

Judgment Sheet
IN THE PESHAWAR HIGHCOURT,
ABBOTTABAD BENCH.

Judicial Department

W.P No. 442-A/2020
Muhammad Riaz Vs. The State and others.

Date of hearing: 05.05.2020

Petitioner by: Mr. Muhammad AsjadParvezAbbasi, Advocate.

State by: Raja Muhammad Zubair, AAG.

Respondent No. 4 by: Mr. Junaid Anwar Khan, Advocate.

JUDGMENT

AHMAD ALI, J. Through the present writ petition, the petitioner has approach this court with the following prayer:-

“On acceptance of instant writ petition, the wife of the petitioner No. 1 namely “Yaseena D/o Gul Zareen” be released from the illegal and improper custody of respondent No. 4 and be brought before the court for her immediate release or any other relief which this Hon’ble Court deem fit and necessary be granted to the petitioner.”

2. It is averred by the petitioners that the Nikahof detenueMst. Yaseena Bibi was performed with petitioner No. 1, however, the Rukhsati had not taken place and meanwhile one

Raheem Shah S/o Abdul Hakeem was murdered and it is alleged that said murder was committed due to illicit relations between the deceased and detenue Mst. Yaseena Bibi. Petitioners further alleged that now the respondents are bent upon to commit murder of Mst. Yaseena Bibi in the name of family honour and as such her recovery from the clutches of respondent No. 4 is necessary to save her life.

3. This case was fixed for 06.05.2020, but today, learned counsel for the respondent moved an application for early fixation of the case as the girl/detenue was also produced by the SHO concerned in the Court today. Learned counsel for the petitioner, present in the court room in some other case, was put on notice, who also got no objection on fixing the case for today. Therefore, with the consent of learned counsel for the parties, the case is fixed for today.

4. Alleged detenue Mst. Yaseena Bibi D/o Gul Zareen was produced by the SHO concerned and her statement was recorded wherein she negated the allegations contained in the instant petition and stated that she was never married or engaged to the petitioner and she was residing with her parents with her free-will and consent who are taking care of her. She further stated that she also filed a complaint against the petitioners before the learned Illaqa Magistrate Mansehra for

extending threats to her and her statement was also recorded before the said Court. She produced copies of her complaint, statement and copy of CNIC of her father which are exhibited as Ex PHA, PHB and PHC respectively.

5. Learned counsel for the petitioner mainly objected on the identification of the girl produced by the SHO concerned by contending that she is not the detenue. For the purpose of identification of the girl, the mother of the petitioner appeared before the Court and stated that she was not the detenue. However, the girl was identified by her father present in the Court, as well as by the local police to be Mst. Yaseena Bibi.

6. Now adverting to the allegations contained in the instant petition. The petitioners alleged that the detenue was married to the petitioner No. 1, but no proof in this respect could be brought on record. Similarly, it is alleged that murder of one Raheem Shah was the result of illicit relations between deceased and the detenue, however, the copy of FIR of the said case, available on file does not disclose such motive. The petitioners also apprehended danger to life of the detenue, however, the detenue herself appeared and negated such threat and supported her stance by submitting copies of her complaint and statement recorded before the learned Illaqa Magistrate, wherein she has averred that she apprehends danger at the

hands of accused. In the case of “*Ali Muhammad Vs. The state (2013 SCMR 1484)*”, the august Supreme Court of Pakistan held that:-

“It is evident from the facts of the present case that Mst. Naseem Akhtar is a grown up young lady and she is not involved in any criminal case as an accused person. Her consistent stand before the Lahore High Court, Lahore and before this Court has been that she was not in any kind of confinement or under any restraint while living with her father. Although she has two rival suitors yet she has expressed a clear desire before this Court that she wishes to go and live with her father namely Ali Muhammad petitioner. We have found it to be rather disturbing that despite her eagerness to continue living with her father she had been deprived of her liberty and ordered by the learned Judge-in-Chamber of the Lahore High Court, Lahore to be lodged at a Dar-ul-Aman and that too for an indefinite period. It is quite ironical and shocking that habeas corpus proceedings before the Lahore High Court, Lahore, which were meant to secure release of a person from an illegal or improper custody or

confinement, had been utilized in the present case for depriving a free person of her liberty and the net result achieved was that a grown up young lady who was not found to be in any kind of confinement or under any restraint had been locked up and incarcerated within the confines of a Dar-ul-Aman for an indefinite period! Such an approach adopted and the result achieved by the learned Judge-in-Chamber of the Lahore High Court, Lahore surely ran contrary to the very essence and purpose of a writ or petition for habeas corpus which is securing freedom and not curtailing liberty.”

Similarly, in the case of “***Abdul Majid Vs. S.H.O Police Station Shujabad (1987 SCMR 282)***”, the august Supreme Court, while dismissing the petition for leave to appeal, held that:-

“This is a petition for special leave to appeal from the order dated 1-11-1986 of the Lahore High Court dismissing the habeas corpus petition of the petitioner. The alleged detenu is a young girl. According to the petitioner she is above 15 years of age. The petitioner claims that she is married to

him and is being illegally detained by her father. It may be mentioned that a criminal case under sections 10 and 11 of the Zina (Enforcement of Hudood) Ordinance had been registered against the petitioner at the instance of her father.

2. We have heard the learned counsel and see no good ground for interfering with the order of the High Court. The petition for leave is, therefore, dismissed.”

7. Proceedings under Section 491 & 491-A Cr.P.C are summary in nature and are not intended to go beyond the summary consideration of the questions essentially relevant to the alleged detention i.e. whether a detenue is to be set at liberty and as a consequence thereof, be permitted to go with the person of his or her own choice, or to drop the proceedings when the detention is found legal. Court while deciding an application under Section 491/491-A Cr.P.C is not required to go into the question of status or relationship of the parties by holding full-fledged trial of the counter-claims and it should concern itself only with free will of the detenue.

8. The petitioner claims that the detenue is his wife, however, the detenue as well as the respondent No. 4 have

totally denied the said averment. It is inappropriate and undesirable, if not illegal, for the High Court to determine the fate of the couple by adjudicating the validity of marriage on the touchstone of the Injunctions of Islam, in the proceedings under Section 491 Cr.P.C.

9. There is nothing on record to suggest that either the detinue is in illegal custody or there is any risk to her life at the hands of respondent No. 4. The petitioner has failed to show any *locus-standi* to file instant petition because as per available record, he has no relation with the detinue. On the other hand, the respondent No.4 is real father of the detinue and the detinue in her statement before the court, stated that she is comfortable in the company of her father and is not in illegal confinement.

10. For the reasons stated above, the petition in hand stands dismissed.

Announced
05.05.2020

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