

FORM NO: HCJD/C

**JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT,  
ISLAMABAD  
JUDICIAL DEPARTMENT**

**Writ Petition No.3172-Q of 2012**

Rimsha Masih

**Vs.**

Station House Officer, Police Station Ramna etc.

Date of hearing: 14.11.2012.

Mr. Abdul Hameed Rana, Advocate for the petitioner.  
Mr. Tariq Mehmood Jehangiri, Deputy Attorney-General.  
Ch. Abdul Aziz, Advocate for respondent No.3/complainant.  
Amir Umer S.I with record.

**Iqbal Hameedur Rahman, C.J:** By means of instant constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, read with Section 561-A of Cr.P.C, petitioner Rimsha Masih seeks quashing of F.I.R. No.303 dated 16.08.2012, registered under Section u/s 295-B P.P.C. at P.S Ramna, Islamabad.

2. The concise facts deducible from the available record are that Complainant/Respondent No.3 Malik Muhammad Hamad lodged the impugned F.I.R. No.303 dated 16.08.2012, by asserting that he was resident of Maira Jaffer. On the fateful day i.e 16.08.2012 at about 6:45 p.m he was sitting near the house of Malik Amjad. Meanwhile, a Christian girl namely Rimsha daughter of Mizrik Masih came out from her house and was proceeding

towards heap of rubbish carrying a polythene envelope in her hand. The complainant suspected that it had contained the verses of Holy Qur'an. He enquired from her as to what it was and where she was carrying. The complainant then opened the envelope and found that it contained Namaz and about 10/12 pages of Namaz were half burnt, while some ashes was in another polythene envelope, which was going to be put by her in the garbage heap. She also divulged that she had put the same on fire. Hence, upon the statement of complainant the F.I.R. mentioned supra was drawn up and the petitioner was booked in the said case.

3. While addressing the arguments in support of petition, learned counsel for the petitioner has contended that from the bare reading of contents of the F.I.R. no offence under Section 295-B P.P.C. is made out against the petitioner; that the petitioner has neither defiled, damaged or desecrated the Holy Qur'an; that during investigation the petitioner has been found innocent; that during investigation one of the recovery witness Qari Muhammad Khalid Chishti has been found to be accused for planting fake recovery and, therefore, he has been challaned in this case; that it has also been found during the investigation that said Qari Muhammad Khalid Chishti himself planted the pages of Qur'an; while in the F.I.R. pages of Qur'an are not mentioned. It is further contended that there is no witness of seeing the burning of pages of Qur'an; that one

of the PWs had categorically stated that Qari Muhammad Khalid Chishti had planted the material in plastic bag. According to learned counsel for the petitioner the motive for false implication of the petitioner is that there is a Christians community in the vicinity and on the last Friday prior to registration of the F.I.R., Qari Muhammad Khalid Chishti while delivering "***Khutba***" contended that they (Christians) be expelled from the vicinity as they used to make a noise, on account of which the petitioner has been implicated in the offence under Section 295-B P.P.C. which is being used as a tool, and thus it is a sheer misuse of process of law; that during investigation the petitioner has been found to be a juvenile and illiterate girl and she is also unaware of any religious implications. Further captivation of learned counsel for the petitioner was that it is a case of clear victimization and petitioner's mental capacity is not upto the required standard; that all these things clearly establish that there is no direct or indirect evidence against the petitioner; that the challan has not been submitted so far. In order to strengthen his contentions, learned counsel has relied upon the following citations:-

- i. **Miraj Khan Vs. Gul Ahmed and 3 others** (2000 S C M R 122)
- ii. **Maqbool Rehman Vs. The State and others** (2002 S C M R 1076)

- iii. **Muslimabad Cooperative Housing Society Ltd Vs. Mrs. Siddiqa Faiz** (PLD 2008 Supreme Court 135)
- iv. PLD 2011 Supreme Court 963

While concluding the submissions, it is prayed that the instant petition be accepted and the impugned F.I.R. be quashed to the extent of the petitioner.

4. Per contra, learned counsel for complainant/respondent No.3 while repelling the arguments of learned counsel for the petitioner contended that after the registration of case all the authorities came for rescue of the petitioner. Learned counsel after reading the F.I.R. contended that it was not the case of the complainant that there were half burnt pages of Qur'an; whereas case of the complainant was to the extent of book of Nimaz; that the police reached at the spot immediately after the occurrence. According to learned counsel for the petitioner all the witnesses except one are still supporting the prosecution case; that if Qari Muhammad Khalid Chishti has put the pages of Holy Qur'an in the polythene envelope, the complainant has no concern with it. Learned counsel then read Section 295-B P.P.C. to contend that "**Ayat**" of Holy Qur'an are included in the book of Nimaz; that no litigation whatsoever was pending regarding the houses of Christians; that the existence or non-existence of mens rea is a question of fact, which cannot be decided in extraordinary constitutional jurisdiction at all. Learned

counsel then while relying upon Article 199 of the Constitution of the Islamic of Pakistan, 1973 strenuously urged that the said provision can be invoked where an efficacious alternate remedy is not available; whereas in the case in hand the petitioner may file application under Section 265-K Cr.P.C for her acquittal which is efficacious and speedy remedy and in this regard he has placed reliance upon **"Dr. Sher Afgan Khan Niazi Vs. Ali S. Habib and others** (2011 S C M R 1813). It is further contended that the challan of this case was submitted on 19.09.2012; whereas the instant petition was filed on 24.09.2012; that Munir Jafferri S.I, who was Investigating Officer of the case had tried to spoil the case of the prosecution by making certain changes in memos; that 4/5 PWs are still supporting the prosecution case; that the disputed question of fact cannot be resolved in constitutional jurisdiction. Learned counsel while reading Section 76 P.P.C. contended that mistake of fact is a good ground but as far as ignorance of law is concerned, there is no excuse for that; that as per medical report the petitioner is 14 years old; while when she was first time produced in hospital, she told her age as 16 years. Another view canvassed by the learned counsel for respondent No.3 was that if an accused pleads some exception, the same is subject to judicial scrutiny and the accused has to prove the same and in this regard he has relied upon Article 121 of the Qanun-e-Shahadat Order, 1984. As far

as ground of juvenile is concerned, the same is not available for quashing the F.I.R.; that the medical examination of the petitioner was not got conducted by the order of the Court concerned; that as far as the ground of lunatic is concerned, to conduct such cases procedure has duly been provided in Cr.P.C and in this regard he has referred to Sections 464 to 475 of Cr.P.C. By the dint of above submissions, it is prayed that the instant writ petition be dismissed. To add vigor to his contentions he has relied upon the following citations:-

- i. **Ghulam Hussain and 2 other Vs. The State** (1991 P Cr L J 431, Lahore)
- ii. **Muzaffar Iqbal Vs. The State** (1993 P Cr L J 125, Karachi)
- iii. **Col. Shah Sadiq Vs. Muhammad Ashiq and others** (2006 S C M R 276)
- iv. **Muhammad Abbasi Vs. S.H.O. Bhara Kahu and 7 others** (PLD 2010 Supreme Court 969)

5. Learned Deputy Attorney-General further added that the scope of Article 199 of the Constitution of the Islamic of Pakistan, 1973 is very limited; that the report under Section 173 Cr.P.C was submitted before the learned Sessions Judge concerned, which was returned with a direction to prepare separate report as the petitioner was a juvenile; that report u/s 173 Cr.P.C has been prepared which could not be submitted due to

injunctive order of this Court; that the petitioner has been placed in column No.2 of the report. Learned Deputy Attorney-General has relied upon **Col. Shah Sadiq Vs. Muhammad Ashiq and others** (2006 S C M R 276), **Muhammad Abbasi Vs. S.H.O. Bhara Kahu and 7 others** (PLD 2010 Supreme Court 969), **Abdul Jabbar and 2 others Vs. Nizam Khan and another** (1993 P Cr L J 1), **Ali Akbar Vs. The State and 2 others** (1999 P Cr L J 258), **Zafarullah Khan Vs. Station House Officer, Police Station Sukheki and 3 others** (2011 P Cr L J 561) and PLJ 1982 CrL. Cases 380.

6. Heard and perused the record.

7. The allegation against the petitioner as levelled in the F.I.R. is that she was found in possession of half burnt of Namaz book alongwith ashes, which she was allegedly carrying towards garbage heap for disposal, when she was intercepted by the complainant. In the light of above allegations as stated in the F.I.R., it can safely be observed that in ordinary daily life people of our society never bother to inquire from any person and particularly from a minor girl that what she is carrying in the polythene bag etc. and what she intends to do with the same. Taking the same into consideration, it reflects the intentions of the complainant in doing so. A prudent man in our society would never bother to intercept a girl in such like situation, therefore, it manifests that the complainant had some ulterior motive beyond the same as has been

asserted by the learned counsel for the petitioner that there exists a motive on the part of the complainant in order to manoeuvre the expulsion of Christian community from the vicinity. Therefore, the malafide on the part of the complainant is very much apparent from the facts and circumstances of the case.

8. It is the claim of the complainant in his first statement for recording of F.I.R. that he suspected that polythene envelope carried by the petitioner/accused contains "Verses" of Holy Qur'an, but at the same time he failed to explain that how he suspected, when he had not stated that Verses of Qur'an were visible from the alleged polythene envelope. It was also mentioned by the complainant in his statement that when he opened the polythene envelope, and then found that it was containing Namaz. It has also come on record that the police had reached at the spot and the complainant handed over polythene envelopes to the police, which were taken into possession through recovery memo, which was attested by the complainant and Qari Muhammad Khalid, but surprisingly in the recovery memo it was mentioned that polythene envelope had contained half burnt 10/12 pages of Namaz as well as two pages of first Sipara of Holy Qur'an. The inclusion of two pages of Holy Qur'an in the polythene envelope and then mentioning the same in the recovery memo by the complainant himself as well as by the recovery witness and that too after a short while of the



alleged occurrence clearly proves a material contradiction and hiatus in the prosecution story, which has occurred at the very initial stage, therefore, the contention of learned counsel for the complainant is negated when the complainant has attested the recovery memo.

9. In the existing circumstances during the investigation the petitioner has been considered to be a juvenile and as per medical report she was found uneducated and her mental age was below her chronological age. It was held in the medical report as under:-

***"Her clinical appearance, built and height (4ft. 11 Inches), was examined along-with radiological investigation and dentitions. On examination her age seems to be approximately 14 years. She appears un-educated and her mental age appears below her chronological age."***

10. In the light of medical report as well as during the investigation, the police has opined that the mental condition of the petitioner/accused was not mentally sound and she was completely unaware of religious feelings and religious preaching of Christianity as well as Islam. During the investigation it was also found that there was not an iota of evidence of mens rea against the petitioner/accused to have committed the offence of burning the pages of Holy Qur'an (Qaida)/Namaz which comes within the definition of offence under Section 295-B of P.P.C. Moreover, during the investigation, it has also been found

that no one has witnessed or saw the petitioner/accused while putting the Namaz on fire. In view of the same, it cannot be said that the petitioner/accused has committed the offence under Section 295-B P.P.C. Furthermore, the police has recorded the statement of witness namely Hafiz Malik Muhammad Zubair, who subsequently has also got recorded his statement under Section 164 Cr.P.C and in both the statements he has categorically stated that Qari Muhammad Khalid Chishti Jadoon had planted the incriminating material i.e. pages of Holy Qur'an etc. in the plastic bag, on account of which said Qari Muhammad Khalid Chishti Jadoon has been declared as an accused during the investigation on account of plantation of fake recovery and he is being challaned in this case.

11. In the said circumstances, implication of petitioner/accused for offence under Section 295-B P.P.C. seems to have been falsely manoeuvred by the complainant in furtherance of ulterior motives as Qari Muhammad Khalid Chishti Jadoon had also expressed the same in the preceding Friday's Sermon, wherein, he had urged that Christian community residing in the vicinity be expelled from the area. As such, false implication of the petitioner/accused is very much surfaced.

12. The most important factor for consideration of involving of any person of having committed the offence under Section 295-B P.P.C. is whether there existed any *mens rea* in committing such like offence? From the

perusal of material brought on record by the prosecution, there appears not an iota of mens rea. It is quite apparent through police investigation as well as medical report that the petitioner was completely unaware of any such wilful intention of committing the offence under Section 295-B P.P.C. In the absence of any wilful intention of wilfully defiling, damaging, desecrating or destroying the original text of Holy Qur'an or part of it without any intention to achieve a nefarious objective contemptuously disrespect of Holy Qur'an, she cannot be considered to have any mens rea and where the same is absolutely lacking in that eventuality a person cannot be accused of an offence under Section 295-B P.P.C. and the said offence cannot be said to have been committed. In this regard I am fortified by the case of "Abdul Ahad. Vs. the State and another" (PLD 2007 Peshawar 83), wherein it has been held as under:-

**"In Jurisprudence, "mens rea" means the intent or mental condition which must concur with the act done and the consequences achieved. The combination of these acts would tag the wrong doer with the mens rea. In criminal law, particularly under the Penal Code, no man can be tried or imprisoned for an act which is committed due to any delusion or misconception of mind, however, culpable and criminal it might be."**

13. From the perusal of police file it is crystal clear that even the prosecution has also reached to a conclusion that there is no *mens rea* on the part of the petitioner for committing the alleged offence. On the contrary, the Investigating Agency has an eye witness namely Hafiz Malik Muhammad Zubair, who has asserted that the material of offence has been planted upon the petitioner, on account of which Qari Muhammad Khalid Chishti Jadoon has been taken into custody and has been made as an accused; whereas, the petitioner has been placed in column No.II of the report under Section 173 Cr.P.C and has been left at the mercy of the Court.

14. In the above perspective and taking into consideration the material presented before this Court as well as arguments of the learned counsel for respondent No.3 who has been arguing the petition mainly on the grounds of technicalities of law and if, the same are taken into consideration, it would amount to defeating the very purpose of dispensation of justice. The predominant factor under the law is that there is no hard and fast rule which bars a High Court while exercising jurisdiction under Article 199 Constitution of the Islamic Republic of Pakistan, 1973 and under Section 561-A Cr.P.C from burying the proceedings by way of quashment. In this regard I am also fortified by the judgment of the Hon'ble Supreme Court of Pakistan i.e. **"Muhammad Aslam (Amir Aslam) and others Vs. District Police Officer, Rawalpindi and**

**others”** (2009 S C M R 141), wherein it was laid down as under:-

**“There is no invariable rule of law as it was dependent on the facts of each case whether to allow the proceedings to continue or to nip in the bud.”**

15. It is also pertinent to mention here that during the investigation, the Investigating Agency has reached to a conclusion that the petitioner/accused was completely unaware of the religious feelings of Islam and religious feelings of Christianity. Keeping in view the conclusion drawn by the police during the investigation about the petitioner, now question of commission of offence under Section 295-B P.P.C. is required to be looked into with utmost caution and care in order to save a female of the age of only 14 years from the woe of trial of a criminal case. In Section 295-B P.P.C. there are specific words ***“wilfully defiles, damages or desecrates a copy of Holy Qur’an or an extract therefrom”*** but when a girl, according to the police investigation is unaware about the preaching of Islam or Christianity and she is also unaware about the affects of defiling of pages or extract from the Holy Qur’an how she by any stretch of imagination could be charged for the offence under Section 295-B P.P.C. and allowing the trial of the petitioner, especially when she has already been found innocent by the Investigating Agency

and has been placed in column No.II of the report under Section 173 Cr.P.C., and has been left at the mercy of Court, would amount to mockery of justice. The continuation of proceedings of this case to the extent of petitioner on the basis of instant F.I.R. would be futile exercise and great miscarriage of justice as there is no likelihood of conviction of the petitioner/accused. It would also be a sheer abuse of process of Court, which is not permissible under the law.

16. Consequently, allowing the petitioner to be grilled through a trial in the given circumstances would amount to allow the courts to be used as a tool for ulterior motive. It would also amount to abuse the process of law which would always prickle the conscious of this Court while deciding this petition and in dispensation of justice. It is also settled proposition of law that when there are extraordinary circumstances, High Court is duty bound to protect the life, liberty, honour and dignity of every citizen.

17. As far as alternate remedy, as agitated by the learned counsel for respondent No.3 is concerned, I have paid due consideration to this aspect and after examining the case from all angles and law propounded by the superior courts, I am unable to see eye to eye with the learned counsel for the simple reason that High Court is quite competent rather has inherent powers to quash the F.I.R. in appropriate cases and it is not necessary to direct the aggrieved person to first exhaust the alternate remedy.

In this regard I am pinning faith upon the case of "**Miraj Khan Vs. Gul Ahmed and 3 others** (2000 S C M R 122), wherein it was laid down that "**There is no absolute bar on the power of High Court to quash an F.I.R. and it is not always necessary to direct the aggrieved person to first exhaust the remedy available to him under section 249-A Cr.P.C**"

18. For the foregoing reasons, this petition is accepted and the F.I.R. No.303 dated 16.08.2012 under Section 295-B P.P.C. registered at Police Station Ramna, Islamabad is quashed to the extent of the petitioner.

19. Before parting with the instant judgment, I would like to observe here that being followers of Islam we in all the affairs of life seek guidance from the Holy Qur'an and in the said Holy book on a number of places Muslims/followers of Islam are warned to be careful and extraordinary careful while levelling such like allegations against any one and such directions are not applicable in respect of other Muslims alone, rather the same are applicable in respect of non-Muslim communities too. So, every Muslim should be extraordinary careful while levelling such like allegations even against a non-Muslim.

**CHIEF JUSTICE**

Announced in open Court on 20-11-2012.

*Approved for reporting.* **CHIEF JUSTICE**