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Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE, MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Crl. Misc. No.5159 of 2022

Kalsoom Mai **Versus** DPO, etc.

JUDGMENT

Petitioner by:	Ch. Fazal Hussain, Advocate.
Respondents by:	Ch. Muhammad Saleem Ansari, AAG. Mr. Muhammad Faheem Sial, ADPP. Ahmad Mohayuddin, DPO Rajanpur, Abdul Rauf, SHO and Mazhar. ASI.
Date of hearing:	29.7.2022.

MUHAMMAD SHAN GUL, J:- Through this judgment the titled criminal miscellaneous is sought to be decided.

2. This criminal miscellaneous, in the nature of habeas corpus, filed under Section 491 Cr.P.C. prays for the recovery and production of Mst. Sajida Mai daughter of the petitioner and Baby Sadia, the granddaughter of the petitioner from the allegedly illegal and improper custody of private respondents. What makes this case peculiar and worthy of attention is the nature of allegations contained in the petition.

3. It has been clearly stated in the petition that the former husband of the alleged detenu has **sold** the detenu Sajida Mai to one Anwar Khalid, who, not surprisingly is at large. What prompted this Court to summon the District Police Officer, Rajanpur in the matter is the nonchalance with which the Station House Officer, P.S. Sadar, Rajanpur informed the Court

yesterday, upon being asked about the detenu, '**that the detenu perhaps may have been sold off for immoral illicit purposes**'. This was, to say the least, shocking and equally appalling!

4. The Court summoned the District Police Officer, Rajanpur who is present before the Court and who has informed the Court that an F.I.R. No.186/22, P.S. Hajipur under Sections 496-A, 371-A and 371-B P.P.C. read with Section 3 of the Prevention of Trafficking in Persons Act, 2018 has been lodged against the husband of the detenu for having allegedly sold the detenu as also against the supposed 'buyer' Anwar Khalid. While this information did somewhat nurse the concerns of the Court, the District Police Officer through the same breath informed the Court that the husband of the detenu had been granted bail in the matter! The detenu not having been recovered, the grant of bail to the former husband of the detenu against whom the crime report in question stands registered for having sold off the detenu is not understandable and hence, the ADPP was also asked to join proceedings and was directed to take a stock of the situation.

5. While the District Police has indeed taken **reactionary** measures and while these may or may not result in production of the detenu, it is a stark fact that the concept of a woman being treated as a commodity or as a product who can be sold has indeed caused anguish to the Court and needs to be addressed. The apathy and indifference of the law enforcement

agencies in curbing and arresting the deplorable menace of treating women as an object is what needs to be addressed. Hence for reasons that shall follow in the discourse ahead, an incessant Mandamus is issued to the District Police Officer, Rajanpur to recover the daughter and granddaughter of the petitioner and ensure that they are set at large and allowed to live and reside wherever they desire.

6. In Pakistan the state of women and inhuman treatment meted out to women mostly by men whom such women are more likely to turn to for their protection has prompted the legislature to enact various safety valves in the form of penal provisions to curb and arrest trafficking in women. While the Pakistan Penal Code in its original form ensured protection against such atrocities against any human being through Sections 362, 365 and 370 P.P.C., the ever increasing rate of women and children trafficking compelled the state to enact further provisions which shall be discussed ahead.

7. An alarming increase in incidents of women and children trafficking resulted in the promulgation of Prevention and Control of Human Trafficking Ordinance, 2002 (now replaced by means of Prevention of Trafficking in Persons Act, 2018). The failure of the governments as also of the state to control and rein in the deep rooted and in most cases tacitly acceptable practice of utilization of women to gain finances or settle disputes ran foul of Articles 9, 14, 25 and 37 of the Constitution and hence new offences were added in the Pakistan Penal Code,

1860 as well with the clear intention to ensure social protection and inviolability of dignity of women in Pakistan through the introduction of the Protection of Women (Criminal Laws Amendment), Act, 2006. By means of this holistic amendment Sections 365-B, 371-A and 371-B etc. were added to the Pakistan Penal Code, 1860. This was done also to compliment and reinforce the commitments undertaken by the State of Pakistan while signing the Convention for Eradication for Discrimination against Women (CEDAW).

8. Later, in 2018, Prevention and Control of Human Trafficking Ordinance, 2002 was repealed and re-enacted as Prevention of Trafficking in Persons Act, 2018. The legislative wisdom and intent in enacting the said Act being clearly evident through its preamble.

9. Therefore while laws have been gradually put in place, the deterrence or prevention aimed at through such provisions has not been attained. The Constitution of Islamic Republic of Pakistan through its Article 11 vows to eradicate all forms of slavery and trafficking, yet in practice, women continue to suffer and are subject to trade by their close family members and this goes on despite the evolution and introduction of laws aimed at ensuring protection of women against such abominable practices. South Punjab being no exception!

10. The South Asian Partnership undertook a study '**Enough is Enough**' and it was reported through the study that Rajanpur

in Punjab was notable for the instances of *Karo-kari* and so called honour killing. It is indeed ironical that a society where women are killed for bringing so called shame to their families are shamelessly subjected to such dishonour by the very male members of their family by trafficking them against money or dispute settlement.

11. The Human Rights Commission of Pakistan in February, 2021 identified women and children trafficking as a form of slavery. Such woman trafficking is a manifestation of historically unequal relations between men and women in the Sub-Continent. The social construction and perpetuation of gender bias establishes male authority and power over women. Some forms of violence against women, especially domestic and customary violence, are so deep rooted in cultural norms that these are hardly recognized as violence and hence largely, albeit wrongly, condoned by the society. **This environment heightens and accentuates the role of the Executive Law Enforcement Agencies and saddles them with a proactive and anticipatory rather than a reactionary role.**

12. The state of women in Pakistan today, especially in far flung areas, marked by harrowing cases such as the present one displaying a society worse than the one that formed basis for feminist movements in 18th century reveals that we are a nation where weak are exploited and the exploiters are condemned on paper only. Our Constitution vows to establish an egalitarian society, however, 50 years on, successive governments and the

state have failed to ensure human dignity and a simple right of free, autonomous dignified life for its women let alone facilitate them in becoming a thriving segment of society. This state of affairs is reminiscent of what **John Stuart Mill wrote in 19th century: J.S. Mill, The Subjection of Women:**

“All women are brought up from the very earliest years in the belief that their ideal of character is the very opposite to that of men; not self-will, and government by self-control, but submission, and yielding to the control of others. All the moralities tell them that it is the duty of women, and all the current sentimentalities that it is their nature, to live for others; to make complete abnegation of themselves, and to have no life but in their affections.”

13. Such subjugation coupled with inability of the state to provide protection pave the way for the treatment of women as mere commodities, a practice which Islam prohibited and sanctioned over 1400 years ago, much before the relatively recent feminist movements were even perceived and definitely before the very famous and widely quoted statement of Hillary Clinton at the UN Conference of Women in September, 1995, ‘Women rights are human rights’. **The sad and ironic reality of the necessity of stating the obvious manifests itself in its worst form in case where women are believed and considered to be an object of gratification in one form or another.**

14. Our claim of being a civilized society with dictates of pro-women laws and even decrees of Sharia should have eliminated all such evils and there should have remained no single custom or usage degrading/lowering the women or depriving them from

their guaranteed rights but details noted above as also the facts of the present case paint a sorry and a different picture and holding Jirgas and passing illegal decrees trading women, trafficking in women, awarding women as *Badl-e-Sulah* etc. are still routine practices particularly in far flung areas. Therefore judicial propriety demands an examination of this issue by the stakeholders with a view to ensure strict application of prevailing laws so as to curb these illegal, immoral not to mention inhuman activities. Viewed in the context of Articles 9, 14, 25 and 37 of the Constitution dignified existence, the protection from degradation and the accessibility to a decent social and cultural environment all seem far away and unattainable.

15. The Federal Shariat Court in “Mst. Sakeena Bibi and 2 others v. Secretary Law, Government of Pakistan, Islamabad and 9 others” (PLD 2022 Federal Shariat Court 57), has also declared trafficking in women, amongst other such notorious practices to be unislamic. This the Federal Shariat Court has held with respect to the Provincially administered Tribal Areas which have been merged in the State of Pakistan as a result of 25th Amendment made to the Constitution. **Rajanpur, on the other hand, has always been a part of the State of Pakistan!**

16. Circumstances of the present case i.e. pendency of a crime report and the frustrating inability of the law enforcement agencies to recover the detinue and her child clamour for an incessant supervision of the issue so that the Executive Organ

of the State performs its statutory functions properly. What this Court has in mind is a version of a continuous Mandamus, spoken of approvingly in “Muhammad Ahmad Pansota and others v. Federation of Pakistan and others” (PLD 2020 Lahore 229), “Mall Road Traders Association v. The Deputy Commissioner, Lahore” (2019 CLC 744), “Swaraj Abhiyan (IV) v. Union of India” (AIR 2016 SC 2953) and “Mubashir Ahmad Almas v. Province of Punjab through Chief Secretary, Lahore and 8 others” (PLD 2021 Lahore 720). Hence, this petition is allowed and a continuous Mandamus is issued to the District Police Officer, Rajanpur to effectuate the recovery of detenu Sajida Mai as also her daughter Sadia and for their production before a competent court of jurisdiction. The District Police Officer, Rajanpur shall seek help, if so required, from all existing law enforcement agencies in the District as also in the Province to bring this matter to fruition. If at any subsequent stage the petitioner or for that matter any interested person believes that the Mandamus issued by this Court is not being adhered to or is being resisted then he or she shall be at liberty to move this Court again. This direction has been issued on account of the immeasurable misery and unperceivable anguish and trauma faced by the petitioner as also the alleged detenues and so as to secure their fundamental rights contained in Articles 9, 11, 14 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

17. In addition to what has been directed above a copy of this petition shall be shared with the Law Secretary, Province of Punjab, Prosecutor General, Province of Punjab as also the Inspector General of Police, Punjab so as for them to ensure that the laws put in place by the legislature are effectively implemented. While the Law Secretary, Province of Punjab shall consider whether the present legislative framework for arresting and preventing the menace of trafficking in women is satisfactory or whether it needs to be reinforced by introduction of any additional safety valves, the Prosecutor General shall ensure that in cases and trials of trafficking in women, proper and diligent prosecution is ensured so that the deterrence aspect of law is harnessed. The Inspector General of Police shall strive to respect the Mandamus issued and ensure recovery of detainees at any cost.

18. **Allowed** in the above terms.

(MUHAMMAD SHAN GUL)
JUDGE

Approved for reporting.

Judge

Announced in open Court on _____.

Judge