

THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No.897 of 2024

Applicant : Mst. Rani
through Mr. Nazakat Ali Mirani,
advocate a/w applicant

Respondent Nos.1-2 : Jan Muhammad & another
through Mr. Farhan Javed,
advocate a/w respondents &
detenue

Respondent No.3 : The State
through Mr. Mumtaz Ali Shah,
Assistant Prosecutor General

Date of hearing : 10th March, 2025

Date of Judgment : 10th March, 2025

JUDGMENT

Jan Ali Junejo, J:-- This Criminal Misc. Application is directed against the Order dated 01-08-2024 passed by the Court of learned IInd Additional Sessions Judge, Karachi-Central, whereby H.C.P. No. 223 of 2024, preferred by the Petitioner, was dismissed with cost of Rs.5000/-.

2. The applicant was married to Muhammad Ramzan nine years ago, and they had two children (aged 4 and 6). After Ramzan's death two years ago, the children lived with the applicant's parents. The deceased husband's parents (respondents No. 1 & 2) allegedly tried to forcibly take the applicant and her children to their home and threatened her. They also allegedly detained one of the children and prevented the applicant from meeting them. The applicant initially filed Habeas Corpus Petition No. 13/2024, which was dismissed on

19-01-2024, directing her to file a Guardianship & Ward (G&W) case for custody. Later, she regained custody with the respondents' consent, but the respondents then lodged an FIR and filed HCP No. 350/2024, which was allowed in their favor on 25-01-2024. After the child's custody was handed over to respondents, the applicant filed HCP No. 223/2024, but it was dismissed on 01-08-2024 by the 2nd Additional District Judge, Central Karachi, citing the previous dismissal without proper judicial consideration.

3. The learned counsel for Applicant contends that the respondents Nos. 1 & 2 have unlawfully taken custody of the minor and are preventing the applicant from meeting her child, despite her being the natural guardian after the father's demise. He further argues that the dismissal of the previous habeas corpus petitions was without proper judicial application of mind and failed to consider the best interest of the minor. He also submits that the minor's welfare lies with the applicant, who has been the primary caregiver, and the respondents have acted with malice by lodging an FIR and misusing legal processes. He prays that this Hon'ble Court allow the Criminal Misc. Application, restore the custody of the minor to the applicant, and grant any other relief deemed just and proper in the interest of justice.

4. The learned counsel for the Respondents Nos.1 & 2 contends that the present Criminal Misc. Application is not maintainable as the applicant has already exhausted her remedies through multiple habeas corpus petitions, which were dismissed on merits. He further argues that the custody of the minor was lawfully handed over to the respondents No. 1 & 2 through a valid court order, and the applicant is attempting to bypass due legal process by repeatedly filing petitions on the

same grounds. He also submits that the respondents, being the paternal grandparents, have a vested interest in the minor's welfare and have been providing proper care, whereas the applicant has failed to establish any legal or factual basis for regaining custody. He prays for the dismissal of the present Criminal Misc. Application as it is frivolous, an abuse of the legal process, and devoid of merit. The learned APG has also adopted the arguments advanced by the learned counsel for the Respondents Nos.1 & 2.

5. I have carefully examined the arguments put forth by the learned counsel for both parties and thoroughly reviewed the material available on record with the utmost diligence and caution. A detailed analysis of the record reflects that the applicant initially filed H.C.P. No.13 of 2024, which was dismissed by the learned IInd Additional Sessions Judge, Karachi-Central vide Order dated 19-01-2024, directing the applicant to file an appropriate application under the Guardian and Wards Act, 1890 for permanent custody. Thereafter, the applicant again approached the Court by filing H.C.P. No.223 of 2024, which was also dismissed vide Order dated 01-08-2024. It is an admitted position that the custody of the minor was handed over to Respondent No.1 in H.C.P. No.350 of 2024, which was not challenged by the applicant before any higher forum. Thus, the said order has attained finality. The present Criminal Misc. Application is not maintainable as the applicant has already exhausted her remedies through multiple habeas corpus petitions. The order dated 25-07-2024 passed in H.C.P. No.350 of 2024 remains unchallenged, and the applicant has not approached any appellate forum to seek its reversal. Filing repeated habeas corpus petitions, despite clear directions to pursue the matter under the Guardian and Wards Act, amounts to an abuse of process. It is also matter of record that the minor,

aged about 06 years, was produced before this Court. Upon inquiry, he appeared to be intelligent and explicitly stated that he wishes to reside with Respondents Nos.1 & 2 and does not recognize the applicant as his guardian. The welfare of the minor is of paramount consideration, and in the present circumstances, it would not be appropriate to disturb his custody without adjudication by the competent Family Court. The Guardian and Wards Act, 1890, provides the appropriate legal framework for determining permanent custody. The applicant has been repeatedly advised to approach the competent Guardian Court for adjudication of her claim, yet she has failed to do so. The persistent submission of habeas corpus petitions, rather than pursuing remedies through the Family Court, is legally unfounded and cannot be accepted. However, the penalty of Rs.5,000 imposed on the Applicant by the learned Additional Sessions Judge is deemed excessively severe.

6. For the reasons outlined above, the current Criminal Miscellaneous Application is dismissed due to its lack of legal merit. Nevertheless, the Applicant retains the right to pursue appropriate recourse under the Guardian and Wards Act, 1890, before the relevant Guardian Court. Any such proceedings must be evaluated independently, free from influence by the observations made in this Judgment. The portion of the Additional Sessions Judge's order imposing the Rs.5,000 penalty on the Applicant is hereby set aside due to its disproportionate nature. If the Applicant has already paid the penalty in compliance with the Order passed by the learned Additional Sessions Judge, the amount shall be refunded to the Applicant in the interest of justice.

JUDGE