

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

Cr.Misc.Appl.No.S- 152 of 2017

DATE

ORDER WITH SIGNATURE OF JUDGE

30.08.2019.

Mr. Ghulam Sarwar Khushk, Advocate for applicant alongwith applicant.
Mr. Ayatullah Khwaja, Advocate for respondents No.4 and 5.
Ms. Rameshan Oad, A.P.G. for the State.
Mr. Jhamat Jethanand, Amicus Curie.

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Detainee Sht. Ponam has been produced by Hyderabad Darul Aman authorities. In terms of order dated 23.08.2019, Mr. Jhamat Jethanand, who was appointed as Amicus Curie to assist the court on a question framed vide order dated 31.05.2019 that whether a Hindu girl who has been granted a decree by a Family Court to live separately from her husband can contract a second marriage, has made submissions and while relying upon the case law reported in PLD 1968 Dacca 728, NLR 1986 SCJ 189, 1999 MLD 778, 1997 MLD 3056, PLD 1975 Karachi 118, PLJ 1998 SC 27, 1996 P.Cr.L.J 2029, and 1996 P.Cr.L.J 1279, has submitted that this petition is frivolous, the applicant is a stranger to the detainee and she has craftily managed to get the detainee out of marriage bond of her husband and got her lodged in Darul Aman from where she induced her to file a suit for judicial separation against her husband and was able to get an exparte decree. He has categorically stated that a Hindu girl who has been allowed to live separately from her husband by a decree of the court is not allowed to contract a second marriage under Hindu Personal Laws and traditions. Mr. Jhamat further submits that detainee Sht. Poonam for recovery of whom the instant criminal miscellaneous application has been filed is totally stranger to the applicant, and is still wife of respondent No.4 Mukesh and that unless such marriage is not dissolved, she cannot contract second marriage with son of the applicant. He submits that detainee is sui-juris and can live life of her own, but she should not be allowed to go with the applicant.

The detainee Sht. Poonam has heard submissions of Mr. Jhamat attentively and thereafter has made a categorical statement that she will not marry with son of the applicant in subsistence of her first marriage with respondent No.4 Mukesh, and that she is sui-juris and may be allowed to leave Darul Aman and live life of her own choice. But at the same time she has submitted that her parents may be called as she wants to go and live with them to decide future course of life.

Mr. Ayatullah Khawaja who is appearing for the parents of alleged detainee, undertakes that in two days` time he would call them to appear in the court for ascertaining as to whether they want to take back the detainee or not. Mr. Jhamat has offered his services to convince the parents of detainee in case they are facing any problem in taking her back and apprise the demerits of letting their daughter go free without any support to fall back on.

As far as this criminal miscellaneous application is concerned, since the detainee has made a clear statement today that she would live an independent life with her parents and is not going to marry with son of the applicant in presence of her marriage with respondent No.4 Mukesh and she is obviously not in illegal confinement, this criminal miscellaneous application filed for her recovery has become infructuous and is accordingly dismissed. However, for the purpose of meeting of parents with her i.e. detainee Sht. Poonam and to ascertain their volition about their daughter, the case is postponed to be taken up on 03.09.2019 at 1-30 p.m. The management of Daul Aman is directed to produce Sht. Poonam on the said date and time. Meanwhile, notice to the parents of detainee may also be issued for the same date.

JUDGE

Tufail/PA

