

HIGH COURT OF SINDH AT KARACHI

**Present: Mr. Justice Abdul Maalik Gaddi
Justice Mrs. Kausar Sultana Hussain**

Constitution Petition No.D-3104 of 2020

Mehik Kumari alias Naniki Kumari
through her mother Mst. Kanta
Kumari Petitioner

versus

Province of Sindh
& others Respondents

Constitution Petition No.D-3105 of 2020

Ali Raza Petitioner

versus

SHO police station Civil Line
Jacobabad & others Respondents

Date of hearing : 09.07.2020

Date of order : 09.07.2020

Mr. Abid Hussain Qadri, Advocate for the Petitioner Mehik Kumari, through her real mother Mst. Kanta Kumari, in C.P. No.D-3104/2020.

Ms. Shahnaz Sehar, Legal Officer, Panah Shelter Home, Karachi along with Petitioner Mehik Kumari @ Naniki and after embracing Islam, her new name is Aleezah.

Mr. Dildar M.S. Shaikh, Advocate along with Petitioner Ali Raza Solangi in C.P. No.D-3105/2020 and for Respondent Ali Raza Solangi in C.P. No.D-3104/2020.

Mr. Salman Talibuddin, Advocate General, Sindh along with Ms. Leela Kalpana Devi, Additional Advocate General, Sindh along with ASI Inayat Ali, P.S. Civil Line, Jacobabad.

Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

Mst. Kanta (mother of Mehik Kumari, now Aleezah) and her husband Vijay Kumar (father of Mehik Kumari, now Aleezah) are present.

JUDGMENT

Abdul Maalik Gaddi, J.– By this common judgment, we intend to decide the captioned Constitutional Petitions filed by the parties

against each other relating to the common question of law and facts. Precise facts leading to these petitions are that Ms. Mehik Kumari @ Naniki Kumari, who was Hindu by religion had voluntarily embraced Islam and change her name from Ms. Mehik Kumari @ Naniki Kumari to Ms. Aleezah; after embracing Islam, she contracted marriage with Ali Raza Solangi; due to this un-ceremonial marriage, her parents got annoyed and initiated criminal litigation against Ali Raza Solangi in the shape of FIR bearing No.7 of 2020 registered under Section 365-B/450/392/34, PPC at police station Civil Line District Jacobabad and the said FIR was disposed of in 'C' class. However, another FIR being No.14 of 2020 was registered on behalf of State against Ali Raza Solangi under Section 3-4 of Child Marriage Restraint Act, 2013, which has been challaned before the concerned Court; during pendency of said litigation and in Proceeding No.1 of 2020 under Section 552, Cr.P.C., learned IInd Additional Sessions Judge, Jacobabad while disposing of the said proceeding passed order that Ms. Mehik Kumari @ Naniki Kumari now Aleezah is a victim child and below the age of eighteen (18) years and then directed the Incharge Darul Aman to shift the custody of said victim child to nearest Child Institution and then she was shifted to Panah Shelter Home at Karachi.

2. In both the petitions, the petitioners besides other grounds are claiming the custody of Mehik Kumari @ Naniki Kumari, now Muslim name, Aleezah.

3. On perusal of record, it reveals that the question which requires consideration of this Court is that whether the petitioner in C.P. No.D-3104 of 2020 being real mother, Hindu by religion, is entitled to the custody of her daughter Ms. Mehik Kumari @ Naniki

Kumari, now named as Aleezah irrespective of the fact that she had embraced Islam?

4. Arguments heard and record perused.

5. In order to resolve the controversy in hand, this Court had called Ms. Mehik Kumari @ Naniki Kumari, now named as Aleezah, from “Panah Shelter Home, Karachi” for recording her statement. On her arrival in Court, her statement was recorded in open Court with regard to ascertain the real facts and to reach at correct conclusion. For the sake of convenience, it would be proper to reproduce the statement of Mst. Mehik Kumari @ Naniki Kumari, now named as Aleezah herein below:-

“STATEMENT OF PETITIONER

Name	:	Mehik Kumari @ Naniki Kumari, now Aleezah
Father Name	:	Vijay Kumar
Age	:	15-16 years
Address	:	Jacobabad.

To Court.

I have been produced by the Incharge Panah Shelter Home, Karachi. I am in Panah Shelter Home for the last six (6) months. I have been sent to Panah Shelter Home by the order of IInd Additional Sessions Judge, Jacobabad and I am in detention since then. On 17.01.2020, I was married with Ali Raza Solangi after embracing Islam and Nikah was performed at Dargah Imrot Sharif. After marriage, I remained three (3) days with Ali Raza Solangi. As per Medical Certificate, my age is 15-16 years. I understand all facts and consequences as I am sui-juris. Presently, I want to go/join with my mother namely, Mst. Kanta. Ali Raza Solangi spoiled my life. I don't want to live in Panah Shelter Home, Karachi. This is my statement.

Note: This statement is recorded in open Court and parties present in Court have acknowledged the same.

Karachi.
Dated: 09.07.2020”

6. From the perusal of above statement of Ms. Aleezah, it can be deduced that she had contracted marriage with Ali Raza Solangi after embracing Islam without any inducement. She in her statement

stated that she is sui-juris. It means that she has attained the age of puberty. However, in her statement, she categorically stated that she wants to go with her mother, who is by religion is Hindu. Perusal of record reflects that in Nikahnama, which has not been denied by any of the party, her age is mentioned as eighteen (18) years, whereas, she has been medically examined and report of medical board on record showing her age as 15 to 16 years, meaning thereby, she has attained the age of puberty.

7. Learned Counsel for petitioner in C.P. No.D-3105 of 2020 contended that since Mst. Aleezah has embraced Islam, therefore, her custody could not be handed over to her mother, who is Hindu by religion and if custody is handed over to her, her life would be in danger. This contention is totally fallacious for the reasons that there is no prohibition under Islamic Law as well as Law of Land to allow a Muslim Girl/Women to live/join/reside with her parents, who are Hindu by religion. Besides, Article 4, 9, 15 and 20 of the Constitution of Islamic Republic of Pakistan, 1973, which is the supreme law of the land, categorically state that no person shall be deprived from his/her life and liberty save in accordance with law and so also opt his/her religion, meaning thereby, no one can be forced to live his/her life against his/her whims and wishes.

8. As regard to the contention of learned Counsel for petitioner Ali Raza Solangi that by joining the company of Hindu mother the Nikah/marriage of Ms. Aleezah which was taken place with Ali Raza Solangi would be "Fasid", this contention is misconceived. Islam does not *ipso facto* deprived a muslim girl from joining the company of her non-muslim parents. Not only this, by merely joining the company of Hindu parents could not effect the Nikah of Ms. Aleezah.

9. In the case in hand, it has been admitted by Ms. Aleezah (newly Muslim Girl) that she had contracted marriage with Ali Raza Solangi after embracing Islam; however, now she wants to go with her mother, who is present in Court, in this scenario, and under the change circumstances, we have no option except to hold that she is set at liberty to go where ever she wants. Since she wants to go with her mother, who is present in Court; therefore, Incharge Panah Shelter Home Karachi is directed to hand over the custody of Ms. Aleezah to her mother namely Mst. Kanta Kumari subject to her furnishing P.R. bond in the sum of Rs.200,000/- [Rupees Two Hundred Thousand only] before the Nazir of this Court for safety of Ms. Aleezah as well as for ensuring her future appearance before any Court of law as and when required. Incharge Panah Shelter, Home, Karachi, is directed that after furnishing requisite P.R. bond by the mother of Ms. Aleezah, handed over the custody of Ms. Aleezah to her mother Mst. Kanta Kumari after fulfillment of all legal formalities.

10. So far as, the question that Ms. Aleezah was induced/threatened to embrace Islam and contracted marriage with Ali Raza Solangi or she contracted marriage with her own will or wish are those questions which could only be decided by the competent Court having jurisdiction and for that purpose, both parties are at liberty to approach proper forum for redressal of their grievances, if any, so advised.

11. Needless to say that in these petitions, certain disputed questions of facts have also been agitated by the parties and in our opinion, these disputed questions of facts could not be resolved under constitutional jurisdiction of this Court. As observed above,

these disputed questions could be agitated before the competent Court(s) having jurisdiction and such Court(s) shall decide the same as per law without influence of this judgment.

12. In view of the above, these petitions stand disposed of along with listed applications with directions to Inspector General of Police, Sindh, Karachi and Senior Superintendent of Police, Jacobabad, to provide legal protection to the parties concerned under the law, if needed.

13. Office is directed to immediately send the copy of this judgment to the Inspector General of Police, Sindh, Karachi and Senior Superintendent of Police, Jacobabad, for information and compliance and make sure that there should not be caused any harassment to the parties.

14. Office is also directed to send the copy of this judgment to the learned Advocate General, Sindh for information and compliance. Also send copy of this judgment to Incharge Panah Shelter Home, Karachi, for information and compliance.

JUDGE

JUDGE

*Faizan A. Rathore/PA**