

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

Case No **W.P.No.9696 of 2017**

Samina Munir **Vs.** ASJ/Justice of Peace, etc..

S.No. of order/proceeding	Date of order/Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
---------------------------	--------------------------	--

28.09.2018 Mr. Adnan Arshad Jatoi, Advocate for petitioner.
Mr. Muhammad Iqbal Mahar, A.A.G.
Mr. Ijaz Ahmad Chughtai, Advocate for respondent.

In the wake of her failure with the Station House Officer as well as a Justice of Peace at Lodhran, the petitioner seeks intervention by this Court in its Constitutional jurisdiction for registration of a criminal case against the respondents as well as their unknown accomplices.

It is alleged that she met Muhammad Azhar respondent to take back certain amount on 9-7-2017 whereafter she was taken to a place by the accused; under restrain not only her belongings were taken by the accused but she was violated as well by the respondent; she was later rescued by one of her brothers and medically examined under a magisterial direction.

Respondent came up with a different story, supported by a police report wherein the petitioner was blamed for having married Muhammad Azhar respondent of her will and volition and it was so asserted on the strength of a marriage certificate, nonetheless, vehemently denied by her. Pendency of a suit by the petitioner seeking jactitation of the marriage being attributed to her is a common ground between the parties.

Learned counsel for the petitioner contends that the petitioner, a young lady, was duped and violated while seeking respondent's assistance to pursue the case of her real brother, a condemned prisoner, awaiting final adjudication upon his life. Vulnerably placed, she was horrifically abused, adds the counsel. It is lastly argued that in the face of most heinous accusation, petitioner's recourse to criminal justice cannot be denied merely on account of pendency of a suit seeking repudiation of marriage, instituted by no other than the petitioner herself. Contrarily, the view taken by the Justice of Peace is defended by the learned counsel for the respondent on the strength of *Azam's case* (PLD 1981 SC 95) relied by the Justice of Peace while declining assistance, however, learned counsel has not controverted receipt of a death penalty by petitioner's brother and instead attempted to bank upon varied positions taken by the petitioner during her past pursuits including a failed marriage with one Qaisar.

2. Heard. Record perused.

3. Direction by this Court for registration of a criminal case is a no small measure, as it may have devastating impact upon an accused blamed for a crime; this power must be exercised with caution and circumspection, however, traditional judicial restraint notwithstanding, certainly there are situations that warrant intervention by this Court. It is not a case involving run of the mill runaway marriages or subsequent betrayals after initial volitions. The petitioner is enduring horrors of an impending execution of her brother and in the given state of affairs prevalent in the justice sector, role played by non-statutory actors, throwing around their weight to lure the unsuspecting hapless litigants is a common knowledge, thus, position taken by the petitioner warrants a most thoughtful consideration; her previous marriage with one Qaisar and subsequent dissolution thereof has no nexus with her accusation qua the accused; grey areas of her past life, if at all any, cannot be pleaded as a

justification for denying her access to justice. Reliance upon *Azam's case* is beside the mark, inasmuch as in the said case, prosecution consequent upon a First Information Report was in progress when it was halted to await final adjudication in civil jurisdiction and as such law declared in the said case, does not create any bar on the registration of a criminal case on the basis of disclosure of information regarding commission of a cognizable offence. It is by now well settled that criminal prosecutions and civil pursuits can progress side by side and unless decision of a criminal case is to be exclusively and essentially based upon civil adjudication, the former cannot be held in abeyance; she has alleged violation and subsequent fabrication of a fake marriage certificate. These allegations, taken from any angle, in all fairness, warrant an independent, unbiased and objective investigative probe; the only methodology hitherto known to determine truthfulness or otherwise of a criminal charge. Registration of a criminal case is a means to an end and not an end in itself; the process, structured upon tangible material with a probable cause, cannot be scuttled merely on the basis of its anticipated failure nor antecedents or past credentials of a victim/woman, viewed uncharitably, can shield the perpetrator in subsequent transgressions. Constitutional Petition No.9696 of 2017 is allowed. Station House Officer shall forthwith record a First Information Report on the basis of petitioner's statement, to be investigated by an officer not below a Deputy Superintendent of Police. It is clarified that observations made hereinabove being issue specific would not impact upon the fate of the case to be determined independently, justly and fairly on the strength of available evidence alone.

(Qazi Muhammad Amin Ahmed)
Judge

Approved for Reporting