

JUDGMENT

Before Shaukat Aziz Siddiqui, J

MARYAM NOOR and another---Petitioners

Versus

The STATE and another---Respondents

W.P. No. 941 of 2018, decided on 4th May, 2018.

SHAUKAT AZIZ SIDDIQUI, J.---Petitioners invoked the constitutional jurisdiction of this court by way of filing instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan with the following prayer:-

"Wherefore in the premise, it is most respectfully prayed that:

- a. The FIR No. 17/ 2018 dated 12.01.2018 under sections 420, 468 and 471 Police Station Ramna may kindly be quashed.
- b. The legal actions may kindly be initiated against respondent No.2 for harassing, defaming and registering false FIRs against the petitioners.
- c. Directions may kindly be issued to the police officials not to register fake FIRs against the petitioner and her brother.

This Hon'ble Court may grant any other relief deemed appropriate in view of the facts and circumstances of the case."

And presented the facts as under;

2. That Nikah of petitioner No.1 with respondent No.2 was solemnized on 03.05.2007, out of this wedlock two daughters namely Rahima Nisar and Fatima Nisar, aged 10 years and 5 years were born. That respondent No.2 pronounced talaq upon petitioner No.1 on 24.09.2016, resultantly relationship of husband and wife terminated permanently. That respondent No.2 lodged an FIR No.17/2018 dated 12.01.2018 against the petitioners, wherein, it has been alleged that the original passports, birth certificates and family registration certificate of the minors are in his possession and petitioners have made a fake report of lost documents, on which stamp of police station Rata Amral is also fictitious. On the basis of this report petitioner No.1 obtained fresh passports of the minor girls and took them abroad on 20.12.2017, complainant further alleged that petitioners had threatened him that they would take his daughters abroad, forever. That the court has granted the interim custody of the minors to petitioner No.1 being real mother and suits for jactitation of marriage and Appointment of Guardian are also pending before the court of competent jurisdiction. That infact, petitioner No.1 went for performing 'Umrah' along with minors and this fact was well within the knowledge of respondent No.2. That petitioners claim is that alleged fake police report for obtaining fresh passports was provided to petitioner No.1 by respondent No.2 himself.

3. Learned counsel for Petitioners contended that impugned FIR has been lodged just to blackmail, humiliate and harass petitioner No.1 and in order to defame her in the society, to compel petitioner No.1 to surrender the custody of minors and for waiving her accrued valuable rights. The very registration of case is tainted with mala fide, which is result of lucrative influence exercised by respondent No.2, on the local police. Learned counsel further contended that petitioner No.1 had already informed the Superintendent of Police that passports of the minors are in the custody of respondent No.2 and also that she is not safe from the illegal and harmful designs of respondent No.2. Learned counsel added that another application for registration of FIR has also been filed by respondent No.2, wherein it has been alleged that petitioners have received an amount of Rs.20 million from him, all the complaints filed by respondent No. 2 are spurious and are just intended to initiate false criminal proceedings against the petitioners to settle family matters. Learned counsel lastly contended that the entire proceedings pending against the petitioners are totally misconceived as from the collective reading of FIR no criminal intent is found, therefore, the machinery of criminal law could not be set in motion and further continuation of trial would be a futile exercise.

4. On the other hand learned counsel for respondent No.2 along with learned State counsel opposed the request of quashment of FIR and prayed for the dismissal of writ petition. Learned counsel for respondent No.2 while rebutting the contentions raised by the learned counsel for petitioners contended that birth certificates and family registration certificate of the minors were in possession of respondent No.2 and the petitioners have made a fake report of lost documents without informing respondent No.2 who is the real father of the minors, with the intention to take them abroad, on which stamp of Police Station Rata Amral is also fake and this act of the petitioners constitutes serious offence under the criminal law, therefore, present petitioners does not deserve any leniency and they must be tried under the law. That respondent No.2 denies pronouncement of divorce.

I have heard the learned counsel for parties and have gone through the relevant record available on file.

5. The stand of complainant/respondent No.2 in the impugned FIR is that petitioners have taken his daughters abroad with the intention to keep them away from him forever. Whereas, perusal of record reveals this fact that petitioner No.1 along with minors proceeded to Kingdom of Saudi Arabia to perform 'Umrah' and returned back to Pakistan, which by itself, prima facie, does not disclose any intent regarding taking the minors away rather negates the stance of complainant. The interim custody of the minors has been given to petitioner No.1 (real mother of the minors) by the court of competent jurisdiction. Moreover, it is observed that another petition under section 22-A/B, Cr.P.C. was filed before learned Justice of Peace, against the petitioners, which has been dismissed, vide order dated 02.03.2018 on the ground that applicant has tried to convert a civil family dispute into a criminal case. In addition to that FIR bearing No.832/2016 was also lodged against petitioner No.2, who was exonerated by the local police. The point whether accused petitioners are having any nexus with the allegations leveled against them in the impugned FIR regarding preparation of fake documents is concerned, no material has been collected by the local police to connect petitioners with the commission of alleged offence, even prima facie.

6. Furthermore, petitioner No.1 has filed suit for jactitation/ dissolution of marriage on the basis of pronounced divorce, is pending before Judge Family Court Rawalpindi, in which next date

of hearing is 14.05.2018 and another application for Appointment of Guardian is also pending between the parties before the learned Guardian Judge Islamabad. Another, important fact is that present petitioner No.1 is the fourth wife of respondent No.2 and latter claims that he did not pronounce divorce upon petitioner No.1. This dispute can only be resolved by the learned Judge Family Court. In order to probe the possibility of reconciliation between petitioner No.1 and respondent No.2, this court provided opportunity of meeting but there seems, serious trust deficit, although respondent No.2 made a statement that he wants petitioner No.1 to join him and live as wife. I failed to understand that how respondent No.2 can win the heart of petitioner No.1 by lodging FIR's like one in hand. Respondent No.2 should have realized this fact that petitioner No.1, even if divorced, shall remain mother of his daughters till the Day of Judgment likewise, respondent No.2 shall remain father, although petitioner No.1 and respondent No.2 can be ex-wife and ex-husband. I am fully convinced that registration of FIR is tainted with mala fide, result of colourable exercise of authority, an abuse of the process of law, without commission of any offence and rarity in the eyes of law. Guidance in this regard has been sought from different authoritative pronouncements of Hon'ble Supreme Court of Pakistan, which are; 1993 SCMR 71, 2000 SCMR 122 and 2012 SCMR 94.

7. Judgments on the issue provides following situations wherein discretion of exercising the authority of quashment of FIR can be used.

- (i) If from the bare reading of the FIR it does not make out any cognizable offence.
- (ii) If the same has been registered without lawful authority and jurisdiction.
- (iii) If any civil liability is given the shape of criminal liability.

Even in the Judgments through which exercise of such discretion has been dis-approved "door of extra ordinary circumstance" has been kept open. Guidance in this regard is sought from 1996 SCMR 186, 2006 SCMR 276 and PLJ 2011 SC 1932(sic.).

8. In case titled as "Sheikh Muhammad Tahir v. The State and others" reported as 2012 PCr.LJ 1075, this court held as under:

"13. The High Court being custodian of the fundamental rights of the citizens is under obligation to provide shield against any invasion made on the guaranteed constitutional rights and protect the subject from discrimination, exploitation, colourable exercise of authority, bolted actions, mala fide and stinking proceedings."

9. To protect citizens from malicious prosecution is the duty of constitutional courts and in light of the law laid down by the superior courts, instant matter is the fit case, where discretion needs to be exercised.

10. Considering the aforementioned facts, writ petition in hand is allowed and as prayed for FIR No. 17/2018 dated 12.01.2018, is hereby, quashed.

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