

JUDGMENT SHEET**IN THE LAHORE HIGH COURT, LAHORE**
JUDICIAL DEPARTMENT**Criminal Revision No.25041 of 2025***Muhammad Asif. Versus The State and another.***JUDGMENT**

Date of hearing:	23.09.2025
Petitioner by:	Mr. Nasir Mehmood Choudhry, Advocate with the petitioner.
State by:	Mr. Sana Ullah, Deputy Prosecutor General

MUHAMMAD JAWAD ZAFAR, J.:- Through this criminal revision, filed under Section 435 read with Section 561-A of the Code of Criminal Procedure 1898 (“**Code**” or “**Cr.P.C**”), Muhammad Asif (“**petitioner**”) has assailed the *vires* of judgement dated 18.04.2025 passed by Additional Sessions Judge, Court of Sessions, Jhang (“**Court of Sessions**”) as well as judgement dated 07.02.2025 passed by learned Judge, Family Court, Jhang (“**Family Court**” or “**trial court**”) passed in family complaint bearing No. 12RT dated 07.06.2024 for offence under Section 6 of the Muslim Family Law Ordinance 1961 (“**MFLO**” or “**Ordinance of 1961**”).

2. Heard, perused.

3. The averments advanced by the learned counsel for the petitioner, as well as the learned Deputy Prosecutor General (“**DPG**”) were thoroughly scrutinised and upon such scrutiny, it straightaway becomes clear that the impugned judgement dated 18.04.2025 was passed by the learned Court of Sessions, whereas the trial was conducted by the Family Court while exercising exclusive jurisdiction in terms of Section 5 of the Family Courts Act 1964 (“**FCA**” or “**Act of 1964**”). Therefore, an important question of law arises: whether the learned Sessions Judge was competent to adjudicate and decide the appeal against the judgement of conviction passed by the Family Court, or whether the judgement passed by the learned Family Court was appealable only before the learned District Judge, (“**District Court**”).

4. According to Article 175(2) of the Constitution of the Islamic Republic of Pakistan 1973 (“Constitution”), ‘No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law’. Evident from the language of the above-quoted sub-article that it is unambiguously clear that a bar and a prohibition have been placed that “No” court in Pakistan shall exercise any jurisdiction in any matter brought before it until and unless such jurisdiction has been conferred upon it by the Constitution itself or under any law. The word “save” appearing in sub-article (2) of Article 175 of the Constitution has a clear connotation of the word “except” for the purpose of construing the above, meaning thereby that “No” court shall have the jurisdiction except as has been conferred upon it by the Constitution and/or law. It is a settled law that any forum or court, which, if lacks jurisdiction, adjudicates and decides a matter, such a decision, etc., shall be void and of no legal effect.¹ It was held in “*Rafi Ahmad v. Province of Punjab*” (**2021 PLC (C.S.) 1283 Lahore**):

‘10. There is no gainsaying that provisions of Article 175 of the Constitution of Islamic Republic of Pakistan, 1973 as expounded by this Court in the case of “*S.M. Waseem Ashraf v. Federation of Pakistan through Secretary Ministry of Housing and Works, Islamabad*” (2013 SCMR 338) at page No. 345), resonate the principle that no Court should exercise any jurisdiction in any matter brought before it until and unless, such jurisdiction had been conferred upon it by the Constitution itself or under any law. Courts only exercise original, appellate, revisional, review or constitutional jurisdiction as mandated under the Constitution and the law’.²

In other words, no court can create or enlarge its own jurisdiction or any other court's jurisdiction. Because of the constitutional command in Article 175(2) of the Constitution, the courts in Pakistan do not possess any inherent jurisdiction based on some principles of common law, equity or good conscience and only have that jurisdiction which is conferred on them by the Constitution or by or under any law.³

5. Under the law, the offence of “polygamy” is punishable in terms of Section 6 of the Ordinance of 1961. The MFLO does not specify a

¹ See “*S.M. Waseem Ashraf v. Federation of Pakistan*” (2013 SCMR 338).

² Also see “*Malik Iqbal Hassan v. Defence Housing Authority*” (PLD 2019 Lahore 145 (dB)).

³ See “*Hamza Rasheed Khan v. Election Appellate Tribunal, Lahore High Court, Lahore*” (PLD 2024 Supreme Court 1028 (7-MB)).

particular forum for conducting the trial for contravention of its provisions; however, this lacuna in the Ordinance of 1961 was filled by Section 5(2) and Section 20 of the FCA, which empower the family courts to take cognizance and conduct trial of any of the offences specified under the MFLO. Section 20 of the Act of 1964 is reproduced *infra*:

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 (VIII of 1961); and, the Child Marriage Restraint Act, 1929 (XIX of 1929).

Further, the Act of 1964 provides that the appeal shall lie to the appropriate appellate authority as specified under Section 14 *ibid*, which reads as follows:

14. Appeals.— [47][(1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable—
(a) to the High Court, where the Family Court is presided over by a District Judge, an Additional District Judge or a person notified by Government to be of the rank and status of a District Judge or an Additional District Judge; and
(b) to the District Court, in any other case.]

6. Imperative at this junction to refer to sub-article (2) of Article 270AA of the Constitution,⁴ which provides the following saving clause to “ordinances”, that ‘*Except as provided in clause (1) and subject to the provisions of the Constitution (Eighteenth Amendment) Act, 2010, all other laws including President’s Order, Acts, Ordinances, Chief Executive’s Orders, regulations, enactments, notifications, rules, orders or bye-laws made between the twelfth day of October, one thousand nine hundred and ninety-nine and the thirty-first day of October, two thousand and three (both days inclusive) and still in force shall, continue to be in force until altered, repealed or amended by the competent authority*’’. Since the amendments made to Sections 5, 14, and 20 of the Act of 1964 via the Family Courts (Amendment) Ordinance 2002 have not been ‘altered, repealed or amended by the competent authority’, therefore, the said provisions are still in vogue.⁵

⁴ Inserted via the Constitution (Eighteenth Amendment) Act 2010.

⁵ See “Muzaffar Nawaz v. Ishrat Rasool” (2022 YLR 1920 Lahore = PLJ 2022 Cr.C 257 Lahore).

7. As a corollary, trial for the offence of “polygamy” can only be conducted by the Family Courts under the FCA and appeals arising therefrom are to be adjudicated by the learned District Judge in terms of Section 14 of the FCA. Consequently, the learned Sessions Judge lacked jurisdiction to pass the impugned judgement, let alone adjudicate on the appeal for want of jurisdiction, because the correct forum for filing an appeal against the decision of the trial court pertaining to the offence of “polygamy” is the learned District Judge in terms of Section 14 of the FCA.

8. The learned DPG submitted that no such judgement could have been passed by the learned Court of Sessions and further stated that he has no objection if the impugned judgement dated 18.04.2025 is set aside and the matter is remitted.

9. In view of the foregoing, judgement dated 18.04.2025 passed by learned Additional Sessions Judge, Jhang, is **set aside**, and the appeal is remanded to the learned District Judge, Jhang, who shall assign the appeal to an Additional District Judge for its decision afresh.

10. Consequently, this petition is **disposed of** in the above terms.

(MUHAMMAD JAWAD ZAFAR)
JUDGE

Approved for Reporting.

JUDGE