

Form No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.4554/2019

Mst. Rasoolan Bibi Versus Muhammad Aslam etc.

S.No.of order/ Proceedings.	Date of order/ Proceedings	Order with signature of judge, and that of parties or counsel, where necessary.
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31.01.2019 Petitioner with Mian Ghulam Rasool, Advocate.
Malik Javed Maqbool, District Public Prosecutor.
Respondent No.3 and Mst. Jannat Bibi (paternal grandmother/دادی of minor) with Mr. Muhammad Imran Chohan, Advocate.

This petition has been filed by the petitioner for the recovery and custody of her maternal granddaughter (نواسی) namely Noor Fatima aged 3½ years, who allegedly is in improper custody of respondent No.3 Abid Ali.

2. Brief facts of the case, as per contents of instant petition, are that the petitioner's daughter namely Abida was married with respondent No.3 Abid Ali and out of this wedlock one child namely Noor Fatima was born, who used to live with the petitioner after the death of her mother Abida (daughter of petitioner). About one month ago i.e. on 23.12.2018 Abid Ali respondent No.3 alongwith his father and uncle forcibly snatched minor Noor Fatima from the petitioner. Petitioner earlier filed an application under Section 491 Cr.P.C. for the recovery of said minor before the learned Additional Sessions Judge, Pindi Bhattian camp at Hafizabad but the same was dismissed vide order dated 31.12.2018. Hence, this petition.

3. Learned counsel for the petitioner submits that after the death of mother of minor Noor Fatima,

petitioner is her natural guardian being maternal grandmother (نانی); minor Noor Fatima was forcibly snatched from the petitioner by respondent No.3, as such, she is in his unlawful custody; in these circumstances, custody of the minor may be handed over to the petitioner. On the other hand, learned counsel for respondent No.3 has controverted said contentions while submitting that now age of the minor Noor Fatima is about 04 years 01 month and 27 days and in this regard, he has placed copy of her birth certificate, according to which minor was born on 04.12.2014; respondent No.3 Abid Ali cultivates his lands in his own village, hence he with his mother namely Jannat Bibi (present in Court) always remains in company of the minor; he has even not contracted other marriage simply to keep minor safe from effect of “step mother”; minor Noor Fatima is very much attached with Abid Ali/her father; Abid Ali respondent No.3 being father and natural guardian is entitled to retain custody of minor. Learned counsel for respondent No.3 has vehemently controverted contention of the petitioner regarding forcibly taking away minor Noor Fatima from the house of petitioner by respondent No.3 by contending that the same was simply incorporated in the petition in order to give colour to the concocted version.

4. Arguments heard. Record perused.

5. It has been observed that though it is mentioned in paragraph No.4 of the instant petition that respondent No.3 snatched Noor Fatima minor on 23.12.2018 from the petitioner, yet no report in this regard has been made by the petitioner to police or any other concerned authority against respondent No.3. Hence, ex-facie it cannot be said that Noor Fatima minor was forcibly

snatched from the petitioner by respondent No.3. Furthermore petitioner earlier filed application under Section 491 Cr.P.C. which was dismissed by the learned Additional Sessions Judge, Pindi Bhattian camp at Hafizabad with the following observations: -

“The petitioner is grandmother of the alleged minor/detenu Mst. Noor Fatima, who has been produced by respondent No.3 Abid ali her father. Admittedly, after death of mother, the alive father (respondent No.3) is natural guardian of the minor who is neither suckling nor still school going. Learned counsel for the petitioner has failed to bring on record any legal circumstance for change of custody of the minor from father or any background constituting apprehension/danger to life of the minor at the hand of her father. At present the custody of Mst. Noor Fatima alleged detenu with her father is neither illegal nor improper. Prima facie maximum the dispute if any between the parties is over family matters, therefore, the petition has no legal force, hence the same is dismissed. The petitioner is at liberty to approach learned Guardian Judge for her redressal, if so advised”

Perusal of abovementioned observation reveals that same are based upon cogent reasons. Even otherwise, Noor Fatima (present in Court), appears to be very much attached with her father/respondent No.3, who has natural right of *Hizanat* after death of mother of the minor, guidance has been sought from the dictum laid down in case of “Nasir Raza versus Additional District Judge, Jhelum and another”(2018 SCMR 590). Without touching merits of the case lest it may prejudice case of either party before Guardian Court, if filed; suffice to observe that custody of Noor Fatima minor with her father/natural guardian has not been found as

improper/unlawful or illegal, for the purpose of deciding instant petition.

6. In view of the above, instant petition is hereby dismissed. However, for settlement of custody of Noor Fatima minor on regular basis, either party can move to the Guardian Court in accordance with law. It is clarified here that the observations made above shall not effect any such case, if filed by any party, before the Guardian Court concerned.

(Farooq Haider)
Judge

Approved for reporting.

Judge

Naeem