

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-207 of 2025

[Mst. Parveen vs.Fida Hussain and others]

Petitioner: Through Mr. Muhammad Rehman Ghous, Advocate
 Date of Hearing: 10.03.2025
 Date of Order: 10.03.2025

ARSHAD HUSSAIN KHAN, J. The petitioners through instant constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has sought the following relief :

1. Direct Respondents No.2 to No.4 to take immediate and effective action for the recovery and safe production of minor before this Hon'ble Court.
2. Declare that the actions and inactions of the Respondents, particularly Respondent No.1 and law enforcement agencies, are illegal, unlawful, and violative of the fundamental rights of the minor under Articles 4, 9, and 14 of the Constitution.
3. Order interim custody of the minor to the Petitioners pending the final adjudication of this petition, in view of the grave risk to her life, health, and psychological well-being.
4. Pass any other order that this Hon'ble Court may deem just and proper in the interest of justice and the welfare of the minor.

2. Briefly, as stated in the Memo of the petition, the petitioner No.1 is real aunt and petitioner No.2 is the step grandfather of the minor Umm-e-Habiba, who remained under their custody since birth. The custody of the minor was handed over to respondent No.1 in Petition No.S-1031 of 2024 under Article 199 of the Constitution. The petitioners are seriously aggrieved and prejudiced by the unlawful, illegal arbitrary and malafide detention of the minor. It is stated that XIXth Judicial Magistrate & Family Judge, Karachi [South] is unable to procure the custody of the minor from respondent No.1.

The background of the present case, as per the memo of petition, is that the minor Umm-e-Habiba was abandoned by her biological parents i.e. respondent No.1 soon after her birth as respondent No.1 and the minor's real mother were separated during the pregnancy. Since then, the minor has been under the exclusive care of the petitioners, who provided her education, health and general welfare. The petitioners

raised the minor with love and affection treating her as their own child. The petitioner No.2 also purchased properties in the minor's name to secure her financial future. It is also stated that nearly 09 years respondent No.1 showed no interest in the minor's upbringing or welfare. Upon discovering the properties purchased in the minor's name respondent No.1 began a series of legal maneuvers aimed at reclaiming custody, seemingly driven by ulterior motives to gain control over the minor's assets. He initially, filed criminal miscellaneous application No.155/2024 under Section 491 Cr.P.C. before District & Sessions Court, Mirpurkhas, alleging wrongful detention of the minor Umm-e-Habiba. This petition was later withdrawn after the respondent extorted money from the petitioner No.1. Thereafter, respondent No.1 filed a habeas corpus petition No.S-1031 of 2024 under Article 199 of the Constitution read with Section 491 Cr.P.C. before this Court, which was disposed of whereby custody of baby Umm-e-Habiba was directed to be handed over to her mother Ms. Saba-ex wife of the petitioner, who refused to have her custody; hence she was kept at PS Sachal, Karachi. However, upon filing Application under Section 561-A, Cr.P.C. [MA 8945/2024] in C.P No.S-1031/2024, with the prayer to handover the custody of the minor to respondent No.1, the custody of the minor was directed to be handed over to respondent No.1, vide order dated 7.10.2024, who then completely disappeared with the minor failing to produce her before any court or comply with the visitation orders. The petitioners being seriously concerned for the well-being of the minors filed G & W application No.2858/2024 before XIX Family Judge Karachi [South]. The petitioners now have serious apprehension and strong reasons to believe that the minor is being forcefully, unlawfully confined by respondent No.1, therefore, her well-being is at risk. The non-appearance / production of the minor creates a serious doubt that the minor is not being looked after as such it requires intervention of this Court in the present petition.

3. Learned counsel for the petitioner has argued that the trial court is unable to procure the custody of the minor and there is serious apprehensions that the minor is not being looked after properly and her life could be in danger. He has contended that respondent No.1 neither provided for the minor nor attempted to establish a relationship with her

for nine years and she was in custody of the petitioners. However, upon knowledge that the petitioners had purchased properties in the minor's name, he maliciously initiated legal proceedings to reclaim custody to gain control over the minor's assets. He has further contended that this Court while giving custody of the minor to respondent No.1 ordered that the petitioners shall have the right to see the minor but the respondent No.1 had denied contrary to his assurance and disappeared with the minor violating the court directives. He has lastly contended that in the aforesaid G&W Application, the petitioners have filed Application under Section 100 Cr.P.C. seeking police action to recover the minor Umm-e-Habiba. The trial court, despite issuance of notices, has failed to take action to ensure the minor's production.

4. Precisely, the petitioners through instant constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seek relief for the recovery and safe production of the minor Umm-e-Habiba, declaring the actions and inactions of the respondents illegal, and interim custody of the minor pending adjudication.`

5. At the very outset, the maintainability of the present constitutional petition under Article 199 of the Constitution was questioned, however, learned counsel for the petitioner has not been able to satisfy the Court. The petitioners have already availed legal remedies by filing a Guardian & Wards application before the Family Court, which is still pending adjudication. It is settled law that the jurisdiction of the High Court under Article 199 is extraordinary and is not to be exercised where alternate remedies are available unless there is a gross miscarriage of justice.

6. The record reveals that the custody of the minor was previously adjudicated by this Court in a habeas corpus petition [No.S-1031 of 2024], wherein the custody was granted to respondent No.1, being real father of the minor. The petitioners' contention that the minor's custody was handed over in violation of her welfare is a matter that falls within the exclusive domain of the Family Court under the Guardian & Wards Act, 1890. The paramount consideration in custody matters is the welfare of the minor, as enshrined in the Guardian & Wards Act, 1890. The Supreme Court of Pakistan has consistently held that custody disputes

should primarily be adjudicated by the Guardian Court. It is settled law that constitutional jurisdiction cannot be invoked where a proper forum exists to address the grievances of the petitioners.

7. In the present case, while the petitioners' concerns regarding the well-being of the minor are valid, they have already initiated proceedings before the Guardian and Ward Court. The Family Court has the jurisdiction and expertise to assess and determine the welfare of the minor based on evidence and circumstances presented before it. The petitioners should pursue their claims in that forum.

In view of the foregoing, I am of the opinion that since the case regarding custody of the minor-Umm-e-Habiba between the parties is pending adjudication before the court of competent jurisdiction, as such, the present constitutional petition is not entertainable, which is accordingly **dismissed in limine**. However, the concerned Guardian Court is directed to expedite the proceedings and ensure that the welfare of the minor remains the primary consideration while adjudicating custody matters.

JUDGE