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Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE.
JUDICIAL DEPARTMENT

W.P. No. of 46868 of 2026

Muhammad Aslam
VERSUS
Addl. Sessions Judge/Ex-Officio Justice of Peace etc.

JUDGEMENT

Date of Hearing:	27.8.2026
Petitioner by:	Muhammad Afzaal, Advocate along with petitioner Muhammad Aslam.
Respondent by:	Mr. Anwaar Hussain, Assistant Advocate General for respondent Nos.2 to 4, 9 and 10 along with Waheed, Station House Officer. Mian H. M. Asim Mehmood and Malik Muhammad Atif, Advocates along with respondent Nos.5 and 6 and Mst. Hina Aslam (daughter of the petitioner) under the escort of Sana Nawaz 32407/C. Ms. Samra Yar Muhammad, Law Officer Child Protection and Welfare Bureau, Lahore

MUNAWAR IQBAL DUGGAL, J. Through the instant constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter to be referred as "the Constitution"*), the petitioner has called in question the legality and propriety of the order dated 06.08.2026 passed by the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Kasur, whereby the application filed by the petitioner under Sections 22-A and 22-B of the Code of Criminal Procedure, 1898 (*hereinafter to be called as "Cr.P.C.")* seeking registration of a criminal case against respondent No.5/Muhammad Luqman and others was dismissed.

2. The facts necessary for adjudication of the instant petition are that the daughter of the petitioner, namely Mst. Hina Aslam, went missing, whereupon the petitioner got registered FIR No.1121/2026 dated 20.05.2026 under Section 365-B of Pakistan Penal Code (Act XLV of 1860), (*hereinafter to be referred as "PPC"*), at Police Station Sattokatla, Lahore, alleging that his daughter had been abducted by unknown persons for the purpose of illicit intercourse. During the course of investigation, however, Mst. Hina Aslam appeared before the learned Area Magistrate and got her statement recorded under Section 164, Cr.P.C., on 29.05.2026, wherein she stated that she had neither been abducted nor subjected to zina by anyone and that she had contracted marriage with respondent No.5/Muhammad Luqman of her own free will and consent. She further stated that her father had lodged a false and frivolous FIR and expressed no objection to its cancellation. On the basis of the aforesaid statement, the said FIR is stated to be under the process of cancellation.

3. Subsequently, upon coming to know about the alleged Nikah of his daughter, the petitioner approached the Municipal Committee, Kasur, for verification of the Nikahnama. The Municipal Committee, Kasur, vide letter dated 23.06.2026, informed the petitioner that no record of the alleged Nikah was available in its office. The petitioner thereafter approached the Station House Officer, Police Station B-Division, Kasur, seeking registration of an FIR against respondent Nos. 5 to 9, alleging, inter alia, that a marriage had been solemnized with a minor girl in violation of the Punjab Child Marriage Restraint Act, 2026 and that the purported Nikahnama was forged and fictitious. As no action was taken on the application, the petitioner invoked the jurisdiction of the learned Ex-Officio Justice of Peace under Sections 22-A and 22-B, Cr.P.C.

4. The learned Additional Sessions Judge/Ex-Officio Justice of Peace, Kasur, after hearing the parties and perusing the police report, dismissed the application vide order dated 06.08.2026 and suggested the petitioner

to approach the Investigating Officer for addition of the relevant offences in FIR No.1121/2026. Hence, the instant petition.

5. Upon preliminary examination of the material available on record, this Court, vide order dated 17.08.2026, directed respondents Nos.3 and 4 to produce Mst. Hina Aslam before the Court. In compliance therewith, she was produced before the Court. Respondent No.5/Muhammad Luqman and his father, namely Muhammad Ilyas, also appeared along with their learned counsel.

6. Learned counsel for respondent Nos.5 and 6 was confronted with the Child Registration Certificate (CRC No.10818545) available on the record, issued by NADRA on 09.03.2017, wherein the date of birth of Mst. Hina Aslam is recorded as 01.03.2011. Thus, according to the document available on record, she was approximately fifteen years and two months old on the date of the alleged Nikah, i.e. 18.05.2026. Learned counsel for the respondents could not produce any contemporaneous and reliable document establishing that Mst. Hina Aslam had attained the age of eighteen years on the date of the alleged marriage. The respondents, however, submitted that she had represented herself to be nineteen years of age and that, relying upon her representation, the marriage was solemnized. Reliance was also placed upon her statement recorded under Section 164, Cr.P.C., wherein she stated that she was above eighteen years of age and had contracted marriage with respondent No.5 of her own free will and consent.

7. Learned counsel for petitioner has reiterated his earlier contentions recorded in the interim order dated 17.08.2026. For sake of completion and brevity, the same are reproduced for ease of reference as under:

> "*Learned counsel for the petitioner submits that the petitioner's daughter, namely Hina Aslam, is about fifteen years of age and is*

stated to have contracted marriage with respondent No.5. In this regard, learned counsel refers to the Nikahnama, according to which the marriage was solemnized on 18.05.2026 by a Nikah Khawan within the territorial limits of District Kasur. Learned counsel further relies upon a birth certificate issued by NADRA, wherein Hina Aslam is mentioned at Serial No.7 and her date of birth is recorded as 01.03.2011.

Learned counsel further submits that the petitioner approached the Municipal Committee, Kasur, for verification of the aforesaid Nikahnama*, whereupon the Chief Officer, Municipal Committee, Kasur, vide report dated 23.06.2026, reported that no record of the said* Nikah *was available in the office. He further contends that the alleged* Nikah *was solemnized and the purported* Nikahnama *was prepared in violation of the provisions of the Punjab Child Marriage Restraint Act, 2026. The petitioner thereafter approached the Station House Officer, Police Station B-Division, Kasur, seeking registration of an FIR, but to no avail, whereupon he was constrained to invoke the jurisdiction of the learned Ex-Officio Justice of Peace under Sections 22-A & 22-B, Cr.P.C*"

8. Heard, the record perused.

9. At the outset, it is necessary to appreciate the legal effect of the Punjab Child Marriage Restraint Act, 2026 published in official gazette on 11th of May, 2026 with its commencement at once (*hereinafter to be called as "the Act, 2026")*. The Act defines a "child" as a person, male or female, who is under eighteen years of age, and defines "child marriage" to include an act of Nikah or solemnization of marriage where either of the contracting parties is a child. The statute further prohibits registration of a child marriage and creates penal consequences for an adult who contracts marriage with a child. More significantly, Section 5 declares that any form of cohabitation, before attainment of eighteen years of age, with or without consent, resulting from a child marriage, constitutes "child abuse" under the Act, ibid. The statutory scheme thus represents a material departure from the earlier legislative framework.

10. It is worthy to note that quite recently the Federal Constitutional Court, in "*Shahbaz Masih v. Additional Sessions Judge, Lahore & others*", F.C.P.L.A. No.536 of 2025, decided on 03.02.2026, considered the earlier legal regime applicable in Punjab and, after examining the judgments in "*Mst. Bakhshi v. Bashir Ahmad*" (PLD 1970 SC 323) and "*Mauj Ali v. Syed Safdar Hussain Shah*" (1970 SCMR 437), observed that the Child Marriage Restraint Act, 1929, as then applicable, criminalized the solemnization of child marriage but did not expressly declare such marriage void or voidable. The Federal Constitutional Court consequently held that, in the absence of an express statutory provision invalidating the marriage, its validity was not affected merely by reason of the contravention of the penal provisions.

11. The aforesaid principle, however, may not be applicable to the controversy before this Court. The alleged Nikah in the instant case was solemnized on 18.05.2026, i.e. after the enactment and coming into force of the Act, 2026. The new enactment has materially altered the statutory landscape by prescribing eighteen years as the minimum age for both male and female persons, criminalizing an adult's marriage with a child, and, most importantly, expressly characterizing cohabitation with a child arising from such marriage as "child abuse", irrespective of consent. The present case must, therefore, be examined in the light of the law actually in force on the date of the alleged occurrence.

12. The Court is conscious that the question of age may, in an appropriate case, require determination upon evidence and that constitutional jurisdiction is ordinarily not the forum for conclusively adjudicating disputed questions of fact. Nevertheless, at the stage of considering an application under Sections 22-A and 22-B, Cr.P.C., the Court is not required to finally determine the guilt or innocence of the proposed accused. The limited question is whether the information furnished to the police discloses commission of a cognizable offence

warranting registration and investigation. The evidentiary value of the documents and veracity of the defence version are matters to be examined during investigation and, where necessary, determined at trial.

13. In the present case, the CRC issued by NADRA in 2017 records the date of birth of Mst. Hina Aslam as 01.03.2011. The alleged Nikah took place on 18.05.2026. Prima facie, therefore, she was below eighteen years of age on the date of the alleged marriage. The respondents have not produced, at this stage, any equally reliable contemporaneous documentary material rebutting the said entry. Consequently, the material placed before the Court gives rise to a reasonable basis for treating the alleged occurrence as falling within the statutory framework of the Punjab Child Marriage Restraint Act, 2026.

14. The statement of Mst. Hina Aslam recorded under Section 164, Cr.P.C., undoubtedly constitutes relevant material and her views cannot be disregarded merely because she is a child. At the same time, under the express statutory scheme introduced by Section 13 of the Act, 2026, her purported consent cannot, by itself, be treated as determinative of her residence, custody or protection where the Court is confronted with a prima facie case of child marriage and the consequent risk of child abuse. The statute requires the Court to make an independent assessment of her safety, welfare and best interests.

15. This approach is also consistent with the contemporary jurisprudence concerning the welfare of child, according to which the wishes of a child capable of forming an intelligent preference are a relevant consideration, but the paramount consideration remains the welfare and best interests of the child. The Supreme Court has emphasized that custody proceedings require a holistic assessment of the child's circumstances and that the best interests of the child, rather than

the competing interests of the parents or other adults, remain the controlling consideration.

16. It is, therefore, not necessary for this Court, at the present stage, to pronounce conclusively upon the validity or otherwise of the alleged Nikah. Such a determination may involve questions of fact and law which are appropriately left to the competent forum. What is material for the present proceedings is that there exists prima facie material disclosing an occurrence which, if established, may attract penal consequences under the Act, 2026. The police cannot decline to set the criminal law into motion merely because the alleged child has expressed willingness to reside with the adult contracting party.

17. The next question is whether registration of a separate FIR is barred by the legal principle laid down in "*Mst. Sughran Bibi v. The State"* (PLD 2018 SC 595). The answer depends upon the nature of the occurrence alleged in the proposed FIR. The law laid down in *Sughran Bibi* is that a second FIR is not permissible merely to place before the police another version of the same occurrence already reported. At the same time, the investigating agency remains under a duty to investigate all aspects of the occurrence and all versions brought before it.

18. The facts of the instant case, however, prima facie disclose a distinction between the occurrence forming the subject matter of FIR No.1121/2026 and the subsequent allegations now made by the petitioner. The earlier FIR concerned the alleged abduction of Mst. Hina Aslam by unknown persons. The present complaint concerns the subsequent discovery and alleged solemnization of a child marriage on 18.05.2026, the alleged preparation/use of a purported Nikahnama and the alleged involvement of persons in solemnizing or facilitating the marriage of a child. The latter allegations are not merely a counter-version of the

alleged abduction; rather, they relate to an identifiable statutory offence arising from a distinct transaction.

19. The distinction is further reinforced by the fact that the alleged Nikah came to light during the investigation of the earlier case and that the Municipal Committee, Kasur, has reportedly stated that no corresponding record of the alleged Nikah exists in its office. Whether the Nikahnama is forged, whether the marriage was in fact solemnized, who participated in or facilitated it, and what offences, if any, were committed are matters requiring investigation. They cannot appropriately be foreclosed at the threshold by treating the complaint as merely a second version of the earlier allegation of abduction.

20. The principle enunciated in *Sughran Bibi*, therefore, does not, in the peculiar circumstances of the instant case, furnish a lawful basis for refusing to entertain the petitioner's complaint altogether. The police shall, however, ensure that the investigation of the earlier FIR and the newly reported occurrence is investigated objectively and strictly in accordance with law, without any no duplication of proceedings or prejudice to any person.

21. It follows that the learned Additional Sessions Judge/Ex-Officio Justice of Peace fell in error in declining to exercise jurisdiction on the sole premise that the petitioner should seek addition of offences in the earlier FIR. The impugned order has failed to take into consideration the subsequent and distinct allegation of child marriage and the statutory consequences flowing from the Act, 2026.

22. For what has been discussed above, the instant petition is **allowed**. The impugned order dated 06.08.2026 passed by the learned Additional Sessions Judge/Ex-Officio Justice of Peace, Kasur, is set aside. Respondent No.4/SHO, Police Station B-Division, Kasur, is directed to proceed in accordance with Section 154, Cr.P.C., on the basis of the

petitioner's application and, if the information discloses commission of a cognizable offence, record the same and proceed with investigation strictly in accordance with law. Needless to observe that the registration of the case shall not be construed as an expression of opinion regarding the guilt of any person.

23. As regards the custody and protection of Mst. Hina Aslam, the Court cannot lose sight of the fact that, prima facie, she is below eighteen years of age and that the alleged marriage was solemnized after the coming into force of the Act, 2026. Therefore, despite her statement that she wishes to go with respondent No.5, Mst. Hina Aslam cannot be allowed to go with respondent No. 5/Muhammad Luqman as any form of cohabitation, before attaining the age of eighteen years, with or without consent has been treated as child abuse under Section 5 of the Act, 2026 and punishment of seven years has been prescribed for any person who induces, forces, persuades, entices or coerces, a child bride to engage in child abuse. For ease of ready reference, the section 5 the Act, ibid is reproduced as under:-

> ***"5. Child abuse and its punishment-*** *(1) Any form of cohabitation, before attaining the age of eighteen years, with or without consent, resulting from a child marriage shall be the child abuse under the Act.*
>
> *(2) Any person who induces, forces, persuades, entices or coerces any child bride or child groom to engage in child abuse or commits child abuse shall be punished with imprisonment for a term which may extend to seven years but shall not be less than five years and with fine which shall not be less than one million rupees."*

24. Section 13 of the Act, 2026 expressly requires the best interests of the child to remain a primary consideration and contemplates immediate protective measures, including safe shelter and supervised custody where required. The statutory scheme further provides that the child's purported

consent, by itself, shall not determine questions of custody or residence in proceedings under the Act, ibid.

25. At the same time, the Court must not disregard the expressed wishes and dignity of Mst. Hina Aslam. Her statement before this Court indicates that she does not wish to return to her parental home and apprehends ill-treatment at the hands of family members. In these circumstances, neither immediate restoration to the parental home nor handing over of her custody to respondent No.5 would adequately address the competing considerations of safety, welfare, protection and her expressed wishes.

26. Consequently, and purely as a protective measure, Mst. Hina Aslam shall remain in the safe custody of the Child Protection & Welfare Bureau, Government of the Punjab, through its duly authorized officer, pending further orders of the competent forum. The Bureau shall ensure her safety, dignity, education, psychological well-being and access to appropriate counselling and shall not permit any person to exercise coercion or undue influence upon her.

27. The learned Guardian Judge, Lahore, shall have jurisdiction to determine the question of custody in appropriate proceedings under the Guardians and Wards Act, 1890, upon an independent assessment of the welfare and best interests of the minor. Nothing contained in this judgment shall prejudice the determination of the competent Court regarding permanent custody, guardianship or the legal status of the alleged Nikah.

28. In view of the apprehension expressed by Mst. Hina Aslam regarding her safety at her parental home, her interaction with her parents shall, for the present, be arranged only in a supervised environment by an authorized officer of the Child Protection & Welfare Bureau. Likewise, if

Mst. Hina Aslam expresses a desire to meet respondent No.5 or his parents, such interaction may be arranged by the Bureau in a safe and supervised environment, subject to the assessment of the child's welfare and without permitting any private or unsupervised meeting.

29. The Child Protection & Welfare Bureau shall submit a brief report before this Court regarding the safety and welfare of Mst. Hina Aslam after an interval of four weeks and thereafter as and when required by this Court.

30. Before parting with the judgment, it is clarified that the observations made herein are confined to the prima facie assessment necessary for deciding the petition under Article 199 of the Constitution and Sections 22-A and 22-B, Cr.P.C. The Investigating Officer shall conduct an impartial investigation without being influenced by any observation contained herein, and the competent criminal Court shall decide the matter strictly in accordance with the evidence and law.

31. The instant Writ Petition is allowed in the above terms.

(MUNAWAR IQBAL DUGGAL)
JUDGE

ANNOUNCED IN OPEN COURT on 31.08.2026.

JUDGE.

APPROVED FOR REPORTNG.

JUDGE.

*Nadeem**