

BLUE SLIP

HJD/C-42

(Received under Act No.II of 1990)

ORDER OF THE Court

In the Court of Mr. Justice Muhammad Waheed Khan

Case No. cal. Revision

Title Muhammad Waqas Gill etc.

Case No. NO 1601/2022

Title v.

Case No. _____

Title Riffat Awan etc

Decided on 20.12.2024

(a) Judgment approved for reporting

✓ Yes

CERTIFICATE

Certified that the judgment/order is based upon or enunciates a principle of law/decides a question of law which is of first impression/distinguishes/over-rules/explains a previous decision.

JUDGE

- Note:-
- (1) This slip is only to be used when some action is to be taken.
 - (2) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
 - (3) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
 - (4) Those directions which are not to be used should be deleted.

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Dated

JUDGMENT SHEET
IN THE LAHORE HIGH COURT
LAHORE
(JUDICIAL DEPARTMENT)

Cr. Revision No.1601 of 2022

Muhammad Waqas Gill v. Rifat Awan, etc.

Date of hearing 20.12.2024

Petitioner by: Mr. Muhammad Iftikhar Ullah Dhillon, Advocate with petitioner.

Complainant by: Mr. Ghulam Ullah Khan, Advocate for respondent No.1.

State by: Ms. Rahat Majeed, Assistant District Public Prosecutor.

MUHAMMAD WAHEED KHAN, J.- Petitioner, Muhammad

Waqas Gill, was tried by learned Magistrate Section 30, Shakargarh, who vide judgment dated 20.12.2019 convicted him u/s 6(5)(b) of the Muslim Family Laws Ordinance, 1961 (the Ordinance) on account of contracting second marriage with one Kanwal Shehzadi on 27.09.2015, without permission from the respondent No.1 and the Arbitration Council and sentenced him as under;-

Fifteen days SI and fine of Rs.70,000/- and in case of non-payment of fine, he shall further undergo SI for 05-days.

2. The petitioner challenged the judgment of the learned Magistrate by filing criminal appeal and respondent No.1 also challenged the same judgment by filing Crl. Revision for enhancement of sentence of the petitioner. Both the matters i.e. Crl. Appeal and Crl. Revision were dismissed by the learned Additional Sessions Judge, Shakargarh through consolidated judgment dated 08.09.2021.

3. Through this petition, the petitioner has challenged judgments of both the learned courts below.

4. The facts of the case are that the petitioner contracted love marriage with respondent No.1 on 18.11.2014 as per Shariah Law and during subsistence of marriage, they were not blessed with any issue. Thereafter, the petitioner contracted second marriage on 27.09.2015, during the subsistence

of first marriage without taking permission from the Arbitration Council. Being offended from the above said act of the petitioner, respondent No.1/complainant filed a complaint in terms of above provision of law of the Ordinance, titled "Rifat Awan Vs. Muhammad Waqas Gill" before the learned Magistrate Sec-30, Shakargarh and on culmination of the same, the petitioner was held guilty and awarded punishment, as stated above.

5. The crux of arguments of learned counsel for the petitioner was that the complaint filed by the respondent/complainant before the learned Magistrate Sec-30 was *corum non-judice*, as it can be tried only by the Family Court and; the complaint by the respondent was filed with malafide, as the same had been filed by respondent No.1 after 3 ½ years of the divorce, hence, both the impugned judgments are nullity in the eye law.

6. Conversely, learned counsel for the respondent, while taking exception to the arguments made by the learned counsel for the petitioner contended that since the charges against the petitioner have been fully proved and substantiated during the course of trial, so, dealing the complaint of respondent, by a wrong forum could hardly affect the merits of the case and the matter be decided on merits and technicalities should not become hurdle in the way of justice. However, the learned law officer, while supporting the arguments advanced by learned counsel for the petitioner submits that, in fact, the learned trial court (Magistrate Sec-30), was never given the powers of Family Court, so, according to the relevant provisions of the Ordinance, the said court had no jurisdiction in the matter, therefore, the entire proceedings, including the judgment rendered by the learned appellate court would stand vitiated.

7. I have heard, learned counsel for the parties and the learned law officer and gone through the record with their assistance and noted that there is no denial of the fact that the petitioner has contracted marriage with Mst. Kanwal Shehzadi, on 27.09.2015, during subsistence of the first marriage with the respondent, without getting the requisite permission, however, I have noted that the respondent had not objected the second marriage of the petitioner about 3 ½ years, as she had filed the complaint on 05.04.2019 and it is also worth mentioning here that till that date, she had already been divorced by the petitioner, which factum could be duly verified from the

divorce deed, registration certificate and the certificate of effectiveness issued by the arbitration council, according to which the divorce was pronounced on 03.12.2018, whereas it was given effect on 13.03.2019. When confronted about the filing of the complaint by the respondent with such a delay, learned counsel for the respondent submits that in fact she was not aware of contracting second marriage by the petitioner, however, learned counsel for the petitioner has drawn my attention towards the photographs, exhibited before the learned Trial Court, showing that the real sisters of the respondent and other family members had participated in the second marriage of the petitioner. So, one thing is obvious, that the respondent had never objected to the second marriage of the petitioner, until she was divorced and she filed the criminal complaint against the petitioner with a delay of about 3 ½ years from contracting his second marriage and that too, after her divorce, so, mala fide on her part is manifestly oozing from the facts and circumstances of the case. Now, advertent to the moot point raised by learned counsel for the petitioner qua the jurisdiction of the learned Magistrate Sec-30, to entertain and decide the criminal complaint under the Ordinance. So, it would be in the fitness of things to reproduce the relevant provisions of section 5 of the West Pakistan Family Courts Act, 1964, which are as under:-

5. Jurisdiction. [(1)] Subject to the provisions of the Muslim Family Law Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in [Part 1 of the Schedule]

[(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Family Court shall have jurisdiction to try the offences specified in Part 11 of the Schedule, where one of the spouses is victim of an offence committed by the other.

(3) The High Court may with the approval of the Government, amend the Schedule so as to alter, delete or add any entry thereto".

And through amendment in the Punjab Family Court (Amendment) Act, 2015 (XI of 2015) dated 18.3.2015 a Family Court was given the power of the Judicial Magistrate 1st Class under the Cr.P.C., 1898 for the purpose of taking cognizance and trial of any offence under The Muslim Family Laws. The relevant amendments are reproduced as under:-

Punjab Amendment:

[20 Family Court as Judicial Magistrate. (1) *A Family Court shall be deemed as the Judicial Magistrate of the first class under the Code of Criminal Procedure, 1898 (V of 1898) for taking cognizance and trial of any offence under this Act; the Muslim Family Laws Ordinance, 1961 (VII of 1961); and, the Child Marriage Restraint Act, 1929).*

(2) *A Family Court shall conduct the trial of any offence under subsection (1) in accordance with the provisions of Chapter XXII of the Code of Criminal Procedure, 1898 (V of 1898) relating to the summary trials.*

(3) *An offence other than contempt of a Family Court shall be cognizable on the complaint of the Union Council, Arbitration Council or the aggrieved party.]*

On going through sub-section (3) of the section 20 of the Act, there is hardly any cavil with the proposition that only a Family Court can take cognizance of the offence on the complaint of the Union Council, Arbitration Council or aggrieved party and obviously the respondent was the aggrieved party, however, I have to see whether the learned Judicial Magistrate was additionally given the powers of Judge Family Court or not and on going through the judgment rendered by it, I have straightway noted that in the head-note it is written "IN THE COURT OF CH. SIFAT ULLAH, MAGISTRATE SEC: 30, SHAKARGARH" and even in the whole proceeding, including the evidence and the interim order-sheet, there is no affixation of any stamp of a Judge Family Court. Since on going through the above referred provision of Muslim Family Law, there is no cavil with the proposition that only the Family Courts have given the exclusive jurisdiction to entertain the issue and adjudicate upon the matters specified in [Part-1 of the schedule], so, the conducting of the trial by the learned Judicial Magistrate was certainly *corum non-judice*, and a nullity, meaning thereby that very inception of the trial was not in accordance with law and it is trite that if a base of action was wrong, all superstructure raised thereon would have no sanctity under the law. It is also well entrenched principle of law that when law required doing things in a particular manner, such things had to be done in that manner and all other modes stood

excluded. I have also gone through the provision of Article 175 of the Constitution of Islamic Republic of Pakistan, 1973 and Sub-Article (2) of said Article reads as under:-

(2) No court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law"

8. In a recent pronouncement rendered by this Court in case of "Muzaffar Nawaz v. Ishrat Rasool and others" (2022 YLR 1920), this Court had set-aside that judgments of both the Courts below on the same point, that the learned Judicial Magistrate was not empowered to hold the trial under the "Ordinance".

9. The epitome of above discussion is that the impugned judgments are not sustainable in the eye of law, because firstly, the complaint filed by the respondent is based on the sheer malafide, as discussed in supra paras and secondly, that the learned Judicial Magistrate Section-30 was not conferred with the jurisdiction to entertain the complaint under the Family Court Act, hence, the same is declared as *corum non-judice*. Resultantly, by accepting this petition, both the judgments of learned courts below are set aside, and the petitioner/accused is acquitted from the charge, he is on bail, his surety stands discharged.

(Muhammad Waheed Khan)
Judge

*This judgment has been reserved on 20.12.2024
and announced in open court today i.e. 27.12.2024.*

Judge

Approved for reporting

Mumtaz

Handwritten signature