

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate/Advisory/Original/Review Jurisdiction)

PRESENT:

Justice Amin-ud-Din Khan, Chief Justice
Justice Ali Baqar Najafi
Justice Rozi Khan Barrech

F.C.P.L.A No.1183 of 2026

[against the impugned order dated
16.03.2026, passed by the High Court of
Sindh, Karachi in Const. Petition No.S-678 of
2022]

Muhammad Faraaz Shaikh & another

.....Petitioner(s)

Versus

Javeria Shahani & others

.....Respondent(s)

For the Petitioners(s) : Syed Mustafa Mehdi, AHC
[with special permission of the court]

For the Respondent(s) : Mr. Haroon-ur-Rashid, ASC with
respondent No.1

Date of hearing : 16.07.2026

JUDGMENT

ALI BAQAR NAJAFI, J.- Through this petition under Article 175-F(1)(c) of the Constitution of Islamic Republic of Pakistan, 1973 [**the Constitution, 1973**], leave to appeal is sought against the impugned order dated 16.03.2026 passed by the High Court of Sindh, Karachi [**High Court**], whereby, the High Court while disposing of CMA No.2420 and 9641 of 2024, recalled the order dated 25.01.2024 passed by it and the petitioner was directed to restore the custody of the minor to the respondent No.1, and if he had failed to bring the minor before the court, FIR be registered under the provision of abduction of child as depriving the mother of meeting with the minor son is violative of fundamental rights

guaranteed to an individual and under Article 35 of the Constitution, 1973, since the family rights of the respondent No.1 had been violated. Besides, the Ministry of Foreign Affairs, Ministry of Interior, Government of Pakistan and Department of Human Rights Affairs of Pakistan were also directed that all measures be taken to ensure that minor be brought to the Court while sending copy of the order to the General Court of Justice District Court Division (State of North Carolina) where the matter was cognizable. However, the case was adjourned to 20.04.2026 but next order is not placed on record.

2. **Briefly**, the facts giving rise to the filing of this petition are that petitioner is resident of State of Carolina, United State of America **[USA]** and is represented through his authorized attorney namely, Muhammad Abdullah. Javeria Shahani **[respondent No.1]**, permanent resident of USA having permanent National Identity Card, though at present is residing in Pakistan. On 21.08.2017, both got married in USA, whereafter, they travelled to Pakistan for a wedding reception. In January, 2019, they were blessed with a minor, namely, Rohaan Faraz Sheikh who is a USA Citizen, having both USA Passport and a Nationality. The petitioner is also enjoying the status of a USA national. Unfortunately, couple separated on 02.10.2021, whereafter, the litigation started for the custody of the minor. On 03.02.2022, an order for temporary custody was passed by General Court of Justice, District Court Division (State of North Carolina) whereby, both the respondent No.1 and the petitioner were ordered to share the joint physical custody of the minor with an arrangement that minor would stay with the petitioner/father for five days and with respondent No.1/mother for nine days every two weeks and both will jointly consult about minor's health, education and day to day activities, etc. In compliance with the said order, the petitioner arrived at the usual exchange location on 06.05.2022 but, after waiting for some time, went to the home of the respondent No.1 where neither she nor the minor were present. Even her cell phone was switched off. The petitioner contacted the respondent No.1 her Attorney who was not aware about whereabouts of both the mother and the

child. The petitioner had informed the US Police who also remained unable to contact with the respondent No.1. However, an official namely, Detective Bonaparte, Missing Persons Unit of Charlotte-Mecklenburg Police Department (Case ID No.20220508134002) was assigned this case. Through the help of surveillance cameras at the airport, the respondent No.1 was located while departing from JFK Airport for Doha on 28.04.2022 and then to Karachi in the flight reservation under the name of Mushaque Shahani (her father). The respondent No.1 after arriving at Karachi immediately filed a Guardianship Petition No.20 of 2022 before Family Judge, Malir at Karachi and also sought Pakistani Citizenship for the minor without the knowledge of the petitioner that too after abducting the minor from USA. Meanwhile, on 09.05.2022, the Court of Justice District Court Division passed an '*Ex-Parte Temporary Emergency Custody Order*' directing the respondent No.1 to return to the State of North Carolina and hand over the child to the petitioner. The US Court also requested the Pakistani authorities to enforce said order by taking the custody of minor and return him to the petitioner pending a full hearing of father's claim for custody, since the minor is a USA Citizen and had spent his entire life in USA. The attorney appointed by the US Court has found respondent No.1 as unfit mother who would cause an irresponsible harm to the minor if allowed to remain with her. The Council for Children's Right **[CFCR]** attorney David Freeman testified in the Court that there was substantial risk of emotional and physical harm to the minor, if he is allowed to stay with mother/respondent No.1 and that the petitioner is a fit parent and should be awarded full custody and according to him, the petitioner/father was close and has a love relationship with the minor, whereas, all the allegation levelled against the petitioner were found false and unsubstantiated. Obviously, upon removal of the child by the respondent No.1, she became liable to a Criminal Contempt Court Order, therefore, the authorities were directed to arrest her and sentence to 30-days imprisonment and imposed a fine of 500 USD. The respondent No.1 was also charged with Felony Custody Order on account of kidnapping the child and

consequently, Federal and State authorities issued warrants against her.

3. The petitioner was constrained to file Const. Petition No.678 of 2022 before the Sindh High Court, in which, on 16.03.2023 a restraining order was passed against the Guardian Court for determining the custody issue until the US Court had given the final judgment, wherein all aspects, including custody of the minor, and divorce settlement between the parties were conclusively decided. Meanwhile, on 09.06.2023, the US Court had passed final/exclusive verdict in favour of the petitioner which was placed on record vide CMA No.4841 of 2023. The Const. Petition was, therefore, disposed of on 06.10.2023 with the direction to the Family Court to decide about fate and the violation of Court judgment within a period of one month keeping in view the amendment in Section 6-A of Schedule-I of the Family Courts Act, 1964. On 18.01.2024, the Family Court held that since the custody of the minor has already been regulated by a foreign court, the respondent No.1 was directed to hand over the custody of minor through American Consulate, Karachi along with his Pakistani and American passport. In addition thereto, the FIA and Human Trafficking Cell Karachi were authorized to recover minor and hand it over to American Consulate, Karachi for its safe return to the foreign court. It was also held that application before the court by the respondent No.1 was barred under Section 19 of the Guardian & Wards Act, 1890.

4. The respondent No.1 challenged this order before the District Judge by filing Appeal No.06 of 2024, however, said appeal was withdrawn on 17.02.2024 giving finality to the said order. Meanwhile, in 08 days the Sindh High Court had passed an order on 25.01.2024 whereby it directed the respondent No.1 to hand over the custody of the minor to the petitioner so that he could be sent back to USA in compliance of which on 02.02.2024 the minor was handed over in US Embassy, Karachi who was returned to USA. This way, the proceedings, until then, came to an end.

5. It is worth mentioning that the petitioner had undertaken to withdraw the contempt application filed against the respondent

No.1 before the US Court, in compliance whereof the warrants were got withdrawn and the relevant order was placed before the High Court vide statement dated 14.03.2024.

6. The controversy re-emerged when the respondent No.1/ mother filed two following miscellaneous applications in the High Court at Karachi.

- (i) CMA No.2420 of 2024 requiring the petitioner to provide documents for dismissal of warrants and also sought regular video meeting with the minor, application under Sections 3, 6 and 12 of the Contempt of Court Ordinance, 2003 read with Article 204 of the Constitution, 1973,
- (ii) CMA No.9641 of 2024, whereby, the contempt proceeding were sought to be initiated against the petitioner.

7. On 16.03.2026, the High Court had ordered to re-call its earlier order dated 25.01.2024 and initiated the contempt proceedings against the petitioner without considering that the order for handing over of the custody of the minor had already attained finality and was thoroughly implemented. It is pertinent to note here that respondent No.1 had challenged the order dated 09.06.2023 passed by US Court before the US Appellate Court/forum where appeal is still pending, meaning thereby that the petitioner had sought her remedy within the legal framework of the said Court at North Carolina, hence this petition against the order dated 16.03.2026.

8. Arguments heard. File perused.

9. After hearing learned counsel for the parties, it is straightaway observed that in the impugned order a reference was given to the order dated 07.01.2026 passed in FCPLA No.14 of 2025, which is out of context since it was passed in another petition, in which some observations were given regarding passing of the orders on compassionate grounds. However, in the present case, admittedly, the order of the Guardian Court, Karachi was assailed which had already attained finality when the appeal was

dismissed as withdrawn from the Court of Additional District Judge. Besides, the petitioner had also submitted before the jurisdiction of the US Court of North Carolina when she had preferred an appeal against the final custody of the minor which is pending. Surprisingly, none of these aspects were discussed in the impugned order dated 16.03.2026.

10. Although, clause 6-A¹ permits the local family courts to deal with the matters of return of child under Hague Convention on the Civil Aspects of International Child Abduction, 1980². The said convention emphasises the exercise of jurisdiction between different Courts of Contracting States to avoid their conflicting views. Under Article 3, the removal or the retention of a child is to be considered wrong where it is in breach of rights of custody attributed to a person, either by operation of law, a judicial or administrative decision or a lawful agreement under the law of the State in which the child was habitually resident immediately before the removal or retention. At the time of such removal or retention those rights were actually exercised, either jointly or alone. Under Article 4, the Convention is applicable to any child of less than 16 years, who was habitually resident in a Contracting State immediately before any breach of custody or access rights. Under Article 12, where a child has been wrongfully removed or retained in terms of Article 3 within a year commencement of the proceedings before the judicial or administrative authority of the Contracting State, the authority concerned shall order the return of the child forthwith to the contracting State where the such child habitually resided unless it is shown that the child has settled in the new environment. Under Article 16, after receiving notice of a wrongful removal or retention of the child the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained, shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention. Under Article 19, a decision under this Convention

¹ Schedule II of the West Pakistan Family Court Act, 1964

² Hague Convention on Civil Aspects of International Child Abduction, 1980

concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

11. Besides, Section 13 of the Code of Civil Procedure³ provides that a foreign judgment is conclusive on directly adjudicated matter between same parties only when the court had jurisdiction, judgment was given on merits, proceedings were founded on correct view of international law while recognizing the law of Pakistan and the judgment not procured against the principle of natural justice or obtained by fraud. Even otherwise High Court should interfere exceptionally, sparingly and in extra ordinary cases of real urgency keeping in view the Guardian Court's powers to regulate the interim custody of the minor.⁴ An alternate remedy must be taken into account while issuing a writ for the recovery of the minor.⁵ In somewhat similar circumstances, as in the present case, the minor was removed by one of the parents from the jurisdiction of guardian court in Pakistan and took him abroad, for which order was passed by the local court that the minor be recovered and produced from abroad and be given to the parent, so that the proceedings before the Guardian Court shall resume from where it were discontinued.⁶

12. In view of the issue of the custody of a child removed or retained from a Contracting State and brought into another Contracting State, it will be expedient for the courts and the concerned authorities to take into account the following guidelines to avoid conflict between the judgments amongst the Contracting States:-

³ **Section 13 of Code of Civil Procedure, 1908**

13. When foreign judgment not conclusive.- A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except;

(a) Where it has not been pronounced by a Court of competent jurisdiction;

(b) Where it has not been given on the merits of the case;

(c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of Pakistan in cases in which such law is applicable;

(d) Where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) Where it has been obtained by fraud;

(f) Where it sustains a claim founded on a breach of any law in force in Pakistan.

⁴ "Mst. Nadia Perveen Vs. Mst. Almas Noreen" (PLD 2012 SC 758)

⁵ Mst. Qurat-ul-Ain Vs. Station House Officer Police Station Saddar Jalalpur Jattan District Gujrat (2024 SCMR 486)

⁶ Suo Motu Case for recovery of minor Kids of Mst. Tahira Jabeen (2010 SCMR 1804)

- a. while dealing with the dispute of custody of the minors between the parties of a different citizenship of countries the court shall consider the jurisdiction of the court which has given an order, whether on merits, and in the proceedings not against the rules of Private International law in which law of Pakistan was recognized, and the judgment was not procured against the principal of natural justice or by fraud,
- b. the removal or retention of a child would be wrong where it is in violation of law, judicial or administrative decisions or a lawful agreement of a State where the child was habitually residing immediately before removal or retention,
- c. unless the child is found settled, he is to be returned to the State where he was habitually residing, and
- d. after receiving such notice from the judicial or administrative authorities, the court shall not decide the case on merits on the rights of the custody unless it is determined that such child is not to be returned under the Convention on the Civil Aspects of International Child Abduction, 1980.

13. For the foregoing reasons, this petition is converted into appeal and is **allowed**. The impugned order passed by the High Court of Sindh is set aside.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
16th of July, 2026

‘Approved for Reporting’

Adeel