IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE IJAZ UL AHSAN

Criminal Petition No.1011 of 2017
Against order dated 16.08.2017 of Lahore High Court, Lahore, passed in Criminal Miscellaneous No.47853-H of 2017.

Mirjam Aberras Lehdeaho **Petitioner(s)**

VERSUS

SHO, PS Chung, Lahore & others **Respondent(s)**

For the Petitioner (s) : Ms. Asma Jehangir, Sr.ASC
Ch. Akhtar Ali, AOR

For Respondent No.2 : Ch. Ishtiaq Ahmed, ASC *a/w* Ghulam Qasim Dogar and Ghulam Jaffer Dogar *(Minors)*

For the State : Ch. Muhammad Waheed Khan, Addl.P.G, Punjab

Date of Hearing : 05.12.2017

JUDGMENT

IJAZ UL AHSAN, J-. The petitioner seeks leave to appeal against an order of Lahore High Court, Lahore, dated 16.08.2016. Through the impugned order, a *Habeas Corpus Petition* (Crl.Misc.No.47853-H of 2017) filed by the petitioner seeking recovery of her minor sons namely Ghulam Qasim Dogar and Ghulam Jaffer Dogar was dismissed.

2. The petitioner, who is a National of Finland met and later married Respondent No.2, who is presently serving as DIG, Punjab Highway Patrol. The marriage took place in 1997 in Lahore, Pakistan. Before the marriage, the petitioner converted to Islam. She states that she continues to be a Muslim. The parties have three children from the marriage

namely, Zahra Bibi Dogar *(about 19 years of age presently living in Canada)*; Ghulam Qasim Dogar *(aged about 17 and a half years)*; and Ghulam Jaffer Dogar *(about 13 years old)*. All three children were born in Lahore, Pakistan.

3. The parties alongwith their children resided in Lahore till 2009. However, presumably on account of security concerns, Respondent No.2 decided to apply for Canadian Immigration for the whole family. On his desire, the family relocated and settled in Grand Falls-Windsor, Newfoundland, Canada. Respondent No.2 also purchased a house in Canada where the family is residing. All three children started schooling in September, 2009 and till recently were living and studying in Canada.

4. It appears that the petitioner and the three children acquired Canadian Citizenship on 17.08.2014. However, Respondent No.2 only acquired Permanent Resident Status as he did not apply for citizenship owing to his Government Service in Pakistan. He returned to Pakistan after getting such status. He however visited his family off and on. The three children were in the care and custody of the petitioner since 2009 who single handedly raised them in Canada.

5. In 2016, during a visit to his family, Respondent No.2 appears to have made plans for the petitioner and their children to visit Pakistan for three weeks. All three children and the petitioner stayed in Lahore till 05.09.2016. Thereafter they returned to Canada with the consent of Respondent

No.2. In order to ensure that there would be no objection by the Immigration authorities regarding minors' traveling with one parent, Respondent No.2 issued permission letter dated 03.09.2016 in favour of the petitioner.

6. Before the petitioner and the children left for Canada, Respondent No.2 insisted that the three children should visit Lahore again during Christmas holidays in December, 2016. While the daughter appears to have declined, the two sons agreed to a short visit with an understanding that they would return to Canada on 26.12.2016. The two children arrived in Lahore on 21.12.2016 with a clear understating that they would return to Canada on 26.12.2016. However, without disclosing anything to the petitioner or the children, Respondent No.2 had quietly filed an application in the Guardian Court at Lahore, under Section 7 of the Guardians & Wards Act, 1890 *(the Act, 1890)* seeking his appointment as a Guardian of the person and property of three children. The application was filed by him on 01.09.2016 when the children were temporarily in Lahore and later left for Canada with his permission. It is also significant to note that the daughter had already attained the age of majority and was therefore an adult which fact was concealed from the Court.

7. Respondent No.2 managed to obtain an *ex parte* restraining order against the petitioner *(in absentia)* from the Court of Guardian Judge-IV, Lahore. In the application, the address of Respondent No.2 in Lahore was given as the

address of the petitioner. It is alleged that Respondent No.2 never disclosed to the Guardian Court that the minors had left the country with their mother on 05.09.2016 with his consent. The case was fixed from time to time and notices were repeatedly issued to the petitioner. Not surprisingly, she was never served and therefore did not appear before the Guardian Court.

8. Having tricked the children through various contrived reasons to stay beyond 26.12.2016, on 03.01.2017, Respondent No.2 moved an application before the Guardian Court seeking permission to produce them in the Court to record their statements. The statements of the minors were accordingly recorded to the effect that they had no objection if their father was appointed as their Guardian. There is nothing on record to indicate that the children were ever informed or were aware of the nature of proceedings in which they had recorded their statements. It is apparent that they neither knew nor had any inkling about the ramifications and implications of such statements. At no stage, was the Court informed that the petitioner had already left for Canada and was living there. However, much belatedly i.e. on 03.03.2017, six months after the petitioner had left Pakistan with her children, Respondent No.2 moved an application before the Guardian Court, stating that the petitioner was no longer in Pakistan and sought permission to give her address in Canada. An additional prayer for his appointment as guardian of the property of minors was also made on the pretext of some property that he owned jointly with his

children. It has also been alleged that although the notice was sent to the petitioner at her address in Canada through courier service, it indicated that some matter was pending in the Court of Nazar Abbas Gondal, Civil Judge, Lahore which was unclear, deceptive, confusing and also gave a wrong case number. The guardianship matter was in fact pending before Guardian Court No.VII, Lahore. The notice did not provide any other details that could provide any indication to the petitioner regarding the nature of proceedings pending in Pakistan.

9. On account of non appearance of the petitioner, the Guardian Judge passed an *ex parte* order dated 04.04.2017 granting Respondent No.2 guardianship of the person and property of the minors Ghulam Qasim Dogar and Ghulam Jaffer Dogar. It is pertinent to mention here that despite an understanding that the children would return by 26.12.2016, they were not allowed to return and Respondent No.2 managed to keep them back on one pretext or the other. When the children did not return to Canada, the petitioner became anxious and started asking questions. Having not received satisfactory answers, she applied for a visa to visit Pakistan in January, 2017 as her Pakistan Origin Card (POC) had expired. It is alleged that Respondent No.2 obstructed or at least did not facilitate renewal of the POC of the Petitioner to keep her out of the country. In the meantime, the two children came to know about the order passed by the Guardian Judge and became restless and suspicious at not being allowed to return. They contacted their mother on

24.04.2017 and informed her accordingly. As soon as the petitioner received a visa, she travelled to Pakistan on 19.06.2017. She alleges that her repeated requests to see the children were declined. This prompted her to file a Habeas Corpus Petition under Section 491 read with Section 561-A, Cr.PC before the Lahore High Court, Lahore for recovery of her children. The children were produced before the High Court on 07.08.2017. The High Court inquired from them if they were under "detention" or "supervision" of any person to which they obviously responded in the negative. This prompted the learned High Court to dismiss the petition as non maintainable, vide order dated 16.08.2017. Hence, this petition.

10. The learned counsel for the petitioner submits that Respondent No.2 had manipulated the visit of his children to Lahore in December, 2016 and thereafter placed unlawful restrictions on them by not allowing them to return to Canada. He is therefore holding them in an unlawful and improper manner. She further submits that it is in the best interest and welfare of the minors that they be relieved of this trauma. She maintains that the children have been deprived of education, denied any direct contact with their mother and the forcible detention has caused serious disturbance to their lives. She further maintains that Respondent No.2 being the father was the natural guardian of the minors. There was no need for him to seek a declaration to this effect. He used the proceedings in the Guardian Court as a cover to deprive the petitioner of her children and to forcibly detain them in

Pakistan against their will. On instructions of her client, the learned counsel categorically stated that the wishes of the children be ascertained by this Court and in case, the children express a wish to stay in Pakistan she would withdraw the petition.

11. The learned counsel for Respondent No.2 has vehemently defended the impugned order. He submits that being the father of the children, Respondent No.2 was the best person to take decisions regarding their welfare and upbringing. He had tried to persuade the petitioner to return to Pakistan alongwith the children, but she had refused to do so. He maintains that Respondent No.2 had sent airline tickets to his children to return to Pakistan which they had done willingly. However, appropriate proceedings were initiated *bona fide* before the Guardian Court in order to avoid any legal complications. He further maintains that admittedly the matter is pending before the Guardian Court where an application moved by the petitioner for setting aside the *ex parte* order is already pending. Therefore, the question regarding custody and welfare of the minors should be left to be determined by the Court of competent jurisdiction after a fair trial and evidentiary hearing to enable the parties to put all requisite material before the Court. On the basis thereof, an informed decision can be made by the Guardian Court regarding the welfare and custody of the minors. He has vehemently argued that in these circumstances, the High Court was justified in refusing to exercise jurisdiction under Section 491, Cr.PC observing that the questions of custody

and welfare of the minors could more appropriately be determined by the Guardian Court. Responding to an assertion made by learned counsel for the petitioner that a petition under Section 7 of the Act, 1890 was not maintainable, he submits that there is no bar in the Guardian and Wards Act, 1890 that may prevent the father/natural guardian from seeking an order appointing him guardian of the person and property of the minors. In this context, he has placed reliance on Section 354 of Muhammadan Law by D.F. Mulla; Shabana Naz v. Muhammad Saleem **(2014 SCMR 343)**; Jacob A. Chakramakal v. Rosy J. Chakramakal **(1975) ILR 2Mad 384)**; Kamini Mayi Debi v. Bhusan Chandra **(AIR 1926 Calcutta 1193)**; and Naziha Ghazali v. The State **(2001 SCMR 1782)**.

12. We have heard the learned counsel for the parties and gone through the record with their assistance. Considering the peculiar facts and circumstances of this case, the following questions arise which have a direct bearing on the outcome of these proceedings:-

i) Whether the petition under Section 7 of the Act, 1890 was maintainable;

ii) Whether the petition before the High Court under Section 491 read with Section 561, Cr.PC was not maintainable;

iii) What is the effect of the impugned order passed by the High Court; and

iv) What order can be passed by this Court in the present proceedings?

13. As far as the maintainability of a petition under Section 7 of the Act, 1890 (Question No.i above) by a real

father is concerned, it appears that despite the fact that the father is a natural guardian, there is no bar in law that places any restriction on the natural guardian to approach a Court of competent jurisdiction to be declared as guardian of the person and property of the minors. It appears that such declaration provides incremental benefits and convenience in his transactions relating to the properties held in the name of the minors. This view is fortified by Section 354 of Muhammadan Law by D.F. Mulla as well as the following judgments:-

i) Shabana Naz v. Muhammad Saleem **(2014 SCMR 343)**;

ii) Jacob A. Chakramakal v. Rosy J. Chakramakal **(1975) ILR 2Mad 384)**;

iii) Kamini Mayi Debi v. Bhusan Chandra **(AIR 1926 Calcutta 1193)**; and

iv) Naziha Ghazali v. The State **(2001 SCMR 1782)**.

14. Having held that there is no bar on the father/natural guardian against obtaining a guardianship certificate, we may observe that the circumstances and *bona fides* of Respondent No.2 in obtaining such declaration/ certificate need to be examined keeping in view the peculiar facts of this case. In this context, the following factors are significant:-

a) The children alongwith the petitioner were living in Pakistan with Respondent No.2 till 2009;

b) It was on the wish and desire of Respondent No.2 that the family immigrated to Canada where the petitioner and all three children

obtained citizenship. On account of professional reasons, he did not seek citizenship but got Permanent Resident Status which allows him to enter and exit Canada at his convenience;

c) From the material placed before us it appears that there was an understanding in the family that either Respondent No.2 would visit the family in Canada as and when he could or in the alternative, the petitioner alongwith the children would visit Pakistan during holidays;

d) The above arrangement continued till 2016 when Respondent No.2 appears to have changed his mind and decided to bring the family back to Pakistan. However, by this time, the petitioner had taken up employment in Canada and the children had started attending Schools/Colleges at various levels in Canada and seven years had elapsed in the meanwhile. It has been asserted on behalf of the petitioner and not denied by the Respondent that the family is well settled and assimilated in the new environment;

e) It appears that there was some resistance from the petitioner, her adult daughter and possibly the two children to permanently return to Pakistan for the reason that they had settled down in Canada and appear to be happy. However, in order to force them to come back to Pakistan, Respondent No.2 used devious and deceitful methods. On the promise that they would only be visiting their father for a short holiday and would be

allowed to return to Canada in December, 2016, the children came to Pakistan in good faith with the blessings of their mother. What neither the petitioner nor the children knew was that Respondent No.2 had other plans and had gone to great lengths to create a legal cover to support his actions;

f) Respondent No.2 approached the Guardian Court without disclosing the exact facts, took pains to conceal the correct address of the petitioner, did not inform the Court that the daughter was already an adult and also withheld the fact that he had granted permission, in writing, to the children to return to Canada. The purchase of a 5 Marla plot in the joint names of Respondent No.2 and the two boys, was also, in our opinion a device, possibly under legal advice, to create grounds of appointment of Respondent No.2 as guardian of property of the minors and thus postponement of age of majority from 18 to 21 years. He got the orders in his favour without contest, *ex parte* and behind the back of the petitioner; and

g) Initially, the petitioner was shown as residing at the house of Respondent No.2 in Lahore and at a belated stage her Canadian address was placed on record. However, the notice sent to the petitioner did not contain the requisite information which would have enabled her to get information about the matter pending before the Guardian Court and to instruct a lawyer to contest the matter on her behalf. The petitioner also appears to have taken advantage of the fact that she was not residing in Pakistan.

15. All the above factors point towards manipulation, deceit and lack of *bona fides* on the part of Respondent No.2. The application for appointment of guardian of the person and property of the minors was used for improper purposes in order to provide legal cover to the wishes and designs of Respondent No.2. We are therefore not willing to hold that the certificate under Section 7 of the Act, 1890 by itself and notwithstanding the facts and circumstances narrated above is a perfect answer and defence available to Respondent No.2 to assert a right to keep the children in Pakistan against their will and take unilateral decisions regarding their custody and other aspects of their lives, which have direct nexus with their welfare. In view of the foregoing discussion we find that the *ex parte* order/judgment of the Guardian Court, Lahore is not sustainable.

16. As regards Question No.ii above, we find that the petition under Section 491 read with Section 561, Cr.PC was indeed maintainable. Where the petitioner, who is the real mother of the children *bona fide* believed that the children had been removed from her custody by exercise of deception and trickery, and thereafter forced to stay in Pakistan against their will, she could not be precluded from approaching the High Court, which was not denuded of its jurisdiction under Sections 491 and 561 Cr.PC to provide relief to the petitioner. Reliance of the learned counsel for Respondent No.2 on Nadia Parveen v. Almas Noreen **(PLD 2012 Supreme Court 758)**; Abdul Rehman Khakwani v. Abdul Majid Khakwani **(1997**

SCMR 1480); and Naziha Ghazali v. The State **(2001 SCMR 1782)** to assert that resort to Section 491, Cr.PC can be made only when the children of tender age have been snatched recently and there is a real urgency in the matter is misplaced. We have perused the said judgments and find that they are distinguishable on facts and not be applicable to the specific facts and circumstances of this case as has elaborately been noted above.

17. This Court has on various occasions examined the question of exercise of jurisdiction by the High Court where the matter involves custody of minors while the matter is *sub judice* before the Guardian Court. In Ahmed Sami and 2 others v. Saadia Ahmed and another **(1996 SCMR 268)** *at page 271,* it was held that*:*

> "It is true that a Guardian Court is the final arbitrator to adjudicate upon the question of custody of child but this does not mean that in exceptional cases when a person who is holding the custody of a minor lawfully and has been deprived of the custody of minor has no remedy to regain the custody pending adjudication by the Guardian Court. In exceptional cases where the High Court finds that the interest and welfare of minor demanded that the minor be committed immediately to the custody of the person who was lawfully holding the custody of minor before he was deprived of the custody, the Court can pass appropriate order under section 491, Cr.P.C. directing restoration of the custody of minor to that person as an interim measure pending final decision by the Guardian Court."

18. In Shaukat Masih v. Mst. Farhat Parkash and others **(2015 SCMR 731),** we held at page 734 that:

> "We have been informed that so far respondent No. 1 has not filed any appeal against the relevant order passed by the learned Guardian Judge nor any application has so far

been filed before the learned Guardian Judge seeking recall of the ex parte order and reconsideration of the matter on its merits. Be that as it may we find that through the impugned order passed by the High Court a minor girl has been given in the custody of her real mother and even if there are some questions regarding proper exercise of jurisdiction by the High Court in the matter still we would not like the little girl to be made a ball of ping pong and shuttle her custody during the legal battles being fought by those interested in her custody. Faced with this unfortunate situation we have decided to invoke this Court's jurisdiction under Article 187(1) of the Constitution of the Islamic Republic of Pakistan, 1973 which allows this Court to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it. Invoking the said jurisdiction of this Court we set aside the order passed by the learned Guardian Judge, Shahkot, District Nankana Sahib on 24-7-2014 and cancel the Guardianship Certificate of the said date and direct the learned Guardian Judge to consider the application submitted before him by the present petitioner regarding custody of the relevant minor as a pending application, to hear all the parties concerned, including the mother of the minor, and then to decide the matter of custody of the above mentioned minor afresh after attending to all the jurisdictional, legal and factual issues relevant to the controversy raised by the parties. During the interregnum the custody of the minor shall remain with her mother and the learned Guardian Judge shall attend to the request, if any, made regarding visitation rights."

19. In Muhammad Khalil-ur-Rehman v. Mst. Shabana Rahman and another **(PLD 1995 SC 633),** this Court held on *pages 638 and 639* that:

"In view of the above observation, it is quite clear that in appropriate cases the Court under section 491, Cr.P.C. if it reaches the conclusion that a minor has been illegally removed from the custody of a person who was holding his custody lawfully, the Court is empowered under section 491, Cr.P.C. notwithstanding the provisions of Guardians and Wards Act to pass appropriate orders. We are, therefore, of the view that the jurisdiction of the Criminal Court is not barred under section 491, Cr.P.C. to pass

> appropriate order with regard to custody of a minor who has been illegally removed from the custody of person, on account of the provisions of Guardians and Wards Act. ... As earlier pointed out, the two provisions, namely section 491, Cr.P.C. and section 25 of the Guardians and Wards Act deal with two different situations and as such the question of ouster of jurisdiction of criminal Court under section 491, Cr.P.C. on account of provisions of section 25 or 12 of Guardians and Wards Act did not arise at all. There is no overlapping between the provision of section 491, Cr.P.C. and section 25 of the Guardians and Wards Act."

20. In the case of Mst. Nadia Perveen v. Mst. Almas Noreen and others **(PLD 2012 SC 758)** we held *at page 760* that:

> "It has consistently been held by this Court in the cases of *Muhammad Javed Umrao v. Miss Uzma Vahid* (1988 SCNIR 1891), *Nisar Muhammad and another v. Sultan Zari* (PLD 1997 SC 852), *Mst. Khalida Perveen v. Muhammad Sultan Mehmood and another* (PLD 2004 SC 1) and *Naziha Ghazali v. The State and another* (2001 SCMR 1782) that the matter of custody of minor children can be brought before a High Court under section 491, Cr.P.C. only if the children are of very tender ages they have quite recently been snatched away from lawful custody and there is a real urgency in the matter and also that in such a case the High Court may only regulate interim custody off the children leaving the matter of final custody to be determined by a Guardian Judge. In those cases this Court had repeatedly emphasized that in such matters the jurisdiction of a High Court under section 491, Cr.P.C. is to be exceptional and extraordinary case of real urgency keeping in view that even a Guardian Judge has the requisite powers of recovery of minor children and regulating their interim custody."

21. Findings to the same effect have been recorded in Abdul Rehman Khakwani v. Abdul Majid Khakwani and 2 others **(1997 SCMR 1480)** and Mst. Khalida Parveen v. Muhammad Sultan Mehmood and another **(PLD 2004 SC 1).**

22. The Guardian Court is the final Arbiter for adjudicating the question of custody of children. However, where a parent holding custody of a minor lawfully has been deprived of such custody, such parent cannot be deprived of a remedy to regain the custody while the matter is *sub judice* before a Guardian Court. Therefore, in exceptional cases *(like the instant case)*, where the High Court finds that the best interest and welfare of the minor demand that his her custody be immediately restored to the person who was lawfully holding such custody before being deprived of the same, the Court is not denuded of jurisdiction to pass appropriate orders under Section 491, Cr.PC directing that custody be restored to that person as an interim measure pending final decision of the Guardian Court. While the tender age of the minor is always a material consideration but it is not the only consideration to be kept in mind by the High Court. Other factors like best interest and welfare of the minor, the procedural hurdles and lethargy of the system, delays in finalization of such matters, the handicaps that the mother suffers owing to her gender and financial position, and above all the urgency to take appropriate measures to minimize the trauma, emotional stress and educational loss of the minor are equally important and also need to be kept in mind while granting or refusing an order to restore interim custody by the High Court. The two provisions of law namely Section 491, Cr.PC and Section 25 of the Guardian and Wards Act deal with two different situations. As such, the question of ouster of jurisdiction of the High Court on account of

provisions of Sections 12 or 25 of the Guardian and Wards Act or pendency of proceedings under the said provisions does not arise. There is no overlap between the two provisions as both are meant to cater for different situations, the first to cater for an emergent situation, while the latter to give more long term decisions regarding questions relating to guardianship of minors keeping in view all factors including their best interest and welfare.

23. We are not persuaded by the argument of the learned counsel for Respondent No.2 that the remedy under Section 491, Cr.PC is barred in view of the availability of an alternative remedy by way of approaching a Guardian Court of competent jurisdiction. This Court as well as the High Court in exercise of their powers under Section 491, Cr.PC have to exercise parental jurisdiction and are not precluded in all circumstances from giving due consideration to the welfare of the minors and to ensure that no harm or damage comes to them physically or emotionally by reason of breakdown of the family tie between the parents. It was with this object in mind that vide order dated 05.12.2017 we directed Respondent No.2 to produce the two children before us in chambers. We met the two boys aged 17½ and 13 years in chambers without the parents or their counsel being present. We talked to them in an informal and friendly atmosphere to determine their respective levels of maturity, the way they were handling their present situation and most importantly their wishes. The minors appeared to be well groomed, confident and mature boys for their age. They were visibly under stress and

did not come across as particularly happy. On gently being questioned by us, they clearly and in no uncertain terms stated that they were finding it hard to adjust in Lahore and would like to return to Canada to continue their education. They however stated that they loved their father very much and would be happy to return to Pakistan during holidays and also spend time with him if and when he came to Canada. They also informed us that they had been admitted to Lahore Grammar School where they had been unable to make friends, adjust to the new system and get into the flow of things socially or academically. They spent most of their time playing video games and watching movies at home and were missing school which was causing academic loss, mental stress and possibly emotional trauma. Although their movement was not entirely restricted, they found it better and safer to stay home most of the times. They had done this for the past almost one year.

24. The admitted facts and circumstances of the case, documents on record and our candid interview with the children, where neither of the parents or their counsel were present, lead us to conclude that the children are mature enough to make an informed and conscious decision regarding the place where they wish to live and receive education in the immediate future and the parent they want to be with for the time being. Keeping in view their educational, emotional and social needs, their wishes must be respected by the parents as well as this Court.

25. Our answer to the third question, *"what is the effect of the impugned order passed by the High Court"* is that the learned High Court has abdicated its jurisdiction and taken its hands off the case without giving it much thought or considering the specific facts and circumstances of the instant case. It has declined to exercise jurisdiction and relegated the parties to contest the matter before the Guardian Court where Respondent No.2 has already obtained an *ex parte* order under Section 7 of the Act, 1890. Although we have been informed that the petitioner has moved an application for setting aside the *ex parte* order, the matter is still pending and considering the ground realities, lethargy of the system, delaying tactics and procedural hurdles in disposal of matters of this nature, it is unfair to expect that the issue will be resolved any time soon. There are no easy answers or procedural shortcuts on the basis of which the legal and factual issues involved in this litigation can be resolved on a fast track basis. However, we have to be mindful of the fact that lives of two young men have been put on hold, while their parents battle it out, motivated by egos and/or their respective desires to ensure that the children grow up in a manner and environment considered suitable for them by one parent or the other. This situation requires an objective assessment by an impartial Arbiter acting in *loco parentis,* motivated by nothing but the objective of looking after and ensuring the best interest and welfare of the children. We therefore hold that in exceptional circumstances like these, we are not hampered or impeded by technical and procedural

hurdles from doing complete justice. Such powers are available to this Court under Article 187 of the Constitution of Islamic Republic of Pakistan, 1973. In appropriate cases where there is a real and imminent danger of physical, emotional or any other harm coming to a minor, this Court would not be shy of exercising powers in its parental jurisdiction coupled with its constitutional mandate to do complete justice to safeguard and secure the interests of the minors. Reliance is placed on Shaukat Masih v. Farhat Parkash **(2015 SCMR 731)** and Khalida Perveen v. Muhammad Sultan Mehmood **(PLD 2004 Supreme Court 1)**.

26. Now we advert to Question No.iv above, *"what order can be passed by this Court in the present proceedings"*. As stated above, considering the specific facts and circumstances of the case, we find that the High Court erred in law in failing to determine the real wishes of the children. It confined itself to asking one or two very routine generic and generalized questions which were neither phrased nor designed to elicit the whole truth or determine the real wishes of the children. We get the distinct impression that the High Court acted with undue haste despite the importance and delicacy of the issue before it. It lost sight of the fact that in suitable cases it has ample powers under the law as well as the Constitution to protect and safeguard the interests of minors to ensure that as far as possible their physical safety, emotional well being and welfare is secured and protected after a balanced and dispassionate assessment of the situation. Unfortunately, the learned High Court shied away

from this legal and constitutional obligation for reasons best known to it.

27. In view of the foregoing, we set aside the *ex parte* order/judgment dated 04.04.2017 passed by the Guardian Court, Lahore against the petitioner. All administrative actions taken and orders passed by administrative authorities/State functionaries as a result of orders passed by the Guardian Court or on the basis of application(s) moved by any of the Respondents are also set aside, recalled and declared null and void. The guardianship petition shall be deemed to be pending before the said Court. It shall grant reasonable time and opportunity to the petitioner to file her replies/written statements. Thereafter, the Court shall proceed to decide the matters strictly in accordance with law. We further direct that as an interim measure, the custody of the two children namely Ghulam Qasim Dogar *(aged about 17 years)* and Ghulam Jaffer Dogar *(aged about 13 years)* shall be handed over to the petitioner, who is their real mother.

28. In view of the above discussion, we convert this petition into an appeal and allow the same. The impugned judgment of the High Court dated 16.08.2017 is set aside.

Judge

Judge

Announced by me in open Court
At Islamabad on _____.

Judge

APPROVED FOR REPORTING

*ZR/**