

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

W.P No.1711/2019.

Mst. Alishba Bibi Vs. The State etc.

Petitioner by: Mr. Sheraz Ahmed Ranjha, Advocate.

Respondents No.1 to 3 by: Ms. Saima Naqvi, State Counsel.

Shabbir Tanoli, SHO, P.S Shalimar,
Islamabad/respondent No.2 in person.
Safdar Hussain, ASI.

Respondents No.4 to 8 by: Ch. Muhammad Nawaz Gondal,
Advocate.

Ms. Khawar Mumtaz, Chairperson
NCSW.

Aamir Ali/respondent No.4 in person.

Neha Pervaiz, minor in person.

Date of Hearing: 14.06.2019.

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner has prayed for issuance of direction to respondents No.2 & 3 to produce the minor Neha Parvaiz (alleged abductee) before this Court and be handed over to the petitioner (mother). The petitioner has further prayed for issuance of direction to respondent No.2/SHO for initiating strict action against the accused persons/respondents No.4 to 8, who has allegedly abducted the minor.

2. Learned counsel for the petitioner contends that the petitioner being mother of minor Neha Parvaiz aged 12 years 07 months has prayed for action against respondents No.4 to 8, who abducted the minor on 06.04.2019; that FIR No.124/19, dated 9.04.2019, U/S 365-B/109 PPC was registered with P.S Shalimar, Islamabad but the minor has not yet been recovered; that the respondents have taken the stance that the minor has converted her religion from Christianity to Islam and entered into Nikah with respondent No.4, which is in violation of Article 36 of the Constitution of Islamic Republic of Pakistan 1973 as well as Child Marriage Restraint Act, 1929.

3. Conversely, respondents No.4 to 8 put appearance before this Court alongwith minor Neha Parvaiz through SHO P.S Shalimar/respondent No.2, whereas the alleged abductee has taken specific stance that she was not abducted and has entered into Nikah with her own free will after conversion of his religion from Christianity to Islam. Learned counsel for respondents No.4 to 8 contend that the minor recorded her statement before the Court of Ms. Ambreen Iqbal Chaudhry, Civil Judge/Judicial Magistrate Section 30 (West), Islamabad, wherein it has been alleged that abductee is 19 years old.

4. Keeping in view above background, this Court passed direction to the National Commission on the Status of Women to interview the alleged abductee in order to verify the stance taken by the alleged abductee as to whether she has converted her faith with her own free will and whether she entered into Nikah with her own choice and what is the legal position relating to age of the minor?

5. The Chairperson National Commission on Status of Women put appearance and submitted her report, which has been placed on record, however, the same will be discussed in subsequent paras to avoid repetition.

6. I have heard the arguments and perused the record.

7. Perusal of the record reveals that the petitioner's husband lodged FIR No.124/19, dated 9.04.2019, U/S 365-B/109 PPC with P.S Shalimar, Islamabad for the alleged abduction of his minor daughter Neha Pervaiz, who was allegedly abducted for the purpose of illicit intercourse. The complainant in the FIR has also alleged that Amir Ali respondent No.4 with his parents approached him for the hand of Neha Pervaiz but they refused as complainant's family is Christian by faith, whereas Amir Ali/respondent No.4 and his family members have different religion.

8. The present writ petition has been filed by the mother of the alleged abductee for the production of her daughter (alleged abductee), who on the direction of this Court has put appearance before this Court and stated that her statement U/S 164, Cr.P.C was recorded, stating therein that she was not abducted by any one and she has converted her faith from Christianity to Islam and entered into Nikah with respondent No.4/Amir Ali with her free will and presently she is

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living with him. The statement has been acknowledged by the I.O present before the Court and certified copy of statement U/S 164, Cr.P.C has been made part of the record.

9. When questioned about age of alleged abductee, the I.O contends that the alleged abductee was also produced before the doctor and as per report dated 08.05.2019 of Department of Diagnostic Imaging of PIMS, the estimated radiological bone age of Neha Pervaiz (new name Mariam) is 16 years +/- 1.96 SD, whereas the alleged abductee claims that she is 19 years old and she has written her date of birth in the Nikahnama as of 01.11.2000. On the other hand, the petitioner, mother of the alleged abductee has produced Birth Registration Certificate issued by Government of Punjab, wherein date of birth of alleged abductee is referred as 08.09.2006 and as per said document, she was 12 years and 07 months old at the time of her alleged abduction. I have meticulously perused the certificate, which contains the date of entry in the record of Government of Punjab as 15.09.2006, which shows that the document has not been prepared later on rather the same was prepared in due course of time.

10. Contrary to the said document, the alleged abductee has also produced the Marriage Registration Certificate registered with Government of Punjab Pakistan Municipal Committee Chanab Nagar, District Chaniot, wherein the date of registration of marriage has been referred as 06.04.2019 and the certificate was issued on 27.05.2019, wherein the age referred by Neha Pervaiz is 19 years with religion Islam.

11. Keeping in view above background, the primary question which requires determination is as to whether the statement given by the alleged abductee regarding conversion of her faith as well as entering into Nikah is valid on the touch stone that at the time of abduction she was not minor and she converted her faith and could enter into Nikah with her free will. Therefore, the alleged abductee was directed to appear before the National Commission on Status of Women, whereby Chairperson of the said Commission has recorded her statement and submitted report.

12. The National Commission on Status of Women was established under National Commission on Status of Women Act, 2012 and notified in the Extra Ordinary Gazette dated 10.03.2012. The Chairperson of the Commission has been appointed by the Federal Government in terms of section 4 of Chapter-II. Section 11 of Chapter-III provides functions and powers of the Commission, whereby the Commission is autonomous and independent regulator, which can examine any policy and programs and can review all Federal laws, rules and regulations affecting the status and rights of women and can suggest repeal, amendment or new legislation in order to eliminate discrimination, safeguard and promote the interest of women and achieve gender equality before the law in accordance with the Constitution and to fulfill the obligations under international covenants and commitments. Even otherwise, the Commission can receive any complaint or initiate any inquiry where the rights of women have been in question, therefore, this Court directed Chairperson NCSW to record the statement of alleged abductee and submit their independent report as to whether the abductee has converted her faith with her own free will and also entered into Nikah without any fear and influence. The report submitted by the Chairperson of the Commission before this Court attains qualified status to be believed as true. The concluding portion of the report submitted by the Chairperson before this Court is reproduced as under:-

“On the basis of the interview NCSW has come to the conclusion that Neha Pervaiz who comes from an underprivileged Christian household was not forced into marriage and has done so of her own free will. The reason for her conversion to Islam seems to be in order to marry him. Whether she had the capacity to enter marriage and to convert has to be determined by the Court as Neha’s correct age is not yet established.”

13. The above referred paragraph of the report resolves only question of conversion of faith. The other question relating to child marriage is based upon determination of age and as per report of the Commission correct age of Neha Pervaiz has not yet been established as there were different sets of dates, firstly the age in birth registration certificate submitted by mother is 08.09.2006, secondly the age referred in marriage certificate is as of 19 years and thirdly the age has been given by the doctor as 16 years +/-1.96 SC, therefore, in such eventuality the matter

requires evidence, which can only be settled by the Court of competent jurisdiction, where challan has been submitted in terms of sections 4, 5 & 6 of Child Marriage Restraint Act, 1929 as stated by the I.O.

14. In order to reach at just conclusion, the relevant provisions of section 4, 5 & 6 of Child Marriage Restraint Act, 1929 are reproduced as under:-

“S. 4. Punishment for male adult above eighteen years of age marrying a child.*---Whoever, being a male above eighteen years of age, contracts child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.*

S. 5. Punishment for solemnizing a child marriage. *Whoever performs, conduct or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.*

S. 6. Punishment for parent or guardian concerned in a child marriage.*---(1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful, or unlawful who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both:*

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.”

15. The above referred provisions can be invoked by the Magistrate 1st Class in terms of section 8 of the Act, therefore, this Court is of the view that where the complaint reflects the solemnization of marriage of minor, the police officials are bound to register criminal case in terms of the said Act for the purposes of prosecution as the terms “*child*” and “*child marriage*” defined in section 2 of the said Act means a person, who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age and a marriage to which either of the contracting parties is child. Term minor has also been defined in section 2 of the Act, which means that a person of either sex who is under eighteen years of age.

16. I have also gone through the provision of The Muslim Family Laws Ordinance, 1961, where section 5 provides compulsory registration of the marriage by the Nikah Registrar and the Union Council shall grant licence to one or more persons, to be called Nikah Registrar. Similarly, it is obligation of a person, who solemnizes such marriage to report the same to the Nikah Registrar for the purposes of registration and any person, who contravenes the same shall be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both. The procedure for appointment of Nikah Registrar has been provided in Rule 7 of The West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 and in terms of sub-rules 2 & 3 of Rule 7, any person who contravenes any of the conditions of such licence, the licence shall be revocable and he shall also be charged under the said provisions for the purpose of criminal prosecution.

17. Keeping in view above background and the stance taken by the alleged abductee before this Court, which has also independently been recorded by the Magistrate U/S 164, Cr.P.C as well as report of National Commission on Status of Woman, the instant writ petition stands disposed of as the question of age of minor can only be concluded after recording evidence by the competent Court and the same cannot be adjudicated upon by this Court in Constitutional jurisdiction.

18. The SHO/respondent No.2 has stated that four accused persons have already been granted post arrest bail and the challan will be submitted before the Trial Court as and when prepared.

19. It is pertinent to mention here that observations made hereinabove are tentative in nature and these shall not be taken into consideration during trial by learned Trial Court.

20. Before parting with the instant judgment, this Court feels it necessary to issue following directions to the authorities concerned to curb the evil of child marriages from the society as well as to ensure the protection of rights of minorities as guaranteed under the Constitution of Islamic Republic of Pakistan, 1973 :-

- (i) *The District Administration/licence issuing authority of Nikah Registrar shall enlighten the Nikah Registrars about the terms of Child Marriage Restraint Act, 1929 as well as punishment for violation of terms of Child Marriage Restraint Act, 1929.*
- (ii) *If any complaint is filed against the Nikah Registrar in terms of Child Marriage Restraint Act, 1929, who solemnizes marriage for facilitating and registering any marriage of any person against her or his wishes, the Chief Commissioner, Islamabad, Deputy Commissioner, Islamabad and the Chairman Union Council shall revoke licence of the Nikah Registrar and submit a complaint before the competent Court for criminal prosecution of the Nikah Registrar and any other person, who is involved in such kind of crime.*
- (iii) *The Chief Commissioner, Islamabad, Deputy Commissioner, Islamabad and the Chairman Union Council are also under legal obligation not to issue any licence to any such individual as Nikah Registrar, who is involved in such type of mal practice and till conclusion of the said complaint by the competent Court, his licence shall be suspended till final judgment of the Trial Court and if the Nikah Registrar is civil servant, departmental action shall also be taken against him.*
- (iv) *All the Nikah Registrars or other persons, who solemnize marriages are under legal obligation to scrutinize the credentials at the time of Nikah as to whether the marriage is solemnized with the free will of the parties and no child is exposed to marriage.*
- (v) *The Family Court in terms of The West Pakistan Family Courts Act, 1964 are also bound to give their findings in such type of cases and if a Family Court comes to the conclusion that the marriage has been registered in violation of law, the Family Court shall refer the complaint to the concerned Magistrate to proceed in terms of Child Marriage Restraint Act, 1929 against the persons, who have solemnized and registered such marriage.*
- (vi) *IG, Islamabad Police, all the DPOs and the SHOs are under obligation to protect rights of the minorities by all means and if any complaint is filed by any of the family members or by parents of the minor that he or she has been forced to convert his or her religion, such complaint shall be taken up on priority basis and statement of the effectee shall be recorded by the Magistrate at first instance as such kind of practice will bring bad name to the state of Pakistan.*
- (vii) *Federal Government shall fulfill its constitutional obligation to protect the minors as well as children in terms of international covenants and commitments and to establish Child Protection Bureau and Child Protection Homes to provide protection to such kind of minors, who are exposed to cruelty, inhuman behavior and infringement of child rights by family members, care givers or their employers if any.*

- (viii) *The NADRA Authorities as well as the Registration Authorities of the Government while issuing Marriage Registration Certificate are bound to link Birth Registration Certificate to their system in order to avoid any conflicting age contents and to avoid legal complications.*
- (ix) *Every birth entry as well as marriage certificate should be recorded in the NADRA registration record and in case of conflict of date the subsequent document shall not be registered unless valid order from the competent Court or the authority is not placed before the relevant officer.*
- (x) *Mere submission of oral entries for the purpose of age should not be accepted unless valid documentary proof of Union Council of birth certificate is produced.*

21. Copy of this judgment be transmitted to Chief Commissioner Islamabad being head of District Administration Islamabad as well as IG, Islamabad Police for information and compliance.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 25th June, 2019.

JUDGE

Approved for Reporting.

JUDGE

R.Anjam