certain documents including an affidavit of free will, Nikhanama, and statement under Section 161 Cr. P.C. wherein she deposed that nobody had abducted her and she contacted marriage with Shahzaman out of her free-will and showed her reservation against her parents.

5. Learned Assistant A.G. present in Court submits that no harassment shall be caused to the couples on the part of the police. However, the issue of underage if any shall be resolved by the competent forum in accordance with the law, if the aggrieved party approaches.

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

7. So far as the question raised by the learned counsel for the respondents that under The Sindh Child Marriage Restraint Act 2014, the purported marriage of Mst. Mehwish with Shahzaman is illegal on the

plea that she has not attained the age of 18 years and studying in XIth class, 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)

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 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 Mst. Mehwish 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 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. 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 underage issue 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 in terms of FIR No. 462 of 2024 registered for offenses under section 452,365-B, 382 PPC of PS A-Section Ghotki Sindh which shall be treated as canceled as per the statement of the petitioner No.1. The petitioner No.2, as well as respondents, shall furnish P.R Bond in the sum of Rs.500,000/-each before the NAZIR of this Court to the effect that no bodily harm shall be caused to the petitioner No.1. SSP and SHO concerned also secured the PR Bond of the petitioner No.2 as well as private respondents to be kept in the Police Station for the aforesaid purpose. However, it is made clear that petitioner No.1 shall be free to meet with her parents as and when she wishes and petitioner No.2 and parents of the petitioner No.1 shall not cause any bottleneck in the intervening period.

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

JUDGE

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