

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Criminal Revision No. 71/2019**

Muhammad Shakil.

**Versus**

Amber Yasmeen and another.

Petitioner By : Meer Farooq Sulehria, Advocate.  
Respondent No.1 By : Mr. Riasat Ali Azad, Advocate.  
State By : Mr. Sadaqat Ali Jahangir, State Counsel.  
Tahir Khan Niazi, S.I/I.O.  
Date of Hearing : 16.12.2019

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**Ghulam Azam Qambrani, J. -** Through the instant Criminal Revision petition, the petitioner seeks setting aside of the impugned order dated 02-04-2019, passed by the learned Additional District Judge (West), Islamabad, whereby petition under Section 476 Cr.P.C. filed by the petitioner, was dismissed.

2. Brief facts of the case are that the petitioner filed a guardian petition for the custody of minors namely "Abdullah Shakeel and Mariyam Shakeel" before the learned Guardian Judge (West), Islamabad, which was contested by respondent No.1. The learned Guardian Judge dismissed the same vide judgment and decree dated 11-06-2016. Feeling aggrieved the petitioner filed an appeal before the learned Additional District Judge (West), Islamabad, which was dismissed being time barred vide judgment and decree dated 25-10-2016. Thereafter, the petitioner filed a review petition before the learned Addl. District Judge (West), Islamabad, which was also dismissed vide order dated 24-11-2016.

3. The said order was assailed by the petitioner through writ petition before this Court, which was allowed vide judgment dated 25.01.2017 with the observation that the appeal of the petitioner be decided on merits, where-after the petitioner filed an appeal before the learned Additional District Judge (West), Islamabad, which was dismissed vide judgment and decree dated 18.03.2017. Thereafter, on 30-04-2018 the petitioner filed an application under Section 476 Cr.P.C. for proceeding against respondent No.1 stating therein that she has obtained a decree by misleading the Court by showing that she has not contracted second marriage whereas she entered into second marriage on 01.04.2016. The said application was dismissed vide impugned order dated 02.04.2019, hence, this petition.

4. Learned counsel for the petitioner, *inter-alia*, contended that during the arguments of the appeal, respondent No.1 deliberately and malafidely suppressed the real facts that she has not contracted second marriage and got the impugned order in her favour whereas she has contracted second marriage on 01.04.2016; that the impugned order has been passed ignoring the material facts and circumstances of the case, hence, liable to be set aside and the respondent be punished after initiating the proceedings under Section 476 Cr.P.C.

5. Learned counsel for the respondent supporting the impugned order contended that she contracted second marriage on 01.04.2016 but the same was done after recording of her evidence in the custody petition.

6. Arguments heard, record perused.

7. Perusal of record reveals that the petitioner filed a guardian petition for the custody of minors before the learned Guardian Judge (West), Islamabad, which was dismissed vide judgment and decree dated 11-06-2016. Aggrieved thereof, the petitioner filed an appeal before the learned Additional District Judge (West), Islamabad, which was dismissed being time barred vide judgment and

decree dated 25-10-2016. Thereafter, the petitioner filed a review petition, which was also dismissed vide order dated 24-11-2016. The said order was assailed by the petitioner through writ petition before this Court, which was accepted vide judgment dated 25.01.2017 with the observation that:-

*"impugned judgment and decree dated 25.10.2016 and order dated 24.11.2016 are hereby set aside and that the appeal shall be deemed to be pending before the learned Addl. District Judge (West), Islamabad, who after hearing learned counsel for the parties shall decide the same on merits."*

Consequently, the petitioner approached the learned Additional District Judge (West), Islamabad, whereby his appeal was dismissed vide judgment and decree dated 18.03.2017.

8. On 30.04.2018 the petitioner filed an application under Section 476 Cr.P.C. before the learned Additional District Judge, (West), Islamabad, for initiation of proceeding against respondent No.1 stating therein that during the proceedings of the appeal, respondent concealed the fact that she has contracted second marriage on 01.04.2016 as mentioned by the Court at para 14 of judgment dated 18.03.2017, which is reproduced hereunder:-

*"As per evidence available on record the respondent No.1 has not contract second marriage which show that she has devoted her life for the up-bringing of the minors".*

As such, she has obtained an order in her favour by misleading the Court, as such, she is liable to be proceeded in terms of Section 476 Cr.P.C. but the said application was dismissed vide impugned order dated 02.04.2019, hence, this petition.

9. For adjudication of above controversy, Sections 476 & 195 Cr.P.C. are relevant, which are reproduced hereunder:-

**"476. Procedure in cases mentioned in section 195. (1)**  
*When any offences referred to in section 195, sub-section (1) clause*

*(b) or clause (c), has been committed in, or in relation to a proceeding in any Civil, Revenue or Criminal Court, the Court may take cognizance of the offence and try the same in accordance with the procedure prescribed for summary trials in Chapter XXII.*

*(2) When in any case tried under sub-section (1) the Court finds the offender guilty, it may, notwithstanding anything contained in sub-section (2) of section 262:*

- (a) pass any sentence on the offender authorized by law for such offence, except a sentence of death, or, imprisonment for life, or imprisonment exceeding five years, if such Court be a High Court, a Court of Session, a District Court or any Court exercising the power of a Court of Session or a District Court;*
- (b) sentence the offender to simple imprisonment for a term which may extend to three months, or to pay a fine not exceeding [one thousand rupees) or both, if such Court be a Court of Magistrate of the first class, a Civil Court other than a High Court, a District Court, or a Court exercising the powers of a District Court or Revenue Court not inferior to the Court of Collector;*
- (c) sentence the offender to simple imprisonment for a term not exceeding one month, or to pay a fine not exceeding fifty rupees or both, If such Court be a Criminal Court or Revenue Court other than a Court referred to in clause (a) or clause (b).*

*(3) The powers conferred on Civil, Revenue and Criminal Courts under this section may be exercised in respect of any offence referred to in sub-section (1) and alleged to have been committed in relation to any proceeding in such Court to which such former Court is subordinate within the meaning of sub-section (3) of S. 195.*

*(4) Any person sentenced by any Court, under this section may, notwithstanding anything hereinbefore contained, appeal;*

*(a) in the case of a sentence by the High Court, to the Supreme Court;*

*(b) in case of a sentence by a Court of Session or District Court, or a Court exercising the powers of a Court of Session or a District Court, to the High Court, and*

*(c) in any other case, to the Session Judge.*

*(5) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeal under this section and the Appellate Court may alter the finding or reduce or enhance the sentence appealed against].”*

**Sec. 195.** *Prosecution for contempt of lawful authority of public servants; Prosecution for certain offences against public justice; Prosecution for certain offences relating to documents given in evidence. (1) No Court shall take cognizance:*

*(a) of any offence punishable under sections 172 to 188 of the Pakistan Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate.*

*(b) of any offence punishable under any 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, or*

*(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in*

*respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.*

10. Where an offence appears to have been committed by a party to any proceedings in any court in respect of a document produced or given in evidence in such proceedings, no court shall take cognizance except on the complaint in writing of the court concerned or some other court to which it is subordinate. The conditions necessary for the applicability of Section 195(1)(c) of the code are:-

- i. The offence mentioned should be committed by the party to proceeding in the Court; and
- ii. Such offence should be in respect of a document produced or given in evidence in such proceedings.

11. Criminal prosecution can be launched only by the Court before whom a false document is pending or can be launched by a person, who has been defrauded, as a result thereof and that too much prior to the production of documents in Court. In this regard, reliance is placed on Judgment reported as "Mahabat Khan and 5 others Vs. Senior Superintendent of Police and 5 others" (1999 MLD 2243). In the judgment reported as "Ch. Feroze Din Vs. Dr. K.M. Munir and another" (1970 SCMR 10), it has been held as under:-

*"that under Section 476 of the Criminal Procedural Code, prosecution is not to be launched as a matter of course for any and every offence alleged to have been committed in the course of judicial proceedings. Necessary requirement for such an action is that it must be taken in public interest and not allowed to be used as a handle in the hand of one party to wreak a private vengeance or satisfy a private grudge against the other party."*

12. In the case in hand, the petitioner is ex-husband of the respondent and they are in rivalry with each other. It is transparent from the record that the respondent has obtained a decree for Khula against the petitioner. On the other hand, the petitioner filed a case for custody of the minors, in which he has failed.

13. It is also reflected from the record that the petitioner is desiring to convert a dispute of custody of minors into criminal litigation. Learned counsel for the respondent in a clear manner stated that the respondent has contracted second marriage, but stated that it took place after recording of her evidence in the custody petition, which fact is substantiated by the record available on file. Moreover, neither any forged document has been produced nor false evidence has been recorded by the respondent herself during the proceedings.

14. Perusal of record further reveals that learned counsel filed his Power of Attorney on behalf of the respondent and in the said Power of Attorney there was no condition that the respondent would be responsible for any such act of her counsel beyond the conditions mentioned therein. Record further reveals that the respondent contracted second marriage on 01-04-2016 whereas she filed her affidavit in the Custody Petition on 28-11-2015. It is pertinent to mention here that learned counsel for the petitioner also admitted that second marriage of respondent took place after recording of her evidence in the Custody Petition. As such, it seems that respondent has not deposed falsely at the time, she filed her affidavit.

15. Keeping in view the above facts and circumstances of the case, I could not find any illegality, irregularity or any jurisdictional defect in the impugned order, therefore, does not require any interference by this Court. The instant petition having no force is **dismissed**.

(GHULAM AZAM QAMBRANI)  
JUDGE

Announced in open Court on 9-1-2020.

JUDGE