

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT**  
**BAHAWALPUR BENCH, BAHAWALPUR**  
**JUDICIAL DEPARTMENT**

W.P. No.7422 of 2022

Mst. Shahnaz Mai      **VS.**      Additional District Judge etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary
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04.10.2022      Ch. Muhammad Ishfaq Teja, Advocate.

Through this Constitutional Petition, the petitioner has challenged the order dated 03.03.2021 passed by the learned Guardian Judge, Sadiqabad whereby the application under Section 25 of the Guardian and Wards Act filed by respondent No.3 for the custody of minor namely Farah Bibi, was accepted by the learned Guardian Judge, Sadiqabad and also assailed the judgment and decree dated 28.10.2021 passed by the learned Additional District Judge, Sadiqabad, who dismissed the appeal of the petitioner.

2. Brief facts of the case are that respondent No.3 Mst. Zoriyat Mai wife of Akbar Ali filed petition under Section 25 of the Guardian and Wards Act for the custody of her minor daughter namely Farah Bibi, contending that Jewan-respondent No.5, cousin of her husband, often used to took her daughter (minor) to his house. That the petitioner and respondents No.4 & 5 illegally detained the minor and disallowed respondent No.3 to meet her minor daughter. The petitioner,

respondents No.4 and 5 filed joint contesting written reply by raising therein certain preliminary objections and also claimed that the minor Farah Bibi is daughter of petitioner's husband Shabbir Ahmad. The learned Guardian Judge as per the divergent pleadings of the parties, framed issues, recorded pro and contra evidence of both the parties and accepted the application of respondent No.3 vide order dated 03.03.2021. Against the said order, the petitioner filed appeal before the learned Additional District Judge, Sadiqabad which was dismissed vide judgment dated 28.10.2021. Hence, this writ petition.

3. I have heard the arguments advanced by the learned counsel for the petitioner and gone through the record with his able assistance.

4. The parties to the lis are close relatives. Respondents No.4 and 5 are married to each other and the petitioner is real mother of respondent No.4. The husband of respondent No.3 is first cousin of respondent No.5. The main controversy in this case is centered around issues No.1 & 5, which are as under:-

1. *Whether the petitioner is real mother of the minor Mst. Farha Bibi as alleged in petition? OPA.*
5. *Whether Shabbir Ahmad is real father of the minor, hence, petition for custody is liable to be dismissed? OPR*

In paragraph No.2 of the application respondent No.3 took following stance:-

"یہ کہ مسئول علیہ نمبر 1 تا 3 نابالغہ کے اجنبی ہیں نابالغہ کی اچھے طریقے سے پرورش نہ کر رہے ہیں۔ اور نہ ہی نابالغان کی تعلیم پر توجہ سے رہے ہیں۔ سائلہ

نابالغہ کی حقیقی والدہ ہونے کے ناطے قدرتی گارڈین ہے۔ نابالغہ بھی سائلہ سے بے حد مانوس ہیں اور سائلہ بھی نابالغہ سے اپنی جان سے بڑھ کر محب کرتی ہے۔ اور اپنی نابالغہ بیٹی کے بغیر زندہ رہنے کا تصور بھی نہ کر سکتی ہے۔"

Respondent No.3 in order to dislodge the onus of issue No.1 herself appeared in the witness box as AW1 and produced her statement in chief in affidavit (Ex.A1) and deposed almost the same facts as narrated in the application and despite searching cross examination nothing adverse to stance was elicited. Akbar Ali, husband of respondent No.3, appeared as AW-2 and substantiated the stance of respondent No.3. In cross examination he deposed that:

"جیسے ہی فرح بی بی پیدا ہوئی میں نے اپنے کزن جیون کو دے دی جس نے کہا کہ میں اسے پالوں گا اور پڑھاؤں گا۔"

He further deposed that

"ایک دن کی فرح بی بی تھی جب میں نے جیون کو دے دی۔"

5. Conversely, petitioner and respondents No.4 & 5 in their joint written reply asserted that minor Farah Bibi is real daughter of Shabbir Ahmad, husband of the petitioner. In reply to the guardian petition, the petitioner and respondents No.4 & 5 in response to paragraphs Nos.1 & 2, have asserted as under:

"1. یہ کہ فقرہ نمبر 1 درخواست مسول علیہ نمبر 2 بابت رشتہ داری سائلہ کی حد تک درست ہے بقیہ غلط ہے۔ مسول علیہ نمبر 2 اور سائلہ کی برادری کے جھگڑے ہیں جسکی بابت سائلہ نے قبل ازیں غلط اور بے بنیاد واقعات ترتیب دیکر مسول علیہ نمبر 2 کی بیوی اور ساس کے خلاف درخواست زیر دفع 491 ض ف گزاری جو مورخہ 18-11-29 کو خارج ہوئی۔ نابالغ فرح بی بی دختر شبیر احمد جو کہ مسول علیہ نمبر 3 کا خاوند ہے ریکارڈ سکول نابالغ فرح بی بی میں بھی نابالغ کا والد شبیر احمد ہے جسکو درخواست ہذا میں فریق نہ بنایا گیا ہے۔ نقل سکول سرٹیفکیٹ نا

بالغ نقل درخواست و حکم 491 ض ف لف ہے۔ نقل پیدائش سرٹیفکیٹ لف ہے۔

2. یہ کہ فقرہ نمبر 2 درخواست غلط اور بے بنیاد ہے۔ نابالغ فرح بی بی اپنے والد شبیر احمد کے پاس ہے جو اُسکی اچھے طریقے سے تعلیم تربیت پرورش کر رہا ہے۔"

In support of above assertion, petitioner herself appeared as R.W.1 and Jeewan as R.W.2. Further, RW-2 while appearing as witness in his cross examination deposed that

"مجھے علم نہ ہے کہ فرح بی بی زوریت بی بی کی پیدائش ہے یا شہناز بی بی کی پیدائش ہے"

He further deposed that

"میری بیوی کو بھی علم نہ ہے کہ فرح بی بی سائلہ زوریت کی بیٹی ہے یا شہناز بی بی کی بیٹی ہے"

He further deposed that

"مجھے علم نہ ہے کہ فرح بی بی زوریت کی بیٹی ہے یا میری ساس شہناز بی بی کی بیٹی ہے"

6. From the perusal of the facts and record, admittedly, Akbar Ali husband of respondent No.3 and Jewan-respondent No.5 are real paternal cousins. The respondent No.3 stated that the petitioner and respondents No.4 & 5 used to take minor to their house due to close relationship of the parties and affection towards the minor. A controversy with regard to the custody of minor arose and the respondent No.3 filed petition under Section 491 Cr.P.C. for recovery of her minor daughter namely Farah against the petitioner and respondents No.4 & 5. In the proceeding initiated under Section 491 Cr.P.C Shabbir Ahmad husband of the petitioner made an unequivocal statement before the learned Additional District Judge/Ex-Officio Justice of Peace to the effect that Farah Bibi is not his real daughter from Mst. Shehnaz

(petitioner) rather he adopted her from Mst. Zuriat Mai (respondent No.3) immediately after birth of baby girl who was only aged about an hour. The said statement is as under:-

“Stated that the alleged detainee Mst. Farah Bibi, 5/6, is not my daughter from my wife Mst. Shehnaz. My wife Mst. Shehnaz gave me the custody of this minor to me when she was just one hour old; I had been getting treatment to minor Mst. Farah in the hospital for 15 days; neither parents of the minor nor anyone else has ever demanded me the return of minor Mst. Farah Bibi; I have got the minor admitted in the School; I love minor from the core of my heart; the custody of the minor is not illegal; petition may be dismissed.”

The learned Ex-Officio Justice of Peace / Additional Sessions Judge, Sadiqabad vide order dated 29.11.2018 dismissed the petition under Section 491 Cr.P.C., however observed that the respondent No.3 may approach the Guardian Court for custody of the minor. For ready reference, relevant portion of the order dated 29.11.2018 is reproduced as under:

“8... The question as to whether custody of the minor/alleged detainee is illegal or improper could evenly be ironed out by the Guardian Court as per mandates of the Guardian and Wards Act, 1890, while keeping in view the paramount consideration i.e. welfare of the minor. The minor, 5/6, has been with the respondents as adopted child. The custody of the minor cannot be stated as improper or illegal as envisaged by the mandate of section 491 Cr.P.C. Legal light has been sought from esteemed case law of Hon’ble Lahore High Court, reported as 2012 MLD 1335 “(Mst. Chanda Vs. Station House Officer & others). The petition in hand stands dismissed with the observation that the petitioner will be at liberty to file application under Guardian and Wards Act, 1890 for redressal of her grievance, if so advised.”

Shabbir Ahmad, husband of the petitioner, stated that Farah Bibi is not his daughter rather she adopted her from respondent No.3. It is thus admitted on record that Farah Bibi minor is real daughter of respondent No.3 and it is settled law that admitted facts need not to be proved. Reliance is placed on the cases of Mst. Nur Jehan Begum through LRs v. Syed Mujtaba Ali Naqvi (1991 SCMR 2300), Chief Engineer, Irrigation Department, N.W.F.P. Peshawar and 2 Others v. Mazhar Hussain & 2 Others (PLD 2004 SC 682) and Mst. Rehmat and others Vs. Mst. Zubaida Begum and others (2021 SCMR 1534). The petitioner did not challenge the aforesaid statement/order before any forum, as such, the same has attained the status of finality and has become past and closed transaction. Reliance is placed on Pakistan International Airlines Corporation Vs. Aziz ur Rehman Chaudhary and another (2016 SCMR 14).

7. As per documentary evidence, after adopting the minor, the petitioner got entered the name of Shabbir Ahmad Chatta at the time of issuance of birth certificate in the column of 'Father's Name' of the minor instead of got entering the name of her real father Akbar Ali, which act of the petitioner is not only against the law but also against the injunctions of Islam. In Quran Majeed, the matter of calling an adopted child by his real father's name baptizing an adopted child has been elucidated as under:

“Allah hath not assigned unto any man two hearts within his body, nor hath He made your wives whom ye declare (to be your mothers) your mothers, nor hath He made those whom ye claim (to be your sons) your sons. This is but a saying of your mouths. But Allah saith the truth and He showeth the way. Proclaim their real parentage. That will be more equitable in the sight of Allah. And if ye know not their fathers, then (they are) your brethren in the faith, and your clients. And there is no sin for you in the mistakes that ye make unintentionally, but what your hearts purpose (that will be a sin for you). Allah is ever Forgiving, Merciful.” (*Muhammad Pickthal*)

خدا نے کسی آدمی کے پہلو میں دو دل نہیں بنائے۔ اور نہ تمہاری عورتوں کو جن کو تمہاں کہہ بیٹھتے ہو تمہاری ماں بنایا اور نہ تمہارے لے پالکوں کو تمہارے بیٹے بنایا۔ یہ سب تمہارے منہ کی باتیں ہیں۔ اور خدا تو سچی بات فرماتا ہے اور وہی سیدھا راستہ دکھاتا ہے۔ مومنو! لے پالکوں کو اُن کے (اصلی) باپوں کے نام سے پکارا کرو۔ کہ خدا کے نزدیک یہی بات درست ہے۔ اگر تم کو اُن کے باپوں کے نام معلوم نہ ہوں تو دین میں وہ تمہارے بھائی اور دوست ہیں اور جو بات تم سے غلطی سے ہو گئی ہو اس میں تم پر کچھ گناہ نہیں۔ لیکن جو قصد دلی سے کرو (اس پر مواخذہ ہے) اور خدا بخشنے والا مہربان ہے (فتح محمد جالندھری)

[ Surah Al-Ahzab : 4 - 5 ]

8. Further, as per Para 352 and 354 of Mohammadan Law, the custody and welfare of a minor lies with the natural parents particularly the mother who is bestowed with inbuilt, inherent clemency, tenderness, love and affection to take best care of the minor more than anyone else in this world. The Hon'ble Supreme Court of Pakistan in this regard has held in a case cited as *Mrs. Shaukat Khalid Vs. Additional District Judge, Rawalpindi and 2 others* (1991 SCMR 19) as under:

“4. Learned counsel for the respondents made a categorical statement that the minor is now living in

a very happy and cordial atmosphere. Be that as it may even if it would have been little indifferent, she sharing with her own parents, their joys and worries, would be more natural than her passing these very important years of adolescence with a foster-mother. And this is in accord with the principles enunciated by Islam and contained in Quran and Sunnah. The adopted parents have never been treated as the same or equal to the real parents. In this context, therefore, we do not accept the contention of the learned counsel that it was "unnatural" to transfer the custody of the minor from her foster-mother to real mother and father. What Islam enjoins and teaches, in our system of law, is natural and not unnatural. Similarly his reliance on a stray case where some exception might have been made on account of extraordinary circumstances of the case for making a departure from the normal rule, is of no avail to the petitioner. As already found in the foregoing discussion in the present case it is in the welfare of the minor to remain in the custody of the natural parents. It is in accord with natural and also with the law."

Another reliance is placed on cases cited as Shabana Naz Vs. Muhammad Saleem (2014 SCMR 343) and Mst. Beena Vs. Raja Muhammad and others (PLD 2020 SC 508).

9. Respondent No.3 is real mother and natural guardian of the minor, thus the welfare of the minor exclusively lies with her, whereas the petitioner has no direct blood relation with the minor. Furthermore, as per documents available at page Nos.62 & 63 of this petition, the petitioner has handed over the custody of the minor to respondent No.3 on 20.09.2022 in the execution application filed before the learned Guardian Judge, Sadiqabad.

10. Learned counsel for the petitioner has not pointed out any illegality or material irregularity in



the impugned orders passed by the learned Courts below and has also not identified any jurisdictional defect. The concurrent findings of facts are against the petitioner which are not called for any interference by this Court in absence of any illegality or any other error of jurisdiction. Reliance is placed on the case of Zulfiqar Ali Vs. Judge, Family Court & 7 Others (2007 MLD 1710).

11. As discussed above, the instant writ petition, being devoid of any force, is hereby **dismissed** in *limine*.

**(Ch. Muhammad Iqbal)**  
**Judge**

Approved for reporting.

**Judge**

**Khurram H.**