

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.3360 of 2020

Hamad Abid Butt
Versus
The Chairman, Arbitration Council, Islamabad, etc.

Petitioner by:	Mr.Asim Riaz Awan, Advocate.
Respondent No.1 by:	Mr.Hammad Saeed Dar, State Counsel.
Respondent No. 2by:	Mr.AbidHussainChoudhary, Advocate.
Date of Hearing:	20.01.2021

GhulamAzamQambrani,J: Through this petition, the petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer:-

“It is, therefore, humbly prayed that on acceptance of this writ petition, the impugned divorce certificate dated 28.11.2018 issued by the Chairman Arbitration Council, Islamabad, may please be cancelled and set-aside.

Any other appropriate remedy, which this Hon’ble Court deems fit and proper in the circumstances of the case and the same has not been asked for may also be granted in favour of the petitioner.”

2. Briefly stated, facts of the instant petition are that the petitioner had announced divorce to the respondent No.2 vide divorce deed dated 28.08.2018. After execution of said divorce deed, the petitioner applied to the respondent No.1 for issuance of certificate of effectiveness of divorce according to provisions of Muslim Family Laws Ordinance, 1961 through application dated 30.08.2018. The petitioner also engaged a counsel to proceed with the pending proceeding. On 26.09.2018, statement of the petitioner was recorded before the respondent No.1. Petitioner revoked his divorce deed vide revocation deed dated 17.10.2018 and reconciled with respondent No.2 on the interference of elders of both the families well before the next date of hearing before respondent No.1. The petitioner accordingly informed his counsel about the same

revocation deed and reconciliation with respondent No.2 in a meeting and asked him to withdraw the application filed under Section 7, *ibid*, much earlier than the expiry of 90 days period. After execution of above mentioned revocation deed and reconciliation, petitioner started living with respondent No.2 happily. Surprisingly, in the month of June, 2020, the petitioner came to know that the respondent No.1 issued a divorce certificate dated 28.11.2018 and his learned counsel had forgotten qua the case of petitioner pending with respondent No.1 due to rush of work. The petitioner at the earliest applied to respondent No.1 for the cancellation of divorce deed vide application dated 19.06.2020, however the office of respondent No.1 straight away refused by saying that there is no provision of cancellation of divorce certificate, hence this petition.

3. Learned counsel for the petitioner has contended that the impugned action of respondent No.1 is without lawful authority and against the principles of natural justice; that the respondent No.1 has failed to appreciate the points involved in case in its real perspective while refusing to entertain the application of petitioner; that the petitioner already revoked the divorce deed dated 17.10.2018 well within prescribed period of ninety days; that the impugned action of respondent No.1 for refusing to entertain the application of petitioner without any written findings is tenable. Further contended that the petitioner and respondent No.2 is ready to appear before this Hon'ble Court for recording their respective statements regarding their re-conciliation and revocation of divorce deed. Lastly, prayed for acceptance of instant petition.

4. Conversely, learned counsel for respondent No.1 has opposed the contentions raised by learned counsel for the petitioner by contending that the petitioner submitted application for issuance of divorce effectiveness certificate; that he appointed a “Salis” for him as required under the Muslim Family Laws Ordinance, 1961; that after adopting due process, proclamation in newspaper was published for appearance of respondent No.2; that the petitioner appeared on 26.09.2018 before the respondent No.1 and recorded his statement that the reconciliation between the parties has been

failed; that the petitioner did not intimate the respondent about the revocation of divorce deed dated 17.10.2018; that the petitioner did not pursue the matter and finally after expiry of ninety days, the divorce effectiveness certificate was issued on 30.11.2018. Lastly, he urged for dismissal of petition.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record with their able assistance.

6. Perusal of the petition reveals that the petitioner was married to the respondent No.2 Mst. SundalHammad. On 28.08.2018, the petitioner pronounced “Talaq” to her. On 30.08.2018, the petitioner filed an application to the respondent No.1 (Chairman Arbitration Council-ICT, Islamabad) for issuance of certificate of effectiveness of divorce under the provisions of Muslim Family Laws Ordinance, 1961, who declared divorce effective vide order dated 28.11.2018. It is the case of petitioner that he engaged a counsel to proceed with the matter before the respondent No.1 and executed wakalatnama and authority letter to his counsel. The respondent No.1 proceeded with the matter and on 26.09.2018, recorded his statement and thereafter issued notice for appearance of respondent No.2 for 24.10.2018. In the meantime, petitioner revoked the above mentioned divorce-deed vide revocation deed dated 17.10.2018 on the intervention of elders of both families and reconciled with respondent No.2. It was also contended by the petitioner that he informed his counsel about reconciliation with the respondent No.2 and execution of revocation deed with a request to learned counsel to withdraw the application under Section 7, *ibid*, filed before the respondent No.1 and before expiry of ninety days, he revoked the divorce deed. After execution of revocation deed, he started living with respondent No.2. In the month of June, 2020, he came to know that respondent No.1 had issued a divorce effectiveness certificate on 28.11.2018, as the counsel for petitioner did not pursue the matter before the respondent No.1 and did not inform about the revocation-deed, which resulted into issuance of divorce effectiveness certificate. The petitioner on 19.06.2020, after having

knowledge of issuance of the certificate filed an application before the respondent No.1 for cancellation of the above certificate which was not entertained, which necessitated him to invoke the constitutional jurisdiction of this court.

7. Perusal of record shows that the respondent No.2 was issued notice by the respondent No.1 and the matter was fixed for 24.10.2018. On the said date, counsel for the petitioner was in attendance while respondent No.2 was absent and the matter was adjourned for 14.11.2018. On the said date, none of the parties was in attendance and proclamation published in the newspaper was received and the matter was adjourned for 22.11.2018. Then on 22.11.2018, none of the parties put in appearance, hence the matter was postponed to 28.11.2018. Perusal of order dated 28.11.2018 shows that after publication and failure of reconciliation proceedings, divorce effectiveness certificate was issued.

8. The petitioner filed application for cancellation of Talaq certificate dated 30.11.2018 on the ground that divorce had already been revoked vide revocation deed dated 17.10.2018, but the same was not entertained. According to Section 7 of Muslim Family Laws Ordinance, 1961 a man , who wishes to divorce his wife shall, as soon as, may be after pronouncement of talaq in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply copy thereof to his wife. A talaq unless revoked earlier shall not be effective until the expiration of ninety days from the day on which notice is delivered to the Chairman. Section 7 is reproduced herein below:-

Section 7 of Muslim Family Law Ordinance, 1961,

- (1) Any man, who wishes to divorce his wife shall, as soon as may be after the pronouncement of Talaq in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.**
- (2) Whoever contravenes the provisions of sub-Section (1) shall be punishable with simple imprisonment for a term, which may extend to one year or with fine**

which may extend to five thousand rupees or with both.

- (3) Save as provided in sub-Section (5), A Talaq unless revoked earlier expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.*
- (4) Within thirty days of the receipt of notice under sub-Section (1) the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and Arbitration Council shall take all steps necessary to bring about such reconciliation.*
- (5) If the wife be pregnant at the time “Talaq” is pronounced, “Talaq” shall not be effective until the period mentioned in sub-Section (3) or the pregnancy, whichever be later, ends.*
- (6) Nothing shall debar a wife whose marriage has been terminated by “Talaq” effective under this Section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.”*

9. In the case in hand, the petitioner revoked the divorce vide revocation deed dated 17.10.2018, but same was not placed before the respondent No.1 well in time and it was not brought into the knowledge of the Council, which issued the impugned order/certificate. The petitioner placed on record a ‘fatwa’ issued by Shuhuba-e- Istafsarat, International Islamic University, Islamabad. After pronouncement of one talaq, the petitioner has made “RajooH” to respondent No.2, which is in accordance with shariah.

10. From the language employed in subsection (3) of Section 7 of 1961 Ordinance, it is abundantly clear that a Talaq unless revoked earlier expressly or otherwise, shall not be effective, until expiration of 90 days from the day on which notice under sub-section (1) was delivered to the Chairman Arbitration Council or Chairman Union Council, as the case may be. Thus the provision of law supra provides a room by using the word expressly or otherwise, that even Talaq can be revoked by way of a written instrument or orally or in

any other mode. The case of the petitioner is that the Talaq pronounced by him had already been revoked vide a Deed of Revocation dated 17.10.2018 which fact was communicated by him to his counsel instructing him to withdraw the notice of Talaq *subjudice* before the Arbitration Council/respondent No.1, but his counsel failed to do the needful within the prescribed limitation, per in-curium statedly owing to his pre-professional engagement resulting into issuance of the impugned divorce effectiveness certificate. Thus, obviously it is negligence on the part of the counsel and not the party/husband, which culminated into creation of an unwanted situation thereby necessitating them to invoke the constitutional jurisdiction of this court. There is no denial to the fact that according to the injunctions of Islam, if husband makes “Rajoo” to his wife before expiry of 90 days, the divorce proceedings will stand annulled. In the case in hand, revocation deed was executed by the petitioner much before expiry of the 90 days and the couple started residing together as husband and wife within limits prescribed by Allah Almighty and are apparently leading a happy matrimonial life, consequent whereof, the divorce proceedings stood abated and are no more in existence.

11. There is no dispute qua revocation of divorce by the petitioner. The only proposition involved in this case is that whether non-communication of factum of revocation of divorce to the Arbitration Council/respondent No.1, has rendered the revocation process invalid or redundant or not? The law on the subject is that in case of clash between an existing law and the injunctions of Islam with regard to validity of marriage, injunctions of Islam shall prevail for the purpose of 1961 Ordinance. I am fortified in my view from the law enunciated in 1997 P.Cr.L.J 1655 Federal Shariat Court (Muhammad Siddique and another Vs the State). This being the legal situation, I am of the irresistible view that since the divorce notice was revoked before expiry of 90 days by the petitioner/husband with his free will and consent and he was very much competent to do so according to Shariah as well as the law of land, therefore, mere non-communication of the same to

the Arbitration Council do not invalidate the revocation process nor break the marriage bond.

12. For what has been observed hereinabove, this petition is **allowed**, resultantly, the impugned divorce effectiveness certificated dated 28.11.2018 issued by respondent No.1 is set-aside.

(Ghulam Azam Qambrani)
Judge

Announced in open Court on this 26th day of January, 2021.

Judge

S.Akhtar