

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 1918 of 2020

Zulekha Bibi

VS

RubinaBibi

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
---	---	--

17.07.2020.

**Mr.Muhammad Iftikhar Ahmed Satti,
Advocate for the Petitioner.**

Through instant petition, the petitioner has assailed order dated 10.07.2020, passed by learned Additional Sessions Judge-V, East-Islamabad, whereby, petition filed by the petitioner u/s 491 Cr.P.C has been dismissed.

2. Briefly stated, facts of the case are that the petitioner Zulekha Bibi is the grand paternal mother of minor children namely Momina Saqib aged 7 years and Arham Saqib aged 3 years. The father of the minors lives abroad in connection with his job, whereas, Respondent No.1, Robina Bibi is the mother of minor children. As per averments of learned counsel for the petitioner, some time ago, Respondent No.1 left the minor children with the petitioner and fled from the house and thereafter started threatening the petitioner that she will snatch the children from her, therefore, petitioner No.1 filed suit U/s 25 of the Guardian and Ward Act, 1890 for custody of minors before Senior Civil Judge/Guardian Judge, Rawalpindi, whereby, vide order dated 07.07.2020 the respondent No.1 was directed not to remove the custody of minors illegally and forcibly, and statedly on the very same day i.e. 07.07.2020, Respondent No.1 forcibly

took away the children from the house of petitioner, therefore, petitioner filed habeas corpus u/s 491 Cr.P.C petition before ASJ-V, Islamabad, (East) for recovery and release of children from the allegedly illegal and improper custody of Respondent No.1/mother of the minor children. Record revealed that the learned ADJ before disposing of the habeas corpus petition filed by petitioner ordered for production of the minors through bailiff of the Court and on that order the minors children Momina Saqib (7) years and Arham Saqib (3) years alleged detenus were produced along with mother of the children. Thereafter, the learned ADJ passed the following order:-

"The detenues/Momina Saqib age 07 year and Arham Saqib age 03 year have been produced by the Bailiff of this Court. As the respondent is real mother of the minors and allegedly real father of the minors is in Saudi Arabia. Till now the marriage is intact between the parties.

In view of the above facts, the petitioner is not entitled for custody because minors are in legal custody of the real mother. The parties, if so advised, may approach the Guardian Judge for the proper custody of minors, Hence, instant petition is dismissed."

Being dissatisfied with the above mentioned order, instant habeas corpus petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, has been filed by the petitioner.

3. Learned Counsel for the petitioner, inter-alia, contended that the learned Additional District Judge failed to apply judicial mind and passed the impugned order while ignoring the relevant law as well as precedents settled by the superior courts in this regard. Learned counsel further contended that the impugned order suffers from misreading and non-

reading of facts of the case as well as material available on record. Learned counsel further contended that petitioner is lawfully entitled for custody of the minors as Respondent No.1 is an illiterate lady with no source of income and having an illicit character, who has kept the minors in the illegal detention, at the residence of Respondent No.2, thus in her custody the future of minors will be destroyed.

4. I have heard the learned counsel for petitioner at some length and have also perused the available regard including the impugned order.

5. Most of the contentions made by the learned counsel are based upon factual events and controversies which can well be ascertained after recording of evidence and this practice cannot be carried out by this Court while exercising powers under Article 199 of the Constitution of Pakistan. Moreover, it has been observed that the allegation regarding illegal custody of minors with Respondent No.2 could not be proved as Respondent No.1 has duly produced her minor children before the learned ADJ. There is also no denial of the fact that the father of the minor children is in Saudi Arabia and that the marriage of the parents of the minor children are still intact, therefore, in view of the settled principle that *mother being the natural guardian in the absence of her husband can ensure better care and welfare of the children*, I am not inclined to interfere with the order passed by the learned Additional District Judge which, as such, has been passed in accordance with law.

6. For what has been discussed above, impugned order dated 10.07.2020 calls for no interference as petitioner has failed to point out any illegality, infirmity or irregularity in the same, therefore, the present petition along with listed application, is accordingly **dismissed** *in limine*.

(LUBNA SALEEM PERVEZ)
JUDGE