

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CRM(M) No.114/2023

ADVOCATE JEHANGIR HASSAN BHAT & ANR.

... PETITIONER(S)

Through: - Mr. Showkat Ali Khan, Advocate.

Vs.

MEHMOODA BEGUM & ORS.

...RESPONDENT(S)

*Through: - Mr. S. R. Hussain, Adv-for R1
Mr. Syed Musaib, Dy.AG-for R2 & R3.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER (ORAL)

06.12.2024

1) Through the medium of present petition, the petitioners have challenged order dated 01.02.2023 passed by the learned Judicial Magistrate 1st Class (District Mobile Magistrate), Sopore, in an application under Section 97 of the Cr. P. C filed by respondent No.1 against the petitioners. Vide the aforesaid order, Senior Superintendent of Police, Sriangar, has been directed to ensure execution of search warrant dated 19.12.2022 through every legally permissible mode and it has been further provided that if Senior Superintendent of Police or the team of officers constituted by the learned Magistrate vide order dated 23.01.2023 comes to the conclusion that the execution of warrant is being impeded by petitioner No.1 herein, they shall be at liberty to proceed against him as per law.

2) On 31.03.2023, this Court, while issuing notice to the respondents, stayed the operation of order dated 01.02.2023 passed by the learned Magistrate. The aforesaid interim order is still in operation.

3) Learned counsel for the petitioners has submitted that the petitioners do not want to pursue the present petition and that the same may be dismissed as withdrawn. His statement is taken on record.

4) Learned counsel for respondent No.1 vehemently opposed the withdrawal of the petition. He has submitted that during pendency of this petition, this Court has passed a series of orders whereby directions have been issued to Senior Superintendent of Police, Srinagar, and other police officers to effect the recovery of minor child who had been forcibly removed from the custody of respondent No.1 and if the petitioners are allowed to withdraw this petition, there is every possibility that the police agency would not undertake the search of the minor child with seriousness.

5) Learned counsel for respondent Nos.2 and 3 has submitted that the police agency is undertaking the search of minor child with all sincerity and seriousness and in this regard, a series of status reports have been filed by the police agency before this Court, the latest one being dated 27.11.2024. It has been submitted that the police party has launched a search for the minor child at Jammu and Chandigarh as well but till date no clue about the minor child could be ascertained.

6) I have heard learned counsel for the parties and perused the record.

7) A petitioner in a litigation is *dominus litus*, meaning thereby he is master of the case. He is the person who has carriage and control of the case. A petitioner is free to abandon or withdraw his case but the same is subject to certain restrictions. Therefore, it would not be open to this Court to deny permission to the petitioners to withdraw the petition, particularly when the petitioners are not seeking liberty to file any fresh proceedings for the same cause, unless there are special circumstances for this Court to deny such permission.

8) Before dealing with the question as to whether the prayer for withdrawal of the petitioner should be permitted, it would be appropriate to refer to some of the orders passed by this Court during the pendency of this petition. On 08.05.2024, this Court expressed its anguish about the manner in which the police agency and its officers are approaching this case and it was observed that the approach of the police agency in the matter is casual in nature. On 03.07.2024, this Court was informed that the Special Investigation Team (“SIT”) of three officers has been constituted and entrusted with the job of recovery of minor child of respondent No.1 and it was informed to the Court that the child may be under the custody of husband of respondent No.1, namely, Arshid Hussain Bhat, who is presently in and around Chandigarh. On 20.11.2024, it was informed to the Court by head of the SIT that despite best efforts by the team, the whereabouts of the person Shri Arshid Hussain Bhat could not be located.

9) Respondent No.1 apprehends that if the petitioners are allowed to withdraw the petition, the police may not continue the efforts to trace out the missing minor child. In this regard it is to be noted that once the petition is dismissed as withdrawn, the order of stay passed by this Court on 31.03.2023 will lapse and the trial Magistrate would be at liberty to proceed further in the matter in the light of impugned order dated 01.02.2023. By dismissal of this petition, the proceedings initiated by respondent No.1 before the learned trial Magistrate would not come to an end. In fact, by withdrawal of the petition, the stay put on the said proceedings by this Court would come to an end and the learned Magistrate would be free to proceed in the matter in accordance with law.

10) The whole purpose of proceedings before the learned trial Magistrate, which have been initiated in terms of Section 97 of Cr. P. C, is to somehow trace the minor child of respondent No.1 and have him produced before the Court. Once the stay order passed by this Court would come to an end with the withdrawal of the present petition, the Magistrate would be free to pass all orders as are permissible under law for securing the recovery of the minor child. The SIT stands already constituted in terms of directions of the Magistrate passed on 23.01.2023. The only thing to be done is monitoring of the progress of the steps that are being taken by the SIT. The same can very well be done by the learned trial Magistrate. This would take care of apprehension of respondent No.1.

11) In view of what has been discussed hereinabove, the petition is dismissed as withdrawn. Interim order dated 31.03.2023 shall stand vacated. The learned trial Magistrate is directed to proceed further in the matter in accordance with law and make all efforts to see that the minor child is produced before the said Court, whereafter appropriate orders with regard to custody of the said child shall be passed in accordance with law.

12) A copy of this order be sent to the learned trial Magistrate for information and compliance.

(Sanjay Dhar)
Judge

Srinagar
06.12.2024
"Bhat Altaf-Secy"

Whether the order is reportable: **Yes/No**

