

3033  
18.5.21

**IN THE HIGH COURT OF SINDH KARACHI**

**Constitutional Petition No.S-728 of 2016 ( LARKANA)**

Mst. Nageena and another.....Petitioners

**VERSUS**

SHO P.S. Dokri & Others.....Respondents

1. For order on MIT report dated 24.03.2021.
2. For order on office objection.
3. For order on CMA No.4871/2018
4. For hearing of main case.

**06.05.2021**

M/s. Sara Malkani, Abbadul-Hasnain and Tajammul H. Lodhi,  
advocates, learned amici curia.

Mr. Faheem Hussain Panhwar, DPO and Mr. Talib Ali Memon, APQ.

Mr. Sohail Laghari, MIT-II.

Dr. Muhammad Usman Chachar, Additional Chief Secretary, Home  
Department alongwith Ali Asghar Mahar, focal person.

Mr. Sikandar Hassan, Deputy Secretary (Legal), Finance Department,  
Govt. of Sindh.

Mr. Ghulam Abbas Detho, Director General, Nisar Ahmed Solangi,  
Director Admin and Tahir Mehmood, Director PMC, Social Welfare  
Department.

Ms. Anjum Iqbal Jamali, Secretary, Mr. Malagh Lal Dodani, Director  
and Wali Muhammad Qureshi, Deputy Director, Women Development  
Department.

Mr. Mazhar Alvi, AIG Legal, Sukkur, Muhammad Anwar Bhatti, SP-  
HQ Khairpur, Raza Milan DSP Legal, DSP Elahi Bux Soomro,  
Investigation Officer.

**ORDER**

**SALAHUDDIN PANHWAR, J.** Pursuant to order dated 08.02.2021 &

03.05.2021, Additional Secretary Home Department, Secretary

Women Development Department and other officers submit reply of

show cause notice and compliance report as well as DSP Headquarter

submits compliance report on behalf of DIGP Sukkur Range and SSP

Sukkur. Beside AIGP (Legal) Mr. Mazhar Alvi is present and submits



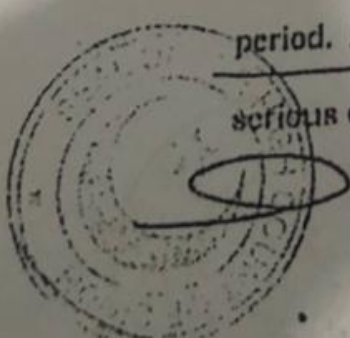
received 18.05.21

compliance report of investigation officer in FIR No.57/2021 recently lodged (after intervention of this Court) regarding rape committed by Darul-Amans officers with the inmates, for offences punishable under Section 376, 217, 506 PPC. Police officials present submit FIR. Investigation Officer Ellahi Bux Soomro contends that he will conduct investigation without being influenced by any pressure. On such contention, it is worth reminding to all (entrusted with investigation of any crime) that they are already under a legal obligation to do the investigation without being influenced from anybody but to find out the truth and to arrest the real culprits. Such obligation, because of negligence on part of investigation, was reaffirmed by honourable Apex Court in the case of Sughra Bibi v. State (PLD 2018 SC 595) while referring relevant Rule, at Rel. page-628 as :-

"Rule 25.2(3) which reads as under:

"(3) It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person"

This Court demands not much but an honour to above obligation. Mr. Mazhar Alvi, who is AIGP, shall supervise the investigation and 173 Cr.PC report shall be submitted before the concerned Magistrate for further proceedings within stipulated period. Needless to mention that all delinquents having role in the serious crime will be sent up for trial.



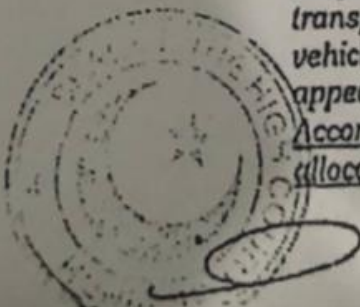


2. Here, it is worth reminding that order (s), being passed by this Court, were / are meant to be honoured and mere passing of date (s) would not ipso facto result in lessening legality thereof. At this juncture it would be conducive to refer Para-7, 8 & 9 of order dated 08.02.2021 which is that:

7. Deputy Secretary Finance Department present submits report containing therein that four posts of Women Protection Officer have been considered however he seeks time with regard to approval of SNEs pursuant to para-2 and 3 of order dated 17.12.2020. Moreover, stance of the Finance Department is that there are many posts which are lying vacant hence approval of SNEs will not serve the purpose. The SNE (s) are to be approved as per requirement of the post(s), so required by the department itself. The agony of unavailability of officials is not an excuse to keep SNE(s) pending rather it is the concerned Department to give explanation in this regard for not making postings on such vacancies despite availability of official(s). In short, this is not the job of the Finance Department to delay with regard to approval of SNEs on the pretext that already posts are lying vacant. That question is purely of such Department and that is bound to fulfill all vacancies if law provides Protection Officers in all districts, Finance Department is required to approve SNEs.

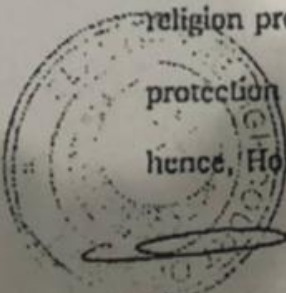
8. Hence, Secretary Women Development Department shall ensure that vacancies are filled in accordance with law within three months and with regard to posts pertaining to Sindh Commission on the Status of Women and Domestic Violence (Prevention and Protection) Act 2013, they shall submit SNEs with the Finance Department and the Finance Department shall ensure approval of the same within one month after receiving the same.

9. Besides, recommendations were sent to the Home Department which reflect : "Develop the budget required to enhance the facilities all women police station serving as the one stop protection centers, including building, temporary shelters required office space for staff and transportation which must include at a minimum two vehicles for the rescue and transportation of women" but appears to have not been complied / attended. Accordingly, Home Secretary shall ensure such budget is allocated and posts are filled in case SNEs are not



approved with regard to women police station they shall resubmit to the Finance Department and Finance Department shall approve the same within one month after receiving the same."

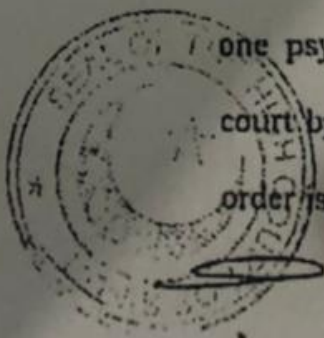
3. When confronted, Home Secretary present contends that yet Women Police Stations are to be notified by the Department though in different districts they have established women police station which, however, were without SNEs and notification. He further ensures that within one month he will submit all SNEs as proposal for final approval with the consultation of Finance Department regarding women police stations. Though such commitment, in view of referred order, is not worth appreciating, however, taken on record but with rider that same shall be taken as 'undertaking' and failure thereof shall bring legal consequences. Accordingly, Secretary Finance Department shall provide every assistance with regard to SNEs which should be submitted by the Home Department within one month as well as approval thereof be made within fifteen days. Needless to mention that concept of women police station is to provide sense of security/safety to majority of population which consists on women who (women), needless to add, shall feel safe and secure while reporting their grievances to women police officer (s) as well will help the victim (s) in receiving justice. This was / is the aim and object for introduction of women police station (s). Needful to add that not only our constitution but our religion provide great respect and honor to the female as undeniably protection is to be provided to our mother, sister, wife and daughter hence, Home Department shall ensure that in every district at least





one women police station is housed and thereafter all posts be filled preferably within three months by way of recruitment rules.

4. With regard to Domestic Violence (Prevention and Protection) Act, 2013, Secretary Women Development Department contends that they have submitted amended Rules to the Law Department for vetting however admitted that they have yet not prepared recruitment rules, hence, seeks one month time to prepare recruitment rules, to be submitted with Services, General Administration & Coordination Department. Secretary Women Development Department contends that there will be issue of nomenclature of Women Protection Officer. I am surprised that without recruitment rules / policy how the department can hope for establishment thereof. The establishment of the department is always subject to fulfilling all required posts which legally can't be filled if the recruitment rules / policy are / is missing. As regard issue of nomenclature, it would suffice to say that nomenclature is never of any importance because the same is to be given by the institution *itself* unless otherwise not barred by the law *itself*, therefore, they may change nomenclature of any post however, that shall be within spirit of Domestic Violence (Prevention and Protection) Act, 2013. At this juncture Secretary Women Development Department further contends that not a single psychologist is working in their Department though in every district there should be one psychologist. For this, directions were already issued by this court by order dated 03.05.2021. For the convenience Para-5 of that order is reproduced as under:



"5. Further, it has also come on record that now Darul Amins are under the domain of Women Development Department. Domestic Violence (Prevention and Protection) Act 2013 which reflects appointment of women protection officers and psychologist in every district separately and those psychologists shall be at the disposal of concerned Magistrate and officers of Women Development Department and SSP. Needless to mention that any psychologists appointed and posted in Civil Hospitals would not be considered, as having been appointed under the Domestic Violence (Prevention and Protection) Act 2013 therefore, directions were issued for approval of SNEs."

The above direction, being nothing but fulfillment of the Act itself, was / is to be honoured without any much delay, therefore, Secretary Women Development Department, would be competent to pursue for compliance of above directives and would submit progress thereof.

5. Beside, Secretary Women Development Department is not aware about ~~working women hostels~~, which is not worth appreciating. The Secretary must have been aware of such position as well that this court has already directed that all women working hostel shall be handed over to the Women Development Department. Such directions were also issued by this court in order dated 26.09.2016. Being relevant Para-2 of that order is reproduced as under:

2. Since ~~women hostels~~ were/are meant to provide accommodation to working women in various districts hence establishment thereof was/is not a mere paper work hence the women department should not only be aware of complete status of women hostels but also in possession and objective use thereof, however, the position is otherwise, it is pointed out that Women Hostel at Shikred Benazirabad is in possession of district police which is not only against notified / declared status of such building but also speaks negligence on part of department and an excess on part of police. Since, establishment of Women Department was/ is itself an acknowledgment that 'time to give the woman her due status in all





spheres of life not only in papers but in reality' which otherwise is insisted in our Constitution and Religion even' therefore, a negligence or excess prejudicing any such 'objectives' cannot and should not be accepted. It, being subject matter of province, requires active interest of Chief Secretary Sindh for true achievement of object thereof. Accordingly, The Chief Secretary, Sindh is hereby directed to ensure that all hostels shall be handed over to the Women Development Department through the respective Deputy Commissioners. Such exercise be completed within a period of two months and compliance report thereof be submitted.

6. According, Secretary Women Development Department shall pursue the same and ensure that possession is received by Women Development Department. Needless to add that progress in this regard also be submitted to this Court.

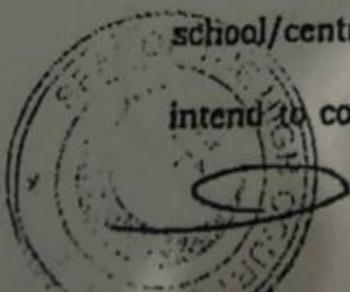
7. With regard to safety of women nestled in Darul Amans, it is worth adding that in whole Sindh there are only four Darul Amans and out of four one is purely under the control of private person/notables, hence, Secretary Women Development Department is required to provide protection to three Darul Amans established at Sukkur, Larkana and Hyderabad. Incident referred in earlier order with regard to rape committed by officials shows complete malfesances and misfeasance of officials. At this juncture Secretary Women Development Department contends that they have removed all male staff from Darul Amans except Chowkidars. At this juncture Ms. Sarah Malkani advocate/learned amicus curiae contends that security issue is very alarming, hence, CCTVs must be installed by the Department and deployment of male police constable should be limited to outside only so as to avoid any misuse by the male staff. Hence, judicial propriety demands direction to the DIG, Special



Security Unit (SSU) Sindh who shall depute lady police constables/commandos round the clock in the four Darul Amans and ensure safety of inmates.

8. At this juncture Secretary Women Development Department also contends that two more Darul Amans are under construction in Jacobabad and Mirpurkhas. It is pertinent to mention here that in view of population there should be Darul Aman in every district hence construction of two *Darul Amans* is worth appreciating. It is added that since *Darul Aman* is considered as a temporary place of 'Amaan/security' hence this should also provide vocational training to the women nestled there so as to enable them to achieve financial independence.

9. Further it is a matter of record that there is no borstal school. The girls who run away from their home/family on different reasons including freewill marriage requires shelter / safety but since because of Child Marriage Restraint Act, minor cannot enter into marriage hence when adolescent girl reach in court the Courts, being subordinate to law, are to act in accordance with law which includes in not recognizing *child-marriage*. In such eventuality, the Courts, normally, are left with no option but to nestle them in *Darul Amans* which I am to say are not meant for girls (minor girls). By order of this court in CP No. D-1703/2019 with regard to child marriage restrict act, directions were issued for establishing borstal school/centres for those girls who are victims of forcible marriage or intend to continue their study but due to customs their families do





not permit. At this juncture relevant portion of that order is reproduced as under:

2. Here, it is important to mention that the Sindh Child Marriages Restraint Act, 2013 itself places an embargo on the marriage of a child under 18 years of age and even prescribes punishment inter alia for any person who facilitates the same including the parents. Though a case has not been registered under the Sindh Child Marriages Restraint Act but since we are conscious of the legal position as well objective of the 'Act' therefore, cannot go by ignoring it because the issue is a 'BIG ONE'. There are hundreds of like petitions in which the marrying girls are under 18 years of age. We would add that every law is meant to meet a particular situation despite a legal embargo the act, aimed to be restrained / curbed, continues then the conclusion could be nothing but lack of enforcement and failure in making objective of such law divulged. The term 'child' itself reflects he is not capable of making intelligent decisions of his life which includes education, health as well unseen future. Since, the 'marriage' normally portrays sui-juris and adult persons therefore, to avoid any harm to health, education etc of a 'child' because of her immaturity an embargo has been placed by law on such marriages. In an earlier petition, a report was filed by the Director, Women Development Department stating that hundreds of under-age girls who have contracted marriage suffer from sexual abuse and human trafficking. Being conscious of all these reflections of the Act, this Court repeatedly issued directions that an age-certificate is mandatory before registering nikkah and no nikkah-khuwan shall register a nikkah unless he is satisfied that the bride and groom are 18 years old but facts, we are sorry to acknowledge, appear otherwise.

3. There is then the issue of providing security and shelter to girls who are victims of child marriages. In Rehmat Bibi's case (PLD 2016 Sindh 268) directions were issued for establishment of rescue centres and safe houses for females under 18 years of age. In the case of Nagina (C.P. No.S-501, 654 and 779 of 2017), the issue of shelter and security for women and girls, victims of consequence of child's free-will and child marriages was taken up by one of us (Salahuddin Panwar, J.) and addressed as follows vide order dated 30-06-2017:

"At the very outset, Secretary Woman Development contends that they have three rehabilitations centers constituted in Nawabshah, Hyderabad and





Jacobabad, but he admits that same are temporary in nature and further he is unable to place on record as to whether any help was provided to any girl seeking protection, or that rehabilitation was carried. ....

Representative of Chief Secretary contends that pursuance to judgment of this Court in Rehmat Bibi case safe houses have been established all over the Sindh, however, he admits that permanent mechanism is yet not established. The directives in case of Rehmat Bibi were never meant to be made part of heap but for doing what quarter concerned is supposed to do. Mere, putting sign-boards on a boundary-wall shall never serve the objective of a safe-house therefore, it is hoped and believed that established safe-houses shall be made 3 functional and operational as they should be, particularly in view of directions, given in the case of Rehmat Bibi and this hopefully shall not take much time.

Home Secretary present and at the very outset admits that issue of protection and rehabilitation of girls, who either contract marriages against wishes of their parents or women, victims of acid attacks and domestic violation is very serious in nature. It is further pointed out that Social Welfare Department, Women Development Department and status of Women Commission which is newly enacted law are in field. Three DarulAman are working in whole Sindh under the supervisions of Social Welfare Department. It is also pointed out that Zakat and Ushar Council is also working for the help of marriages of poor girls and fabulous amount is spared for rehabilitation of women. Since, representative of Chief Secretary contends that Chief Secretary has taken very serious notice about the graveness of issue and within '15' days complete mechanism (road map) would be given for the protection of women. Such acknowledgment is worth appreciating and statement to complete mechanism within a period of 15 days is taken as an 'undertaking' with hope that same shall be honoured particularly when the graveness of issue is already acknowledged by Chief Secretary. Besides, it is brought on record that 09 rescue centers by the police have been established for the protection of women which is also an step to a journey which shall make the women of this land safe and protected in





both situations i.e in exercise of her right of choice as well in case of her being deserted.

Women Development Officer present submits details which shows that about 12 women trafficking cases and many of the women after freewill marriage were sold out. She further contends that there are cases wherein girls after being trapped through face-book and other social media under the pretext of marriage have been used for prostitution purposes. She also contends that about 500 cases are reported with her, wherein after love marriage because of differences; girls tried to commit suicide. These facts when confronted to all the present, all the concerned officers agreed that a universal (help line) number would be provided with vide publication enabling the victims to seek help / protection in the event of any harm or prejudice to their guaranteed rights. It is also contended that a mechanism would be established thereby a special force shall be deployed for the help of victimized women by immediate response to any call / complaint. Secretary Women Development undertakes that they will keep a data of all the girls who contract marriage against wishes of their parents and will appoint surveillance officers and in case of any harm to them either by their parents or in case of deserting of such women by husband or his families, such women would be shifted to rehabilitation centers and complete help would be provided to them. This will surely purpose of the department but shall also meet the objectives, insisted in the case of Rehmat Bibi. However, it is added that while maintaining the record or keeping surveillance the department shall ensure a mechanism so as to avoid any harm or prejudice to dignity of such woman.

The representative of Chief Secretary, Sindh when confronted with fact that though Secretary Women Development is Secretary of Women Commission yet Women Commission is not established, he (representative of Chief Secretary Sindh) contends that within 'one month' whole exercise would be carried out and Women Commission would be established. Accordingly, Secretary Women Development who is also Secretary Women Commission shall ensure that meeting shall be called within 'two months' to examine the 4 compliance of orders of this Court, passed in this case as well in case of Rehmat bibi and will

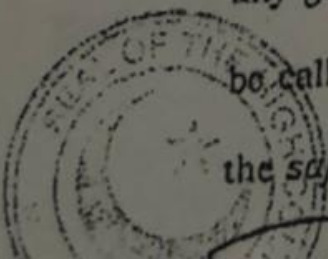




also collect the complete data and shall issue guideline to the officers as well commission, if is in field and any change in law the concerned authority shall be approached for legislation. I would add here that minority (adolescence) is also one of the factor which results into making girls becoming a prey of spell, used by ill-motivated persons which perhaps was one of the objective for re-enactment of Child Marriage Restrain Act. The Act provides that marriage with a girl of less than 18 years is an offence, therefore all Nikah Khawan Registrar shall ensure that girl is having CNIC or sufficient proof in shape of school certificate or medical certificate issued by the concerned authorities, else marriage shall not be registered and in case of violation police officers shall proceed against the delinquent persons. Deputy Commissioners of all Districts shall issue instructions to all Nikah Khawan Registrars for compliance.

It is the time to call report as to whether the above directives and commitments met fate of compliance or otherwise?. Accordingly, reports regarding compliance thereof shall be called from all concerned by the MIT which be placed on next date.

10. Secretary Women Development Department shall provide every assistance for supervise visit of Darul Amans particularly in Sukkur, Hyderabad and Larkana to M/s. Sara Malkani, Abbadul-Hasnain and Tajammul H. Lodhi, advocates, learned amici curiae, Mr. Fahcem Hussain, DPG and Mr. Talib Ali Memon, Assistant P.G. as and when they intend to visit those Darul Amans/safe houses. It is expected that District & Sessions Judge shall also entertain any application filed by Women Development Department with regard to any grievance by directing concerned Magistrate. The report (s) also be called from District & Sessions Judge (s) regarding functioning of the safe-houses as was earlier ordered.





- { 13 } -

AIGP Sindh is hereby directed to ensure that CCTV(s) are installed in front of Darul Aman(s) and safe houses to ensure safety of the inmates therein as well as Secretary Women Development Department shall ensure that CCTV are installed inside the Darul Aman(s).

To come up on 16.08.2021 at 11.00 a.m..

Certified to be true copy,

Sd/- SALAHUDDIN PANHWAR  
JUDGE

Assistant Registrar (Civil / Writ SB)

Constitutional Petition No.S-728/2016(Larkana) Karachi dated the May 18, 2021

Copy is forwarded for information and compliance to:

- ❖ The Learned Member Inspection Team-II of this Court.
- ❖ The Learned District & Sessions Judges (ALL) through Learned MIT-II of this court.
- ❖ The Chief Secretary, Government of Sindh, KARACHI.
- ❖ The Inspector General of Police, Sindh, Karachi.
- ❖ The Secretary, Law Department, Government of Sindh, KARACHI.
- ❖ The Secretary, Home Department, Government of Sindh, KARACHI.
- ❖ The Services, General Administration & Coordination Department, Government of Sindh, KARACHI.
- ❖ The Secretary, Finance Department, Government of Sindh, KARACHI.
- ❖ The Secretary, Women Development Department, Government of Sindh, KARACHI.
- ❖ The Deputy Inspector General, Special Security Unit (SSU) Sindh, KARACHI.

(ABDUL RASHEED BALOCH)  
Assistant Registrar (Civil / Writ SB)