

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Writ Petition No. 4030/Q/2019.

Sajid Hussain

Versus

Additional Sessions Judge-V (West), Islamabad, etc.

Petitioner by: Raja Zaheer-ud-Din Babar and Mr. Akhlaq Ahmed Bhatti, Advocates

Respondents: Barrister Ayesha Siddique Khan, State Counsel.
Raja Tanvir Akhtar, Advocate.
Arshad Ali, SHO P.S. Tarnol, Islamabad.
Niaz Muhammad, ASI/I.O, P.S. Tarnol, Islamabad.

Date of Decision: 10.01.2020.

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner Sajid Hussain has prayed for quashing of FIR No.510, dated 18.11.2019, U/S 364-A PPC, P.S. Tarnol, Islamabad, registered on the complaint of respondent No.2/Mst. Uzma Bibi for alleged abduction of her two minor children namely Mujtaba Khalid and Abdullah Khalid, who were removed by real father namely Muhammad Khalid.

2. Learned counsel for the petitioner contends that petitioner has also assailed the order dated 09.11.2019, passed by learned Additional Sessions Judge (West), Islamabad whereby direction was issued to SHO P.S. Tarnol for registration of FIR while dealing with the petition U/S 491 Cr.P.C. for the recovery of detenues namely Mujtaba Khalid, aged about 03 years and Abdullah Khalid, aged about 01 year.

3. Notices were issued to respondents Mst. Uzma Bibi and SHO P.S. Tarnol, who have put appearance and stated that minor children were

removed by real father of the minors Muhammad Khalid who after taking the custody of minors handed over the same to the present petitioner and left the country for his job in Saudi Arabia.

4. While considering the above background this Court passed the order dated 29.11.2019 and directed the concerned SHO to recover the minors by all means and initiate action against Muhammad Khalid through D.G. FIA as well as Secretary, Interior, however, on 02.12.2019 one Zahid Khan, cousin of present petitioner as well as minor's father put appearance and produced the minors namely Mujtaba Khalid and Abdullah Khalid, handed over to real mother, therefore, other proceedings against father (Muhammad Khalid) were dropped.

5. The only question left for determination of this Court is quashing of FIR which has been investigated by the I.O after the joining of investigation by the petitioner. From the perusal of record, it reveals that the minors were retained by Muhammad Khalid, who also put appearance before this Court today and contends that his wife left the abode without minors and he has to leave Pakistan for his job in Saudi Arabia, where-after minors were left at Lahore, however, he further stated that his wife filed frivolous applications for registration of case as well as recovery of minors despite the fact that minors are in Pakistan and have not been kidnapped. Muhammad Khalid has also stated that he had divorced his wife Mst. Uzma Bibi on 27.09.2019 and as such minors are with mother, who have not been kidnapped by the present petitioner Sajid Hussain.

6. While considering the above background, I have confronted the I.O regarding any evidence qua the abduction of minors by the present petitioner Sajid Hussain, whereby I.O has candidly conceded that no such evidence is available. It is trite law that FIR is liable to be quashed mainly on the ground

that when case is of civil nature or no offence is made out or very registration of FIR is based upon malafide. Reliance is placed upon 2014 P.Cr.L.J 1361 (Haji Zeri Gul Vs. Ahmad Jan Khan), 2014 MLD 795 Peshawar (Aftab Ahmed Vs. State), 2014 YLR 429 Karachi (Bashir Ahmed Vs. VIIIth Family Judge, District West, Karachi), 2011 SCMR 1937 (Rana Shahid Ahmad Khan Vs. Tanveer Ahmed).

7. Keeping in view the above referred pronouncement of superior courts, the extra-ordinary exceptional circumstances exist in this case where no iota of evidence is available against present petitioner Sajid Hussain for abduction of minors rather the order which has been made basis for registration of criminal case dated 09.11.2019, passed by learned Additional Sessions Judge, Islamabad seems to be based upon frustration, who passed the said order just to get recovered the minors by all means in proceedings U/S 491 Cr.P.C. initiated on the petition of Mst. Uzma Bibi mother of minors. As such petitioner Sajid Hussain while appearing before the learned Additional Sessions Judge, Islamabad in proceedings U/S 491 Cr.P.C. requested time and again and ensured that he will manage the recovery of minors but he has failed to fulfill his commitment, which resulted into registration of FIR.

8. While considering the above background, order for registration of FIR against petitioner Sajid Hussain is considered to be an abuse of process of law as minors were not in his custody, which has been confirmed in the police investigation, therefore, there is nothing left to proceed further in FIR No.510, dated 18.11.2019, U/S 364-A PPC, P.S. Tarnol, Islamabad, as the minors have already been recovered and are presently with respondent mother, however, real father Muhammad Khalid has put appearance and confirmed his point of view which also discloses that no offence is made out against the petitioner and co-accused. As the grievance of the complainant Mst. Uzma Bibi/mother

of minors was against her husband Muhammad Khalid, therefore, this Court comes to conclusion that no offence is made out, hence, FIR No.510, dated 18.11.2019, U/S 364-A PPC, P.S. Tarnol, Islamabad is hereby quashed alongwith its order dated 09.11.2019, which was passed without lawful authority by learned Additional Sessions Judge (West), Islamabad.

9. Instant writ petition is allowed in above terms.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid