

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. S-728 of 2016 (Larkana)

Mst. Nageena & another.....Petitioner

V E R S U S

SHO PS Dokri & others.....Respondents

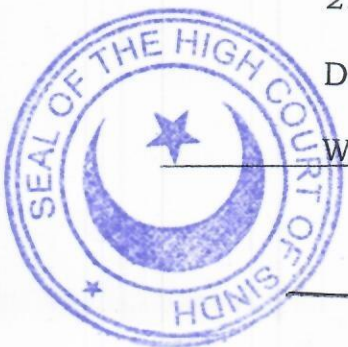
ORDER

24.02.2020

Ms. Sara Malkani advocate, amicus curiae.
Dr. Muhammad Nawaz Shaikh, Secretary Social Welfare Department,
Ms. Alia Shahid, Secretary Women Development Department. Ms.
Nuzhat Shirin, Chairperson, Sindh Commission on status of women,
Dr. Azeem-ur-Rehman Khan Meo, Distractor General, Sindh Child
Protection Authority, Muhammad Khaliq Qureshi, Addl. Director,
focal person, Social Welfare Department, DSP Legal Raza Mian,
.....

SALAHUDDIN PANHWAR, J: Chairperson, Sindh Commission on Status of Women submits some recommendations, as approved by Sindh Commission on Status of Women, taken on record. The importance and vitality of status of Women Commission has never been under any dispute rather **Sindh Act NO.XX of 2015** has been an **acknowledgment** thereof but continuous hammering by this Court, regretfully to say, can't make things (objectives) functional and quarter concerned still wondering around **recommendations**. However, the approved recommendations, *hopefully*, shall get required status without any further delay. Accordingly Chairperson, Sindh Commission on Status of Women, being one of the members of Committee, shall place these recommendations before the committee and the committee shall *inter alia* examine the same and same, if found in line of directives of this Court as well objective of Commission, shall be processed for their legal status. D.G. Child Protection Authority submits recommendation, taken on record.

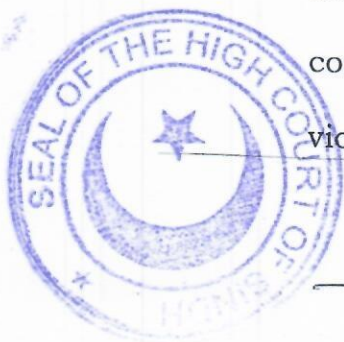
2. At this juncture Secretary, Women Development Department and Chairperson, Sindh Commission on Status of Women contend that despite of availability of funds there are



difficulties in utilization of those funds. It is highlighted with regard to safe houses, budget is already available with the deputy commissioners but they are not providing access to Social Welfare Officers with regard to utilization of those funds with regard to running of safe houses. It is also highlighted that even in safe houses there was no staff deputed. It has come on record that there is shortage of officers and officers posted with Sindh Commission on Status of Women have been transferred as well there is no recruitment.

3. At this juncture Secretary Social Welfare Department contends that they intend to shift seven girls from Darul-Binat to Panah Shelter Home. Accordingly Social Welfare Department would be competent to complete this exercise, as this is their domain to nestle the inmates at proper place.

4. The position, being so, is nothing but to make the purpose of such **safe house (s)** redundant. How, one can expect result from a thing without driver / operator thereof?. *Perhaps*, the quarter concerned are taking things as **granted** merely by fixing the boards of '**safe house**' over some structure. Such attitude, I shall have to add, is not worth appreciating. The quarters concerned are always expected to come with substantial proposals so as to use such *specified* places for maximum benefits which, if permissible and practicable, must not be confined to one class but can be widened to include all related class (es) / victims of those **subjects (laws)** which, *primarily*, address similar or *alike* class (es) / victims. Since, in every district, safe houses are established therefore, the quarter (s) concerned will consider use of such **places** for victims of domestic violence as well children, *least* as a temporary place of safety /



security. All i.e Sindh Commission on Status of Women; DG Child Protection and Social Welfare department would come forward with a proposal to get maximum use of such **places**, as even in earlier order (s) insisted. Needless to add that since past brought some miseries, happened with persons, housed in place of safeties, therefore, it is the time to remind that safety / security always ensures complete safety of person hence any harm even to honour and integrity of such housed persons shall expose all concerned, including Deputy Commissioner (s) concerned to legal actions unless they establish their *bona fide* and *continuous* involvement in running of such places as per dictates of law.

5. I would add that nothing can be expected if the places are without manager(s), therefore, it is expected that all officers shall be posed at Commission on Status of Women and Safe House(s) within a week as well difficulties regarding use and access, shall be ensured to be no more complained about. Meanwhile, in pursuant to order of this court within the ambit of Domestic Violence (Protection and Prevention) Act 2013, accordingly Chief Secretary Sindh shall ensure that sufficient staff is posted as well Deputy Commissioners are directed to provide running expenses with regard to safe houses. Besides Chief Secretary Sindh shall ensure that all recruitments in Social Welfare Department and Women Development Department are made on urgent basis and may be appointed on contract basis, if permissible.

6. Pursuant to order of this court committees are believed to be discussing the issue in their meetings and it is expected that committee would complete this assignment within stipulated period. The committee with regard to Violation Against Women shall finalize



their recommendations within one month and AIG who is convener of that committee shall ensure that report is submitted within one month.


7. Chief Secretary Sindh shall ensure that all working women hostels are shifted under the domain of Women Development Department.

8. Learned District and Sessions Judges shall depute a magistrate who shall make surprise visits to **Working Women Hostels** with the assistance of Deputy Commissioner(s) and submit report with regard to present status and occupation with the clarity whether working women hostels are used by working women or otherwise?. This exercise shall be completed within ten days with report.

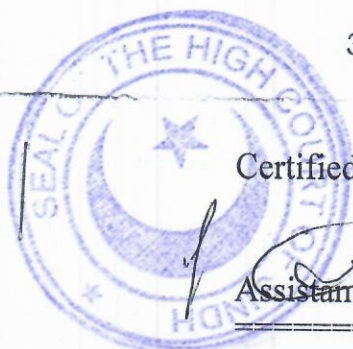
9. Chairperson, Sindh Commission on Status of Women shall also visit all working women hostels in whole Sindh; all SSPs shall coordinate and provide every assistance to the Chairperson, Sindh Commission on Status of Women.

10. Office shall communicate this order as well order dated 23.07.2019 passed by division bench of this court at Circuit Court Hyderabad in CP No.D-1703/2019 (appended with this order) to Chief Secretary Sindh, A.G. Sindh and all concerned departments including amicus curiae. Attendance of respective Secretaries as well D.G. Child Protection Authority is dispensed with however their focal persons shall be in attendance on next date. To come up on 30.03.2020 at 11.30 am.

Certified to be true copy,


Assistant Registrar (Civil / Writ SB)

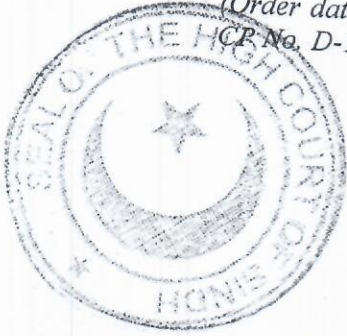
SD/- SALAHUDDIN PANHWAR
JUDGE

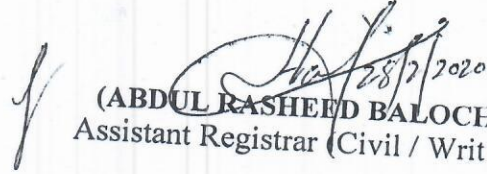


Copy is forwarded for information and compliance to:

1. Ms. Sara Malkani Advocate, Amicus Curiae.
2. All Learned Distinct & Sessions Judges Sindh.
3. The Chief Secretary Sindh, Karachi.
4. The Advocate General Sindh, Karachi.
5. The Chairperson, Sindh Commission on Status of Women, Karachi.
6. The Secretary, Social Welfare Department, Karachi.
7. The Director General, Child Protection Authority, Karachi.
8. The Deputy Commissioner (s) Sindh (All), through Chief Secretary Sindh, Karachi.
9. The AIG, Sindh Karachi
10. The Senior Superintendent of Police (SSPs) Sindh (All), through Inspector General of Police Sindh, Karachi.

(Order dated: 23.07.2019 passed by division bench of this court at Circuit Court Hyderabad in CP No. D-1703/2019., is attached)




(ABDUL RASHEED BALOCH)
Assistant Registrar (Civil / Writ SB)

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

Present:

Mr. Justice Salahuddin Panhwar
Mr. Justice Adnan Iqbal Chaudhry

C.P No.D-1703 of 2019

[Mst. Sehar & another versus Province of Sindh & others]

1. For orders on office objection
2. For hearing of main case

23.07.2019

Mr. Irfan Ali Rahujo, Advocate for petitioners a/w petitioners.

Mr. Muhammad Ismail Bhutto, Additional A.G Sindh a/w SHO Kotri (Imran Afridi), SIP Latif Shah and ASI Mohammad Ali Soomro.

Syeda Samreen Ali, Advocate files Vakalatnama for respondent No.4, who is also present.

Through this petition, the petitioners have approached this Court for protection after they eloped and contracted marriage with free will. There is an FIR against the petitioner No.2 (the boy) alleging that he had abducted the petitioner No.1 (the girl). The petitioner No.1 (the girl), *however*, has given a statement refuting the allegation. The petitioner No.1 is admittedly a student of 8th class. Her parents say that they (the parents) were married around 16 year ago, hence there is no doubt that the petitioner No.1 is a minor and squarely falls within meaning of '*child*' as defined by Section 2(a) of the Sindh Child Marriages Restraint Act, 2013. Regarding the petitioner No.2 (the boy), we have yet to see whether he is a major or otherwise?.

2. Here, it is important to mention that the Sindh Child Marriages Restraint Act, 2013 *itself* places an embargo on the marriage of a child under 18 years of age and *even* prescribes punishment *inter alia* for any person who facilitates the

same including the parents. Though a case has not been registered under the Sindh Child Marriages Restraint Act but since we are conscious of the legal position as well objective of the 'Act' therefore, cannot go by ignoring it because the *issue* is a '**BIG ONE**'. There are hundreds of like petitions in which the marrying girls are under 18 years of age. We would add that every law is meant to meet a *particular* situation despite a *legal* embargo the act, aimed to be restrained / curbed, continues then the conclusion could be nothing but lack of enforcement and failure in making *objective* of such law divulged. The term '**child**' *itself* reflects he is not capable of making *intelligent* decisions of his *life* which includes education, health as well *unseen* future. Since, the '**marriage**' normally portrays *sui-juris* and *adult* persons therefore, to avoid any harm to health, education etc of a '**child**' because of her *immaturity* an embargo has been placed by *law* on such marriages. In an earlier petition, a report was filed by the Director, Women Development Department stating that hundreds of under-age girls who have contracted marriage suffer from sexual abuse and human trafficking. Being conscious of all these reflections of the *Act*, this Court repeatedly issued directions that an age-certificate is mandatory before registering nikkah and no nikkah-khuwan shall register a nikkah unless he is satisfied that the bride and groom are 18 years old but facts, we are sorry to acknowledge, appear otherwise.

3. There is then the issue of providing security and shelter to girls who are victims of child marriages. In *Rehmat Bibi's* case (PLD 2016 Sindh 268) directions were issued for establishment of rescue centres and safe houses for females under 18 years of age. In the case of *Nagina* (C.P. No.S-501, 654 and 779 of 2017), the issue of shelter and security for women and girls, victims of consequence of child's free-will and child marriages was taken up by one of us (Salahuddin Panwar, J.) and addressed as follows vide order dated 30-06-2017:

"At the very outset, Secretary Woman Development contends that they have three rehabilitations centers constituted in Nawabshah, Hyderabad and Jaccobabad, but he admits that same are *temporary* in nature and further he is unable to place on record as to whether any help was provided to any girl seeking protection, or that rehabilitation was carried.

Representative of Chief Secretary contends that pursuance to judgment of this Court in *Rehmat Bibi* case safe houses have been established all over the Sindh, however, he admits that permanent mechanism is yet not established. The directives in case of *Rehmat Bibi* were never meant to be made part of *heap* but for doing what quarter concerned is supposed to do. Mere, putting *sign-boards* on a boundary-wall shall never serve the objective of a *safe-house* therefore, it is hoped and believed that established *safe-houses* shall be made

functional and operational as they should be, particularly in view of directions, given in the case of *Rehmat Bibi* and this *hopefully* shall not take much time.

Home Secretary present and at the very outset admits that issue of protection and rehabilitation of girls, who either contract marriages against wishes of their parents or women, victims of acid attacks and domestic violation is very serious in nature. It is further pointed out that Social Welfare Department, Women Development Department and status of Women Commission which is newly enacted law are in field. Three DarulAman are working in whole Sindh under the supervisions of Social Welfare Department. It is also pointed out that Zakat and Ushar Council is also working for the help of marriages of poor girls and fabulous amount is spared for rehabilitation of women. Since, representative of Chief Secretary contends that Chief Secretary has taken very serious notice about the *graveness* of issue and within '15' days complete mechanism (road map) would be given for the protection of women. Such *acknowledgment* is worth appreciating and statement to complete mechanism within a period of 15 days is taken as an '**undertaking**' with hope that same shall be honoured particularly when the *graveness* of issue is already acknowledged by Chief Secretary. Besides, it is brought on record that 09 rescue centers by the police have been established for the protection of women which is also an *step* to a journey which shall make the women of this land safe and protected in *both* situations i.e in exercise of her right of choice as well in case of her being deserted.

Women Development Officer present submits details which shows that about 12 women trafficking cases and many of the women after freewill marriage were sold out. **She further contends that there are cases wherein girls after being trapped through face-book and other social media under the pretext of marriage have been used for prostitution purposes.** She also contends that about 500 cases are reported with her, wherein after love marriage because of differences; girls tried to commit suicide. These facts when confronted to all the present, all the concerned officers agreed that a universal (help line) number would be provided with vide publication enabling the victims to seek help / protection in the event of any harm or prejudice to their guaranteed rights. It is also contended that a mechanism would be established thereby a special force shall be deployed for the help of victimized women by immediate response to any call / complaint. Secretary Women Development undertakes that they will keep a data of all the girls who contract marriage against wishes of their parents and will appoint surveillance officers and in case of any harm to them either by their parents or in case of deserting of such women by husband or his *families*, such women would be shifted to rehabilitation centers and complete help would be provided to them. This will surely purpose of the department but shall also meet the objectives, insisted in the case of *Rehmat Bibi*. However, it is added that while maintaining the record or keeping surveillance the department shall ensure a mechanism so as to avoid any harm or prejudice to *dignity* of such woman.

The representative of Chief Secretary, Sindh when confronted with fact that though Secretary Women Development is Secretary of Women Commission yet Women Commission is not established, he (representative of Chief Secretary Sindh) contends that within 'one month' whole exercise would be carried out and Women Commission would be established. Accordingly, Secretary Women Development who is also Secretary Women Commission shall ensure that meeting shall be called within 'two months' to examine the

compliance of orders of this Court, passed in this case as well in case of *Rehmat bibi* and will also collect the complete data and shall issue guideline to the officers as well commission, if is in field and any change in law the concerned authority shall be approached for legislation. I would add here that *minority* (adolescence) is also one of the factor which results into making *girls* becoming a *prey* of spell, used by ill-motivated persons which *perhaps* was one of the objective for re-enactment of Child Marriage Restrain Act. The Act provides that marriage with a girl of less than 18 years is an offence, therefore **all NikahKhuwan Registrar shall ensure that girl is having CNIC or sufficient proof in shape of school certificate or medical certificate issued by the concerned authorities, else marriage shall not be registered and in case of violation police officers shall proceed against the delinquent persons. Deputy Commissioners of all Districts shall issue instructions to all NikahKhuwan Registrars for compliance.**

4. We may say that the pain, taken by the Court in *Rehmat Bibi's* case, and the resulting efforts of the Government of Sindh have produced the Sindh Child Marriages Restraint Rules, 2016 framed under the Sindh Child Marriages Restraint Act, 2013. The Rule-3 thereof reads as under:-

3. **Ensuring Age of Parties.** (1) Any person performing, conducting or solemnizing the marriage must ensure that the bride and the bridegroom are aged 18 or above as per the Act.

He shall provide a signed affidavit stating that he has satisfied himself about the age of the contracting parties as not being less than 19 years. Such affidavit shall be attached with nikahnama.

(2). An attested copy of a valid CNIC of both contracting parties shall be attached with the nikahnama, marriage contract or any other documentation having the same effect.

Explanation:- The copies of CNIC may be attested by a Nikah Registrar having license under Section 5 of Muslim Family Laws Ordinance, 1961 and attached with nikahnama for registration of marriages.

(3). If a CNIC of either party to the marriage is not available, the parties may attach a medical certificate verifying the age of the parties

(4). Any person or institution providing a medical certificate verifying age of a person shall sign and provide an affidavit stating that he has satisfied himself about the age of the person examined. Such affidavit shall be attached with the nikahnama, marriage contract or any other document having the same effect;

(5) Fabricating false evidence, statement or affidavit shall be liable to prosecution as per the Pakistan Penal Code, 1860 (Act XLV of 1860).

5. It could *safely* be said that if the above provision is followed the *possibility of child marriage, in writing*, shall almost come to an end because the contracting parties to have *proof* of their claim of marriages do equip themselves with *Nikahnama* by a licensed **nikah-khuwan**. Accordingly, it is hereby ordered that all the *Deputy Commissioners* shall ensure making the above provision *divulged* to all licensed 'nikah-khuwan' through concerned Union Council (s) or Municipal Administrations with clear rider that it shall be the responsibility of such *nikah* registering authority i.e Union Council of Municipal Administration, as the case may be, to avoid registering such *nikah* and to report the matter for legal action against such *nikah-khuwan*. Such compliance report with acknowledgment of notice / knowledge of said provision by all *licensed nikah-khuwan* of respective District through concerned Union Council (s)/Municipal Administration, must reach to this Court within thirty days.
6. The Act, *inter alia*, further provide for 'Child Protection Institutes' for the temporary custody of female child victims. Per Rule 23 of the said Rules, such Child Protection Institutes are monitored by the Child Protection Authority. One cannot monitor an *abstract* (non-existent) thing but surprisingly we have not been informed whether such Child Protection Institutes have been established, and if so, where?. Nor have we been informed of the efforts made by the Provincial Monitoring Committee on Child Marriage and the District Monitoring Committees to curb child marriages and to create awareness amongst the young generation of the ills of child marriages and its consequences as is intended through the Sindh Child Marriages Restraint Act, 2013 and Rules framed thereunder. The said Committees have been constituted under Rules 24 and 35 respectively of the Sindh Child Marriages Restraint Rules, 2016 and comprise respectively of 18 and 11 members each. The role of such Committees is set out in Rules 31 and 42 respectively but whether they exist and functioning, *surprisingly*, is another question begging for an *answer*. Since, it is, *prima facie*, not possible to go further without having certain responses, therefore, we would prefer to hold ourselves from making any further comment (s) till such time. Accordingly, Chief Secretary Sindh shall submit details whether such committees are notified and existing.
7. Admittedly, the petitioner No.1 is minor and issues arising due to her adolescence also cannot be ruled out, therefore, her custody is being temporarily

given over to Abad Shelter House, where she shall be nestled and an officer from the Women Development Department shall visit her on a daily basis to counsel her about her future including her education and security. Thereafter, such officer shall submit a report making recommendations for the welfare of the petitioner No.1 during her minority. The parents and husband of the petitioner No.1 would be competent to visit her. For the purposes of taking the petitioner No.1 to the Shelter Home today, her husband is allowed to accompany her.

8. In view of the discussion above, the Child Protection Authority, the Additional Secretary of the Women Development Department of Sindh (as Secretary of the Provincial Monitoring Committee on Child Marriage), and the Deputy Commissioner Hyderabad District (as Chairperson of District Monitoring Committee) are added as respondents to this petition. The office to issue notice to them for the next date alongwith a copy of this order. The petitioners' counsel to file an amended title accordingly. On the next date, the said respondents shall submit a list of Child Protection Institutes operating in the districts of Hyderabad with a list of facilities, personnel and security measures existing thereat to cater to the welfare of the minors. They shall also place on record a list of cases registered against nikahkhwan for the offence of conducting/facilitating child marriages. Additional Secretary of the Women Development Department of Sindh shall also inform the Court in writing the details of rehabilitation centers for women established as committed before the Court on 30-06-2017 in the case of *Nagina (supra)*.

9. Office shall not entertain any petition regarding freewill marriage, if girl is claiming adult but not having CNIC. Her counsel will be bound to file family tree certificate and certificate of marriage as well affidavit by Nikah Khwan showing therein that bride and groom are adult and he has examined such evidence. Affidavit shall also show consequences in case of false affidavit as such procedure is provided under the Sindh Child Marriage Rules, 2016. Besides, office shall not accept any petition if the bride is minor and raise serious objection. All Deputy Commissioners shall be directed to ensure that Nikah Khwan are registered and proforma affidavits shall be provided to Nikah Khwan as stated above.

To come up on 29.07.2019. The officer designated by the Women Development Department for the petitioner No.1 as ordered above shall also be in attendance on the next date. Office shall communicate this order to all Deputy

Commissioners through Chief Secretary Sindh, as well as Registrar and Additional Registrars of this Court at Karachi, Sukkur and Larkana.

JUDGE

JUDGE

Sajjad Ali Jessar