

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**Criminal Revision No.02/2014**

Imtiaz Ali

*versus*

Salma Liaqat, etc.

Petitioner by: Mr. Ahmad Iqbal Maiken, Advocate along  
with petitioner.

Respondent No.1 by: Mian Ashfaq Ahmad, Advocate along  
with father of respondent No.1.

Date of Hearing: 05.07.2019.

**MOHSIN AKHTAR KAYANI, J:** Through the instant criminal revision petition, the petitioner impugns judgment dated 08.01.2014 of the learned Additional Sessions Judge, whereby appeal filed against judgment dated 27.09.2013 of the Assistant Commissioner (Secretariat)/Sub-Divisional Magistrate was dismissed and sentence of 01 month awarded under Section 6(5) of the Muslim Family Laws Ordinance, 1961 along with fine of Rs.5,000/- was upheld.

2. Brief facts as referred in the instant writ petition are that Mst. Salma Liaqat (*hereinafter referred to as "respondent No.1"*), submitted a complaint against her husband namely Imtiaz Ali (*hereinafter referred to as "petitioner"*) with the allegations that petitioner contracted second marriage on 01.11.2012 without getting prior permission from her, which is a violation of the condition envisaged vide Column No.21 of the Nikahnama and Section 6 of the Muslim Family Laws Ordinance, 1961. Pursuant to proceedings on the complaint of respondent No.1, the learned Trial Court convicted the petitioner and sentenced him to 01 month simple imprisonment along with payment of fine of Rs.5,000/-.

The petitioner feeling aggrieved thereby preferred an appeal, which was dismissed and view of the learned Trial Court was upheld. Hence, the instant criminal revision.

3. Learned counsel for petitioner contends that respondent No.1/complainant being lawful wedded wife of petitioner abstained from performing conjugal rights since 02 years, which constrained the petitioner to contract second marriage with prior intimation to respondent No.1, who showed no conflict on the matter of second marriage; that petitioner is ready to maintain respondent No.1/complainant in a separate house, however respondent No.1/complainant's parents are not allowing her to perform her conjugal rights as evident from record; that neither respondent No.1/complainant sought dissolution of marriage, nor petitioner has divorced her; that petitioner has instituted a suit for restitution of conjugal rights, which is pending adjudication in the Family Court/Civil Judge, Islamabad; that both the Courts below have misconstrued the evidence available on record as well as facts and circumstances of the case, and passed the impugned judgments in hasty manner, therefore, the same may be set aside.

4. Conversely, learned counsel for respondent No.1 contended that permission in writing to contract second marriage is mandatory, which is to be obtained only from the concerned Chairman Arbitration Council, but the petitioner has failed to do so; that there is no concept of either written or oral permission of existing wife in order to contract second marriage, rather prior permission has to be obtained from Arbitration Council; that the stance of petitioner that he informed respondent

No.1/complainant of his contracting second marriage is just an admission and the same is in violation of Section 6 of the Muslim Family Laws Ordinance, 1961; that both the Courts below have rightly appreciated the available record as well as circumstances of the case and passed the impugned judgments, therefore, the instant criminal revision may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner was married to respondent No.1 in the year 2008 and later on petitioner entered into second marriage with Mst. Tayyaba Nadeem Abbasi on 01.11.2012 through Exh.P5, which was solemnized by PW-2 Hafiz Noor Elahi Chishti, who confirmed the execution of second marriage without permission.

7. Respondent No.1 appeared as PW-1 and contended that she filed a complaint in terms of Section 6 of the Muslim Family Laws Ordinance, 1961 on the ground that petitioner entered into second marriage without her permission. The complaint was processed by Chairman Arbitration Council/ Administration, Union Council Tarlai, Islamabad under Rule 21 of the Family Law Rules under the Muslim Family Laws Ordinance, 1961 and presented the same before the Assistant Commissioner (Secretariat)/Sub-Divisional Magistrate 1<sup>st</sup> Class, Islamabad for initiation of trial against the petitioner under Section 6 of the Muslim Family Laws Ordinance, 1961 as the petitioner has contracted second marriage without prior permission of respondent No.1. During the trial, the prosecution has produced three witnesses i.e. PW-1 Mst. Salma Liaquat

(complainant), PW-2 Hafiz Noor Elahi Chishti and PW-3 Haji Liaquat Ali Mughal, father of complainant.

8. As per record, respondent No.1 produced complaint Exh.P1 in support of her contention along with complaint to Arbitration Council Exh.P2, original Nikahnama with petitioner Exh.P3 and copy of Nikahnama of second marriage Exh.P5. Even though respondent No.1 was subjected to lengthy cross-examination, the petitioner could not achieve any material fact in his favour.

9. PW-2 Hafiz Noor Elahi Chishti, Nikah Registrar, stated that petitioner assured him that he will submit written submission of his first wife with respect to second marriage and on assurance and execution of affidavit the second marriage of petitioner was registered, whereas in the relevant section i.e. Column No.21 of the Nikahnama was filled by the petitioner with the acknowledgment that permission was orally granted by his first wife. PW-2 Hafiz Noor Elahi Chishti further stated that the petitioner has given affidavit Exh.P6 with undertaking that in case of any fraud he will be held responsible.

10. On the other hand, respondent No.1 being the first wife was specifically confronted regarding permission of second marriage in the following manner:

سوال: کیا آپ نے کبھی غصے میں آکر یا ویسے راضی خوشی اس کو دوسری شادی کی اجازت دی تھی؟  
جواب: یہ غلط ہے۔ کبھی اجازت نہ دی ہے۔

11. On the contrary, the petitioner put appearance in his own defence to substantiate his case and has taken a specific stance that:

"شادی کرنے کے بعد یہ بات میں نے خود اپنے سر حاتی لیاقت مغل صاحب کو اپنے کمرے میں بٹھا کر بتائی۔ اس کے بعد انھوں نے کہا کہ جاؤ جو بات ہوگی اس کو دہادو اور رک جاؤ۔ یہ بات میں نے اپنی بیوی کو بھی بتائی وہ ہنسی خوشی رہ رہی

تھی اس نے کہا مجھے کوئی اعتراض نہیں ہے تم اپنی دوسری بیوی کو جہاں مرضی ہو باہر رکھو۔ میں اپنے گھر کو چھوڑ کر نہیں جاؤں گی یہ میرا گھر ہے۔ سائمنہ کے باپ نے میری شادی کے چھ دن بعد اپنے بڑے بھائی کو فون کیا ان دونوں نے آپس میں صلح مشورہ کیا اور میرے والد اپنی بہو کو میکے چھوڑ آئے۔"

During the course of cross-examination, the petitioner has acknowledged his second marriage in the following manner:

"میری دوسری شادی یکم نومبر 2012 کو ہوئی ہے۔ یہ نکاح نامہ Exh.P5 میری دوسری شادی کا ہے۔ پہلی شادی خاندان ک تمام افراد کے مرضی سے ہوئی اس لیے اس شادی میں شرکت کی۔ یہ صحیح ہے کہ دوسری شادی کے نکاح نامہ میں خاندان کے کسی فرد کے دستخط نہ ہے نا ہی اس میں کوئی گواہ ہے۔"

12. The above referred admission on the part of petitioner has left nothing to disbelieve the contention of respondent No.1. Similarly, the petitioner has also acknowledged that he has written correct statement in Column No.21 of Exh.P5. However, he further acknowledged that:

"یہ صحیح ہے کہ کسی بھی عدالت سے اجازت نامہ برائے دوسری شادی لیا ہے۔ یہ صحیح ہے کہ میں نے ثالثی کونسل سے دوسری شادی کا اجازت نامہ لیا ہے۔"

The above referred statement has been read in context with the entire case and it seems that the word "نہ" has been missed as if there was some written permission issued by any Court or Arbitration Council in favour of petitioner to contract second marriage the same could have been produced on record.

13. In order to decide the controversy, I have gone through Section 6(1) of the Muslim Family Laws Ordinance, 1961, which reads as under:

*"No man during subsistence of existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance."*

The above referred provision of law placed a permanent restriction upon the Registrar not to register a marriage without prior permission of the Arbitration Council. The said provision also puts a statutory duty upon a person entering into a second marriage to submit written permission from Arbitration Council. However, in present case no such permission was issued by Chairman Arbitration Council, rather the petitioner had not applied for any such permission.

14. The admitted position on record confirms that respondent No.1 has proved the charge of polygamy against the petitioner, who has intentionally and willfully entered into second marriage without any written permission from Arbitration Council. The documentary proof i.e. Exh.P5 relating to second marriage has been confirmed by PW-2 Hafiz Noor Elahi Chishti, Nikah Registrar, and even admitted by petitioner himself, which proves the offence of Section 6 of the Muslim Family Laws Ordinance, 1961.

15. Perusal of the impugned judgments further reveals that both the Courts below have skipped an important issue involved in the instant matter to converse on as the role of PW-2 Hafiz Noor Elahi Chishti, Khateeb, Jamia Masjid Moeenia, Sector E-11, Islamabad has not been examined appropriately, who got registered second marriage between petitioner and Mst. Tayyaba Nadeem Abbasi through Exh.P5. PW-2 Hafiz Noor Elahi Chishti has not performed his statutory duty as he had not refused to register second Nikah of petitioner in absence of written permission from Arbitration Council and as such, pursuant to

obtaining an affidavit Exh.P6 from the petitioner, PW-2 Hafiz Noor Elahi Chishti/Nikah Registrar registered the same, which shows his criminal misconduct and intentional violation of Section 6(1) of the Muslim Family Laws Ordinance, 1961, wherein the legislature has specifically used terms i.e. "nor shall, any such marriage contracted without such permission be registered under this Ordinance." Such state of affairs clearly depict that PW-2 Hafiz Noor Elahi Chishti being the Nikah Registrar has not performed his statutory duty in a manner prescribed under the law, which entails necessary action against him as the license granted to him under the law was meant to solemnize marriages in accordance with mandate of the Muslim Family Laws Ordinance, 1961, while any violation or contravention of any condition of license granted to Nikah Registrar would result into revocation and cancellation of the license.

16. In order to further elucidate the position, it is the statutory duty of Nikah Registrar to ask the man entering into another marriage for submission of written permission from Chairman Arbitration Council in a manner provided under Rule 14 and 15 of the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 and in this regard following steps should be taken.

- Written application to the Chairman Arbitration Council for seeking permission to contract second marriage shall be filed by a person (man) interested in such permission.
- Prescribed fee should be submitted.

- Brief statement of grounds on which new marriage is alleged to be just and necessary, which includes the reasons of sterility, physical infirmity, physical unfitness for the conjugal relation, willful avoidance of a degree for restitution of conjugal rights or insanity on the part of existing wife.
- The applicant has to state whether the consent of existing wife or wives has been obtained thereto.
- On receipt of application the Chairman Arbitration Council shall ask the applicant and existing wife or wives to nominate their representative(s).
- Chairman Arbitration Council after hearing parties and representatives decide the application after recording of reasons within prescribed period while granting permission for second marriage or otherwise.

The above referred process, if not adopted by the person (man) to get permission for second marriage, such person is not entitled for solemnization of second marriage, even the Nikah Registrar is under statutory duty to refuse registration of second marriage, failing which he shall also be liable for prosecution.

17. For what has been discussed hereinabove, I have also gone through the concurrent findings of both the Courts below and observed no illegality therein as proper opportunity was granted to petitioner, who has failed to substantiate any of his plea, rather the prosecution has successfully proved the matter. Furthermore, the sentence awarded by both the Courts below is on lesser side despite the fact that the petitioner



has acknowledged and admitted his second marriage without having a valid legal permission under the law, however, at this stage, this Court in criminal revision is not in a position to enhance the sentence of the petitioner while relying upon PLD 2017 SC 187 (Ishtiaq Ahmad vs. The State, etc.), wherein it has been held by the apex Court as under:

*“11. The petitioner concedes that he was already married and he also had a child from his first wife when he contracted a second marriage without obtaining permission from the Arbitration Council. The ingredients of the offence under section 6(5)(b) of the Ordinance thus stood established. The petitioner was lucky as the trial court had treated him very leniently in the matter of punishment by sentencing him to imprisonment for only one month as he could have been imprisoned for up to a year. Consequently, this petition for leave to appeal is dismissed and leave is refused.”*

In view of above, the instant criminal revision is hereby DISMISSED having no merits. Petitioner is on bail, therefore, he should be taken into custody to serve his remaining sentence.

18. On the other hand, taking into account the role of PW-2 Hafiz Noor Elahi Chishti/Nikah Registrar towards non-performance of his statutory duties, the Chief Commissioner, Islamabad and Deputy Commissioner, Islamabad are hereby directed to initiate necessary proceedings against PW-2 Hafiz Noor Elahi Chishti with respect to revocation of his license. The Chief Commissioner, Deputy Commissioner, Islamabad and the concerned Chairman Union Council of Islamabad Capital Territory shall issue written directions to all Nikah Registrars to follow the spirit of law in registration of marriages. They shall refuse to register second marriage where written permission of

Arbitration Council in prescribed manner has not been granted and any oral permission claimed by any person with respect to second marriage should not be treated valid as it requires proper documented authority of the Arbitration Council. Similarly, the oral permission of the first wife or earlier wives during subsistence of marriage in favour of husband is also not valid under the law and such oral permission to allow any person intended to contract another marriage is also not acceptable.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 22.08.2019.

JUDGE

Khalid Z.