

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.97/2013

Mst. Shakeela Bibi

versus

Muhammad Ramzan & 02 others

Appellant by: Ch. Muhammad Javed Gujjar, Advocate.

Respondents by: Mr. Yasir Shakeel, Advocate.
Mr. Sadaqat Ali Jahangir, State Counsel.
Muhammad Amin, Naib Court, Assistant
Commissioner (Saddar) with record

Date of Decision: 03.03.2021.

JUDGMENT

MOHSIN AKHTAR KAYANI, J: Through the instant criminal appeal, the appellant has called in question judgment of the learned Assistant Commissioner (Saddar) / Sub-Divisional Magistrate, ICT, Islamabad, dated 29.07.2013, whereby Muhammad Ramzan (Respondent No.1) has been acquitted under Section 249-A Cr.P.C.

2. Succinctly, Mst. Shakeela Bibi (appellant) entered into contract of marriage with Muhammad Ramzan (Respondent No.1) on 12.08.1996. In September, 2011, when respondent No.1 brought Mst. Rabia (Respondent No.2) to his house as a second wife, the appellant protested the same, whereupon appellant filed a complaint under Sections 5 & 6 of the Muslim Family Laws Ordinance, 1961 having allegations that respondent No.1 got married without prior consent of the appellant or from the Arbitration Council and Nikahnama produced by respondent No.1 is not registered. Accordingly, the learned trial Court summoned respondents No.1 & 2, against whom a charge was framed, however during pendency of the trial, said respondents filed application under Section 249-A Cr.P.C., which has

been accepted vide impugned order dated 29.07.2013. Hence, instant criminal appeal.

3. Learned counsel for appellant contends that the appellant has brought on record material facts and documents before the learned trial Court, but the same have not been taken into account while passing the impugned order, even no evidence of the complainant side has been recorded before passing of the impugned judgment, which suffers from misreading and non-reading of facts and evidence brought on record by the appellant; that the learned trial Court has accepted the application under Section 249-A Cr.P.C. without any lawful justification while vide the impugned order, which is liable to be set-aside.

4. Conversely, learned State Counsel as well as learned counsel for respondents No.1 & 2 contend that respondent No.1 had produced an affidavit portraying that the appellant has no objection over respondent No.1's contracting second marriage and the appellant was well aware of the second marriage, even otherwise, the Nikahnama produced by respondent No.1 shows the entries of names of appellant and four children born from the marital bond of respondent No.1 and appellant; that the learned trial Court has rightly appreciated the facts and circumstances of the case and acquitted respondent No.1 of the charge.

5. Arguments heard, record perused.

6. Perusal of record reveals that Mst. Shakeela Bibi (appellant) filed a complaint under Section 5/6 of Muslim Family Laws Ordinance, 1961 against her husband, Muhammad Ramzan (respondent No.1), before the Chairman Arbitration Council, which had been referred to learned Divisional Magistrate, ICT, Islamabad, having jurisdiction in this regard,

with the allegation that respondent No.1 has brought Mst. Rabia / Respondent No.2 to his house and started living with her without having any legal right, as such, the appellant reported the matter to S.H.O., P.S. Golra Sharif, Islamabad, whereupon respondent No.1 submitted Nikahnama executed with respondent No.2, dated 10.08.2010, in his evidence, though same was alleged to have not been registered with the Arbitration Council, Islamabad or with the Nikah Registrar. The main grievance of the appellant in this appeal is that the learned Trial Court without recording evidence has acquitted respondent No.1 primarily by assuming that an affidavit was executed by the appellant, whereby permission of second marriage was granted to respondent No.1 as well as on the basis of a photograph of the appellant with respondents No.1 & 2, though both the said documents were not exhibited in evidence and the premature acquittal of respondent No.1 in terms of Section 249-A Cr.P.C. is not legally justiciable.

7. Undeniably, respondent No.1 entered into marriage with respondent No.2 on the basis of Nikahnama he had produced before all forums acknowledging his second marriage with respondent No.2, however it is admitted position that formal order of Chairman Arbitration Council qua permission of contracting second marriage is neither available on record nor had respondent No.1 ever applied under the Muslim Family Laws Ordinance, 1961 qua such permission. The learned Trial Court has considered the affidavit, though a photocopy, showing that the appellant has no objection over contracting second marriage by respondent No.1. As such, the status of affidavit has been settled in the suit for declaration / jactitation of Nikah, titled "*Mst. Shakeela Bibi, etc. vs. Muhammad Ramzan,*

etc.”, decided by the Court of Ms. Ayesha Shabbir, Civil Judge, Islamabad, whereby the appellant had challenged the Nikahnama, dated 10.08.2010, with the claim that same is forged and is liable to be cancelled with further prayer that respondent No.2 is not legally wedded wife of respondent No.1. The suit had been dismissed vide judgment and decree, dated 19.04.2016, whereby the validity of affidavit regarding permission of Nikah of respondent No.1 with respondent No.2 has been settled in Paras 30, 31 & 32 of the judgment, which are as under:

30. *Record shows that plaintiff No.1 and defendant No.1 was married to each other on 12.08.1996. According to the plaintiffs defendant No.1 brought defendant No.2, in his house in the month of July 2010 and when they were asked about their relationship, defendant No.1 prepared a forged affidavit regarding permission to contract second marriage as well as Nikahnama regarding his 2nd marriage. According to the plaintiffs defendant No.1 and defendant No.2 are not legally wedded couple and they are resided together without any relationship.*

31. *To prove the above contentions plaintiffs were given opportunity to adduce evidence. Surprisingly all the plaintiffs appeared in the witness box but they failed to explain as to how defendant No.1 had prepared alleged forged affidavit regarding permission and Nikahnama. Moreover the examination in chief of all the three witnesses of police station are silent about the manner in which forgery had been committed. It is an admitted preposition of law that when forgery of any document is alleged to be committed then the person who alleged the forgery is required to prove it through evidence. In the instant suit case firstly all the plaintiffs during their cross-examination had admitted the fact that plaintiff No.1 had filed a complaint before the Court of Assistant Commissioner with the contention that defendant No.1 had contracted 2nd marriage without the permission of plaintiff No.1. Moreover PW-2 in his cross-examination had admitted the fact that*

a marriage between defendant No.1 and 2 was held in year 2011, similar is the case with PW-3 who also admitted the marriage between the defendants in cross-examination.

32. *After the admission of the plaintiffs regarding the marriage of the defendant No.1 with defendant No.2, the remaining stance of the plaintiffs become doubtful. Moreover plaintiff No.1 had not denied her thumb impression on affidavit produced on record. Besides that she had not made any effort to question the genuineness of Exh.D9 while requesting the court to verify her thumb impression on the affidavit."*

8. While considering the above referred findings of the learned Family Court, there is nothing left in favour of appellant, especially when it has been declared by the competent court of law that appellant had admitted the second marriage as well as her thumb impression on affidavit Exh.D9, hence the execution of affidavit is admitted, per se, such finding on the pivotal issue has persuasive value to be noted and recorded by a criminal court under safe administration of justice.

9. I have also gone through the contents of affidavit, which are as under:

منکد مسماة شکیلہ بی بی روجہ محمد رمضان سکندہ سری سرال ڈاکخانہ گولڑہ شریف تحصیل و ضلع اسلام آباد کی رہائشی ہوں اور حلفا بیان کرتی ہوں۔

نمبر 1- یہ کہ من مظہرہ کا نکاح شرح محمد سے مورخہ 1996ء کو مسمی محمد رمضان ولد حکم داد سے قرار پایا۔

نمبر 2- یہ کہ اب من مظہرہ کا شوہر محمد رمضان دوسری شادی کرنا چاہتا ہے۔

نمبر 3- یہ کہ مسمی محمد رمضان جو کہ میرا شوہر ہے۔ اور میرے حقوق ادا کر رہا ہے۔ اور مجھے اپنے شوہر کی دوسری شادی

سے کوئی اعتراض نہیں اور نہ ہی میں اپنے شوہر کے خلاف نان و نفقہ کا کوئی دعوٰی دائر کرنا چاہتی ہوں۔

لہذا میرا مندرجہ بالا بیان میرے علم و یقین کے مطابق بالکل درست ہے۔

10. This Court is mindful of the fact that the above referred affidavit was executed on 15.07.2010 while the second marriage of respondent No.1

with respondent No.2 was registered on 10.08.2010 after due permission, per se, while considering the above referred overwhelming evidence the learned Trial Court has rightly applied the provision of Section 249-A Cr.P.C., where probability of conviction is not visible in this case, rather further proceeding in the matter would amount to wasting the precious time of the Court and abuse of process of law. The appellant has failed to place any justifiable reason to interfere with the findings of the learned Trial Court, even otherwise, the marriage between appellant and respondent No.1 had dissolved in the year 2015 and, as such, the entire case at this stage is only to be considered as a process to drag respondent No.1 in unnecessary litigation and to satisfy the ego of the appellant, per se, the Courts shall not act as a tool for accomplishment of personal vendetta, therefore, instant appeal is not maintainable and the same is hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.