

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.2751/2021
Khurram Mehboob Shah & three (03) others
vs.
The State & two others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
01.	28.09.2021	Mr. Mehboob-e-Hasnain, Advocate for petitioners.

Through the captioned writ petition, the petitioners have prayed for the following relief:

- a) *Petition in hand may be accepted;*
- b) *Impugned order dated 17.10.2020 whereby application U/S 193 PPC filed by petitioners was dismissed by the learned trial Court.*
- c) *Impugned judgment dated 19.09.2020 whereby while acquitting petitioners learned trial Court deliberately avoided to take note of and record in the impugned judgment, deliberate mis-statements on the part of complainant / respondent No.2, and also avoided to take cognizance against respondent No.2 / complainant under perjury law / U/S 193 PPC, in disregard of law laid down by / direction of Hon'ble Apex Court of Pakistan vide judgment reported as PLD 2019 Supreme Court 527.*
- d) *Penal action under perjury law may graciously be ordered to be initiated against complainant / respondent No.2.*
- e) *Any other relief deemed appropriate may also be granted.*

2. Learned counsel for petitioners as well as petitioner No.2 Mehboob-e-Hussain, in-person, contends that Mst. Shazia Akbar Ghilzai (respondent No.2) lodged criminal case FIR No.166, dated 10.08.2018, under Sections 363, 147, 148 PPC, P.S. Secretariat, Islamabad alleging that she is

working as Assistant Professor in Quaid-e-Azam University and had married Khurram Mehboob Shah (petitioner No.1) on 14.09.2016, who were later on blessed with a son, Rohan; that when respondent No.2 was going out of the country on a course, her husband was unable to get visa, which resulted into family dispute and on 03.06.2018, the petitioners snatched the minor from her with the help of Kamran Iqbal Yousafi, MD KPMG, Lahore; that the said criminal case has been tried by the learned Trial Court and resultantly all the petitioners have been acquitted of the charge vide judgment dated 19.09.2020, whereafter the petitioners filed application under Section 193 PPC praying to proceed against respondent No.2 for willfully committing perjury by fabricating evidence in the criminal case on 03.10.2020, and the learned Trial Court without adverting to the evidence of perjury dismissed the said application vide impugned order dated 17.10.2020; petitioner No.2 further argued that the evidence of perjury is visible on record as the prosecution has failed to discharge the burden nor is respondent No.2 able to demonstrate from record that all petitioners are involved in kidnapping of her minor son, who is otherwise real son of petitioner No.1 Khurram Mehboob Shah, as such, no offence is committed in terms of Section 363 PPC, therefore, learned Trial Court has to prosecute respondent No.2 for malicious prosecution in terms of Section 193 PPC.

3. Arguments heard, record perused.

4. Perusal of record reveals that respondent No.2 was married to petitioner No.1 and blessed with minor son but, later on due to acute disparity respondent No.1, father of minor, had allegedly snatched the minor from respondent No.2 (mother), whereafter the latter approached this Court through Criminal Miscellaneous No.475/2018 but, petitioner No.1 moved from residential abode along with minor and shifted to Karachi, which resulted into non recovery of minor and disposal of the criminal miscellaneous petition filed by respondent No.2 with the observation that petitioner i.e. present respondent No.2 shall approach the police, vide order dated 20.06.2018. The matter has been agitated before the apex Court by Respondent No.2 through Criminal Petition No.276/2018, whereby on the direction of apex Court the minor was recovered and handed over to Respondent No.2 vide order dated 14.09.2018. However, on the other hand respondent No.2 got lodged the instant FIR No.166, dated 10.08.2018, under Sections 363, 147, 148 PPC, P.S. Secretariat, Islamabad for alleged abduction of minor at the hands of petitioners.

5. The petitioners have been tried by the Court after framing the charge and finally all the petitioners have been acquitted of the criminal case on the basis of judgments reported as PLD 1968 Lahore 97 (Ahmad Nawaz, etc. vs. The State), PLD 2008 Lahore 533 (Kausar Parveen vs. The State) and 2001 P.Cr.LJ 31 Lahore (Muhammad Ashraf v. S.H.O.), whereby the offence under Section 361 PPC has been elaborated, as such, the learned Trial Court has taken

the view that the father, if removes the minor from mother, is not guilty of offence of kidnapping, which is the main reason of acquittal.

6. Besides the above referred position, the petitioners had filed an application under Section 193 PPC against respondent No.2, per se, the said Section is defined in the following manner:

Section 193 PPC (Punishment for false evidence)

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine; and whoever, intentionally gives or fabricates false evidence in any other case, shall, be punished with imprisonment of either description" for a term which may extend to three years, and shall also be liable to fine.

7. The application so filed by the petitioners under Section 193 PPC qua false evidence in the judicial proceedings requires a logical explanation. If the learned Trial Court in the instant criminal case comes to conclusion that Respondent No.2 (complainant) is not a truthful person and facts narrated by her are found false, thereafter the offence under Section 193 PPC attracts and even the learned Trial Court can proceed with trial of a person who is found guilty of perjury in the light of case reported as **PLD 2019 SC 527 (Notice to Constable Khizar Hayat in the matter of Criminal Miscellaneous No.200/2019)**. But in this case, the learned Trial Court has not declared Respondent No.2 guilty of giving false evidence or offence of perjury

nor any such finding is visible from record, rather the learned trial Court while acquitting the petitioners, vide order dated 19.09.2020, has observed as under:

"20. In view of above discussion, it is held that the prosecution has miserably failed to produce cogent, solid trustworthy and confidence inspiring evidence, to connect the accused persons with commission of offences. Moreover, no offence of kidnapping constitute against accused Khurram Mehboob, being father of minor. I hereby acquit accused persons, Khurram Mehboob s/o Mehboob Hussain, Mehboob Hussain S/O Raheem Baksh, Rehana Bibi W/O Mehboob Hussain and Riffat Bibi W/O Adnan Naeem, from the charge of offences U/S 363/149/147/109 PPC. Accused are on bail. Their bail bonds stand discharged from their liabilities. Case property, if any, be dealt in accordance with law. File be consigned to the record room after its due completion."

8. After meticulous perusal of above referred order, it can safely been concluded that the application under Section 193 PPC of the petitioners has rightly been dismissed while taking analogy from provision of Section 195(1)(b) Cr.P.C., which reads as under:

195. (1) No Court shall take cognizance: --

(b) Prosecution for certain offences against public justice: *Of any offence punishable under arty of the following sections of the same Code, namely Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except, on the complaint in writing of such Court or of some other Court to which such Court is subordinate.*

9. In addition to the above referred position, the learned Trial Court while relying upon PLD 1971 SC 124 (Mansab Ali v. Amir), 1986 MLD 1156 Lahore (Muhammad Ramzan

vs. The State) and 2003 P.Cr.LJ 1242 Karachi (Abdul Nabi v. Syed Mukhtar) has rightly opined that no cognizance could be taken by a Court, except on a complaint in writing by such Court where such offence is committed, as such, the private person has no right to file a complaint in view of provision under Section 195(1)(b) Cr.P.C. This Court is in agreement with the view arrived at by the learned Trial Court vide impugned order dated 17.10.2020 that the acquittal of present petitioners from criminal case is not on the basis of malicious prosecution, rather on a technical reason that petitioner No.1 being father of the minor is not held liable for offence of kidnapping of his own son, hence the question of fabricating false evidence on the part of respondent No.2 is not visible , especially when the entire matter of removal of minor has been settled by the apex Court in Criminal Petition No.672/2018, therefore, the instant writ petition is misconceived and same is hereby **DISMISSED** *in limine*.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.