

Stereo. HCJDA 38
JUDGMENT SHEET

LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

Writ Petition No. 39/2025

Jameel Ahmad

Vs.

The State and others

JUDGMENT

Date of hearing:	14.11.2025
For the Petitioner:	Mr. Tariq Mahmood Khan, Advocate.
For Respondents No.1 to 4:	Mr. Zafar Iqbal Awan, Additional Advocate General, with Shabbir/SI.
Respondent No.5:	In person.
For Respondent N.6:	Nemo.
<i>Amicus curiae</i>	Syed Zeeshan Haider, Advocate.

Tariq Saleem Sheikh, J. – Respondent No.5 got FIR No.1350/2024 dated 25.11.2024 registered against the Petitioner and Respondent No.6 at Police Station City Liaquatpur, District Rahimyar Khan, under section 376 PPC. She alleged that the Petitioner lured her, cohabited with her for a few months, and when she insisted that he should formalize the relationship, married her on 22.4.2024. Subsequently, she learnt that he was already married and had a family. She protested for being cheated, upon which the Petitioner divorced her on 14.10.2024. Respondent No.5 claimed that on 17.10.2024, she was present at her house when, at 10:00 p.m., the Petitioner and Respondent No.6 came there armed with weapons. The Petitioner raped her at gunpoint while Respondent No.6 stood guard. After that, they left. Respondent No.5 alleged that since the Petitioner had divorced her three days earlier, i.e., on 14.10.2024, he had no right over her and his act was unlawful and he was liable to be punished.

2. Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”), the Petitioner seeks quashing of FIR No.1350/2024. He denies the allegation that he was

in a live-in relationship with Respondent No.5. However, he acknowledges that he married her on 22.4.2024, and that the marriage was registered with the Union Council City 98, Liaquatpur. He also concedes that he divorced her on 14.10.2024, adding that he did so through a written divorce deed and sent notice regarding it to the Chairman/Administrator of the aforesaid Union Council in terms of section 7(1) of the Muslim Family Laws Ordinance, 1961 (MFLO), through registered post. The Petitioner asserts that upon receiving the *Talaq*, Respondent No.5 became enraged and managed to have FIR No. 1350/2024 registered by concocting a false story. The alleged incident of 17th October never took place. Even otherwise, Respondent No.5 is still his wife and bound by his marital bond, as he revoked the *Talaq* on 23.12.2024 and applied to the Chairman, Union Council City 98, Liaquatpur, for the withdrawal of his notice under section 7(1) of the MFLO. The *Talaq* was revoked before the expiry of the 90-day period stipulated in section 7(3) of the MFLO and before its confirmation by the Union Council. Subsequently, he also filed a suit for restitution of conjugal rights against Respondent No.5 which is pending. The Petitioner claims that FIR No. 1350/2024 is *mala fide*. No offence within the definition of section 375 PPC, punishable under section 376 PPC, is made out.

3. The principal issue that arises in this case is whether the Petitioner's pronouncement of divorce on 14.10.2024 had taken legal effect under section 7 of the MFLO by the date of the alleged occurrence on 17.10.2024. If the marital bond had not been legally severed, the further question is whether, on the allegations levelled in the FIR, he can be prosecuted for an offence under section 376 PPC.

Discussion

4. Under Islamic law, a marriage may be dissolved either by the death of a spouse or by divorce effected through one of the following methods: (i) by the husband at his will, without the intervention of a court, (ii) by mutual consent of the husband and wife, without the intervention of a court, (iii) by a judicial decree. A wife cannot divorce herself from her husband without his consent, except under a contract made before or after marriage. However, she may, in some cases, obtain a divorce by judicial decree on the grounds prescribed by law. When the divorce proceeds from

the husband, it is called *Talaq*; when it is effected by mutual consent, it is called *Khula* or *Mubara'at* according to the terms of the contract between the parties.¹ A divorce may be pronounced so as to take effect on the happening of a future event. It is thus called a contingent divorce.² A *Talaq* may be effected orally (by spoken words) or by a written document (*Talaqnama*). Under Shia law, the *Talaq* must be orally pronounced by the husband, in the presence of two witnesses and the wife, in a set form of Arabic words. A written divorce is not recognized, except in certain circumstances.³

5. Mulla further explains that a *Talaq* may be effected in several ways.⁴ The first method, *Talaq ahsan*, consists of a single pronouncement of divorce during a *Tuhr* (period between menstruations), followed by abstinence from sexual intercourse for the period of *Iddat*. The second method, *Talaq hasan*, consists of three pronouncements made during successive Tuhrs, no intercourse taking place during any of the three Tuhrs. Finally, *Talaq-ul-bidaat* or *Talaq-i-badai* consists of (i) three pronouncements made during a single *Tuhr*, either in one sentence, e.g., "I divorce thee thrice", or in separate sentences, e.g., "I divorce thee, I divorce thee, I divorce thee", or (ii) a single pronouncement made during a *Tuhr* clearly indicating an intention irrevocably to dissolve the marriage, e.g., "I divorce thee irrevocably."⁵ Mulla states that a *Talaq hasan* becomes irrevocable and complete on the third pronouncement, irrespective of the *Iddat*. On the other hand, a *Talaq badai* becomes irrevocable immediately it is pronounced, regardless of the *Iddat*. As the *Talaq* becomes irrevocable at once, it is called *Talaq-i-bain*, that is, irrevocable *Talaq*.⁶

6. While classical Islamic law defines the forms and legal effects of divorce, the MFLO contains provisions to regulate it in Pakistan. Section 7(1) of the MFLO mandates that any man who wishes to divorce his wife

¹ D.F. Mulla, *Principles of Mahomedan Law*, paragraph 307.

² *ibid.*, paragraph 308.

³ *Syed Ali Nawaz Gardezi v. Lt.-Col. Muhammad Yusuf* (PLD 1963 SC 51)

⁴ *ibid.*, paragraph 311.

⁵ *Talaq-ul-bidaat* is not recognized as valid by Shia law. See: *Syed Ali Nawaz Gardezi v. Lt.-Col. Muhammad Yusuf* (PLD 1963 SC 51), which relies on *Baillie's Digest of Muhammadan Law*, Part II, p. 118, *Tyabji's Muhammadan Law*, Third Edition, Ss. 136-142, *Mulla's Principles of Mahomedan Law*, p. 662, Fifteen Edition, *Syed Ameer Ali's Muhammadan Law*, Fourth Edition, Vol. II, p. 533)

⁶ D.F. Mulla, *Principles of Mahomedan Law*, paragraph 312.

shall, as soon as may be, after the pronouncement of *Talaq* in any form whatsoever, give the Chairman of the Union Council (as defined in section 2 of the MFLO) (the “Chairman”) a notice in writing of his having done so, and shall supply a copy thereof to the wife.⁷ Section 7(2) states that whoever fails to do so shall be punished with simple imprisonment up to one year or with a fine that may extend to five thousand rupees, or with both. Section 7(3) provides that 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 section 7(1) is delivered to the Chairman. Section 7(4) states that within thirty days of receiving the aforementioned notice, the Chairman shall constitute an Arbitration Council⁸ for the purpose of facilitating a reconciliation between the parties, and the Arbitration Council shall take all necessary steps to bring about such reconciliation. Section 7(5) further provides that if the wife is pregnant when *Talaq* is pronounced, it shall not be effective until the period mentioned above expires or the pregnancy ends, whichever is later. Section 7(6) states that 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.

7. Section 7 of the MFLO, and in particular subsection (3) thereof, has been considered in several cases. In Syed Ali Nawaz Gardezi v. Lt.-Col. Muhammad Yusuf (PLD 1963 SC 51), the Supreme Court of Pakistan held

⁷ Act XXIX of 2021 inserted the following proviso section 7(1) of the MFLO:

Provided that where the parties belong to Fiqah-e-Jafria –

- (a) the man may voluntarily and with his free will pronounce himself or through duly authorized attorney (*Vakil*) *Talaq* uttering in literal Arabic words (*seegha*) in the physical presence of at least two witnesses qualifying the requirements of clause (1) of Article 17 of the Qanun-e-Shahadat, 1984 (P.O. No. 1 of 1984);
- (b) the pronouncement of *Talaq* shall be ineffective if it is done jokingly or under anger, intoxication, insanity, duress or coercion of any kind and from any corner whatsoever; and
- (c) in case of dispute, with reference to clauses (a) or (b) arising due to difference of opinion, the parties or any of the parties may have recourse to a court of competent jurisdiction or by approaching the “*Mujtahid-e-Alam*” and the decision of *Mujtahid-e-Alam* shall have a status of an award and the same shall be dealt with in accordance with the provisions of the Arbitration Act, 1940 (X of 1940).

Explanation.— The expression “*Mujtahid-e-Alam (Faqih-e-Azam)*” means a juris-consult, religious scholar or doctor of Shia school of thought well versed with Shariah having international repute and of such recognition. The Council of Islamic Ideology shall maintain a panel of *Mujtahid-e-Alam* having aforesaid qualification.

⁸ See section 2(a) of the Muslim Family Laws Ordinance 1961.

that the Legislature had sought to incorporate, as far as may be, the Islamic law provisions relating to the two forms of *Talaq-us-Sunnat*, namely *Talaq ahsan* and *Talaq hasan*, within this section. It observed that the question whether the result achieved is in strict conformity with Islamic law did not fall within its province to determine by reason of Articles 5 and 6 of the 1962 Constitution. The Court noted that section 7 envisages a machinery of conciliation intended to dissuade a husband from proceeding with a unilateral divorce if reconciliation through mediation is possible. The object of the provision, it explained, is to prevent the hasty dissolution of marriages without an effort to preserve the matrimonial bond. If the husband, upon reflection, abstains from giving notice to the Chairman, he may, under section 7, be deemed to have revoked the pronouncement, which would operate to the advantage of the wife. Subsection (3) precludes the *Talaq* from taking effect for a specified period, during which the parties continue to be husband and wife in law.

8. In *Abdul Mannan v. Safuran Nessa* (1970 SCMR 845), the petitioner claimed that his marriage with the respondent had been dissolved by divorce with the respondent's consent. This plea was also raised before the High Court, which found that no notice of the alleged divorce had been given to the Chairman as required under section 7(1) of the MFLO. The petitioner's counsel conceded this omission. The Supreme Court held that in view of the express provision of section 7(3), the alleged divorce had not yet become effective.

9. In *Muhammad Salahuddin Khan v. Muhammad Nazir Siddiqi and others* (1984 SCMR 583), the Supreme Court reaffirmed the view taken in *Syed Ali Nawaz Gardezi* and *Abdul Mannan*. In *Malik Javid Ali and another v. Abdul Kadir and another* (1987 SCMR 518), the Court held that in cases of "Khula and Mubara'at the dissolution proceeds on the wishes of one party, culminating in a settlement between the parties, and as such, the statute takes over even where the parties have, by a settlement, arrived at dissolution." In view of section 8 of the MFLO, the procedural requirements of section 7 must be observed.

10. However, a divergent view has emerged in some cases where the courts have considered the effect of divorce under Islamic law,

independent of compliance with section 7 of the MFLO. In Allah Dad v. Mukhtar and another (1992 SCMR 1273), the petitioner lodged a private complaint under sections 10 and 16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, alleging that respondent No.2 was his lawfully wedded wife and mother of three children. She eloped with respondent No. 1, Mukhtar, and subsequently filed a suit for dissolution of marriage, which she later withdrew. Mukhtar allegedly took her to his house, where they were living in adultery. The respondents pleaded that they had contracted marriage after the petitioner had divorced respondent No.2 on 17.5.1981. Respondent No.2 withdrew her suit on the ground that the petitioner had divorced her orally and through a divorce deed on the said date. The Shariat Appellate Bench of the Supreme Court held that notice of *Talaq* to the Chairman is not mandatory under the Injunctions of Islam, and a divorce pronounced or reduced to writing by a husband does not become ineffective or invalid in Shariah merely because such notice was not given. Therefore, where a woman, after obtaining a valid divorce and observing the prescribed period of *Iddat*, contracts marriage with another man, such marriage is not unlawful and their cohabitation cannot be regarded as Zina.

In Mst. Zahida Shaheen and another v. The State and another (1994 SCMR 2098), Zahida Shaheen and her husband, Aqeel-ur-Rehman, were accused of contracting an unlawful marriage and committing Zina, on the ground that their Nikah was solemnized while Aqeel-ur-Rehman was still married to Zahida's maternal aunt, Mst. Razia. The prosecution contended that the union was void under Shariah, which prohibits simultaneous marriage with a woman and her niece, and that their cohabitation amounted to Zina. The appellants maintained that Aqeel-ur-Rehman had divorced Mst. Razia and married Zahida Shaheen after the expiry of the *Iddat* period. The Shariat Appellate Bench found that the existence of a *Talaqnama* raised sufficient doubt to undermine the prosecution's case. It noted that people often fail to send notice of *Talaq* to the Chairman as required under the MFLO. Reaffirming the principle laid down in *Allah Dad*, the Court held that such omission does not invalidate divorce in Shariah. It concluded that the appellants, having acted on the *bona fide* belief that the divorce was effective, had committed no offence and acquitted them.

11. In *Mst. Kaneez Fatima v. Wali Muhammad and another* (PLD 1993 SC 901), the Supreme Court held that section 7 of the MFLO is an existing law that has not been declared repugnant to the Injunctions of Islam either by the Federal Shariat Court or the Shariat Appellate Bench of the Supreme Court. The Council of Islamic Ideology has also made no recommendation against it. The Court rejected the view taken in *Mirza Qamar Raza v. Mst. Tahira Begum* (PLD 1988 Kar. 169), where the Sindh High Court, while exercising constitutional jurisdiction in a family matter, declared section 7 void under Article 2A of the Constitution as contrary to the Injunctions of Islam. It was also noted that another Bench of the Supreme Court had already set aside *Mirza Qamar Raza* on the principle that if a case can be decided on other grounds, “there was no need to enter into questions of constitutional issues, particularly so when it did not fall within the jurisdiction of the court.” The Supreme Court further clarified that the constitutional interpretation of family laws lies outside the jurisdiction of the Shariat Courts.

12. In *Kaneez Fatima*, while reaffirming earlier authorities, including *Syed Ali Nawaz Gardezi v. Lt.-Col. Muhammad Yusuf* (PLD 1963 SC 51), *Abdul Mannan v. Safuran Nessa* (1970 SCMR 845), *Muhammad Salahuddin v. Muhammad Nazir Siddiqi* (1984 SCMR 583), and *Malik Javid Ali and another v. Abdul Kadir and another* (1987 SCMR 518), the Supreme Court qualified the view expressed in *Gardezi* that failure to send notice of *Talaq* to the Chairman could be treated as deemed revocation. It stated that such omission “does not by itself lead to the conclusion that *Talaq* has been revoked. It may only be ineffective but not revoked. This controversy should be considered from [a] practical and purposive point of view, taking into consideration the facts and circumstances of each case.” The Supreme Court acknowledged the long-standing controversy surrounding section 7 and noted that, due to constitutional constraints, it could not “give any verdict on the conflicting claims challenging or justifying the provisions of section 7 of the MFLO. However, keeping in view the facts of each case, the applicability and interpretation of section 7 has to be construed in that light.” In a case where divorce is effected with the consent of both parties and confirmed in writing under their undisputed signatures, section 7 should not be construed strictly (particularly where the

penal consequences under section 7(2) are invoked) since the parties do not willfully commit a breach and *bona fide* believe that they have been divorced by mutual consent, treating the notice to the Chairman as a mere formality. The notice may be sent at any time thereafter to fulfil the requirements of section 7.

13. Courts have also considered the role of the Chairman of the Union Council in the context of section 7 of the MLO. In *Mst. Fahmida Bibi v. Mukhtar Ahmad and another* (PLD 1972 Lahore 694), this Court held that a divorce does not become effective unless notice is served on the Chairman and 90 days have passed from the date of its receipt. The Chairman is required to initiate reconciliation efforts by giving notice to both parties to nominate their representatives for the constitution of an Arbitration Council. If either party fails to appear, the Chairman cannot compel attendance, nor can such absence attract any penal consequence. Regardless of the parties' conduct or attitude, the divorce becomes effective upon the expiry of 90 days unless it is revoked earlier by the husband. If both parties appear and an Arbitration Council is constituted, but reconciliation fails, the only function of the Chairman or Council may perform is to record in writing that reconciliation was unsuccessful. They are not empowered to issue any decision or certificate to give effect to the divorce. If reconciliation fails or the husband does not revoke the *Talaq* within ninety days, the divorce becomes automatically operative and effective. The MFLO and Rules contain no provision requiring the issuance of a certificate for this purpose. Any certificate issued by the Chairman in this context would lack legal basis and carry no legal effect.⁹ In *Almas Mubashar v. Mubashar Hanif* (PLD 2014 Lahore 494), this Court held that the issuance of a certificate of *Talaq* is a mere technicality not mentioned in the MFLO, and the divorce becomes effective automatically upon the expiry of 90 days from receipt of notice by the Chairman (Nazim or Administrator) of the Union Council.

14. The issue of withdrawal of notice has also been considered in several cases. In *Mst. Fahmida Bibi v. Mukhtar Ahmad and another* (PLD 1972 Lahore 694), this Court held that under subsection (3) of section

⁹ Islamabad High Court expressed similar view in *Fawad Ahsan and another v. Chairman, Arbitration Council, and another* (PLD 2017 Islamabad 364), and *Muhammad Afzal Khan v. Chairman Arbitration Council, and another* (2018 CLC 1125).

7 of the MFLO, if the husband revokes the *Talaq* before the expiry of ninety days, the spouses continue to be husband and wife in law. It was further observed that the MFLO does not require the husband to notify the Chairman of such revocation. The phrase “unless revoked earlier, expressly or otherwise” is significant. A husband may revoke the *Talaq* by any clear act or declaration, including communication to the wife, without necessarily informing the Chairman. In such cases, if the Chairman issues a certificate of effectiveness in ignorance of the revocation, it would carry no legal force. Treating such a certificate as conclusive proof of divorce would undermine the statutory right of revocation.

15. In **Princess Aiysha Yasmeen Abbasi v. Maqbool Hussain Qureshi and others** (PLD 1979 Lahore 241), the spouses executed a written agreement to dissolve their marriage and forwarded it to the Chairman of the Union Council, requesting completion of the formalities. This Court held that dissolution through *Khula* or *Mubara'at* is irrevocable once mutual consent has been recorded, and the husband has no authority to withdraw from it unilaterally. The Court further observed that, owing to the expression “*mutatis mutandis* and so far as applicable” in section 8, the form of notice in such cases may differ from that prescribed for a unilateral *Talaq* under section 7(1). It rejected the contention that proceedings under section 7 were unnecessary where dissolution was by mutual consent. In **Mst. Sana Shehzad v. Secretary Union Council No.81 and others** (PLD 2014 Lahore 632), this Court held that where divorce is effected by mutual consent on the basis of *Mubara'at*, the husband cannot retract or withdraw it. Further, the Chairman (or the Administrator of the Union Council) has no authority to adjudicate on its validity. The Chairman is bound to issue a certificate of effectiveness and has no power under the law to entertain a notice of withdrawal or to initiate proceedings on that basis.¹⁰

16. The following principles may be deduced from the foregoing discussion:

¹⁰ Also see: *Muhammad Shahbaz Ahmad v. Sher Muhammad and another* (1987 CLC 1496), *Abdul Rashid and others v. SHO, Police Station Saddar Renala, and others* (1995 PCr.LJ 1247), *Mst. Shamshad Mai v. Chairman Arbitration Council, Ahmedpur East, District Bahawalpur, and others* (2000 MLD 173), *Mst. Ambreen Shah v. Chairman, Union (Arbitration) Council/Administrator, Union Committee, and others* (2002 MLD 778).

- (i) Under section 7(3) of the MFLO, a *Talaq* does not become legally effective until the expiry of 90 days from the date on which notice under section 7(1) is received by the Chairman of the Union Council, unless it is revoked earlier. Section 7(3) precludes the *Talaq* from taking effect for a specified period, during which the parties continue to be the husband and wife in law.
- (ii) During this 90-day period, the husband retains the right to revoke the *Talaq* either expressly or by any unequivocal conduct indicating such intent. Intimation to the Chairman is not a statutory precondition for revocation.
- (iii) Where the *Talaq* is revoked within the aforementioned period, the marriage continues to subsist in law, regardless of the form in which the divorce was originally pronounced (including *Talaq-ul-bidaat*).
- (iv) Failure to send notice to the Chairman may attract penal consequences under section 7(2), but does not by itself amount to revocation of *Talaq*. It renders the pronouncement ineffective, not invalid, in law.
- (v) The legal effect of divorce under Islamic law without compliance with section 7 has limited recognition only in prosecutions for Zina, where the Shariat Appellate Bench has held that such divorces, though unnotified, may still be valid under Shariah. This exception does not apply to the offence of rape under section 376 PPC.
- (vi) The Chairman of the Union Council is required, upon receiving notice under section 7(1), to constitute an Arbitration Council and facilitate reconciliation between the parties. However, failure of either party to appear or of the Council to conduct proceedings does not prevent the operation of section 7(3). The Chairman is not empowered to adjudicate on the validity or effect of *Talaq*, and the issuance or non-issuance of a certificate has no legal bearing on its effectiveness.
- (vii) A divorce by *Mubara'at*, once duly executed and communicated to the Chairman, is irrevocable, and the husband has no authority to withdraw from it unilaterally. The requirement of notice under section 7(1) of the MFLO applies *mutatis mutandis*. However, it only ensures procedural regularity and does not affect the validity or finality of the dissolution.

17. It is necessary to clarify that *Mulla's Principles of Mahomedan Law* is a respected reference work and frequently cited for its exposition of Islamic personal law as applied in the sub-continent. However, it is not a source of law in itself.¹¹ Where the statutory scheme or binding judicial authority provides clear guidance, resort to such secondary commentaries

¹¹ *Najaat Welfare Foundation v. Federation of Pakistan and others* (PLD 2021 FSC 1), *Gulzar Ahmad and another v. Ayesha Naz Sarwar and others* (2022 CLC 675), *Mst. Mumtaz Bibi v. Qasim and others* (PLD 2022 Islamabad 228), *Mahnoor Shabbir v. Additional District Judge and others* (2024 CLC 513), *Mst. Mussarat Fayyaz and others v. Government of Pakistan and others* (PLD 2025 FSC 18).

must remain subordinate. *Kaneez Fatima*'s case affirms that the legal effectiveness of a *Talaq* in Pakistan is governed by section 7 of the MFLO, irrespective of the form in which it is pronounced. The limited exception recognized in *Kaneez Fatima* is with respect to divorces effected through mutual consent (*Mubara'at*).

18. Turning to the present case, the Petitioner admits that he had strained relations with Respondent No.5 and divorced her through a written Divorce Deed dated 14.10.2024. He states that he sent notice of this pronouncement to the Chairman of Union Council City 98, Liaquatpur, under section 7(1) of the MFLO through registered post (No. 782/RGL/134438798) on the same date. The Divorce Deed appended with the petition indicates that the Petitioner employed the form of *Talaq-ul-bidaat*. However, before the expiry of the 90-day period contemplated by section 7(3) of the MFLO, he submitted a written revocation to the Chairman through registered post (No. 666/RGL/134440180) on 23.12.2024. These facts were not disputed by the State or Respondent No.5 during the hearing. Thus, the Petitioner revoked the pronouncement within the statutory window. Applying the principles discussed above, the divorce did not take effect, and the marriage continued to subsist in the eyes of the law.

19. Law distinguishes between sin, crime, and offence. A "sin" is a moral or religious transgression, an act considered wrong according to divine command or ethical principles, judged by one's faith or conscience. Its consequences are spiritual or moral, such as guilt or divine punishment. In contrast, under the statutory framework of Pakistan, a "crime" is an act or omission that is made punishable by law. It is a public wrong that affects society at large, and the offender may be punished by death, imprisonment, fine or other legal penalties. Courts established under the Constitution adjudicate only statutory offences and do not concern themselves with moral or religious conduct. The term "offence" is a technical expression that refers to any act (or omission) that violates the law. It encompasses both regulatory violations, such as traffic infractions, and serious penal acts like murder. "Offence" is a broader concept than "crime", the latter being generally reserved for serious offences involving public wrongs. Thus, every crime is an offence, but not every offence amounts to a crime in this sense. Under

Shariah, however, a crime is an act prohibited by divine injunction and punishable with *Hadd* or *Ta'zir* penalties.

20. In the present case, the marital bond between the Petitioner and Respondent No.5 existed in law at the time of the alleged occurrence. The Petitioner's conduct may be considered immoral or inappropriate under religious or social norms, but he cannot be prosecuted under section 376 PPC because, on the facts pleaded in the FIR, the essential ingredients of the offence are not disclosed.

21. This Court does not exercise jurisdiction under Article 199 of the Constitution to quash criminal proceedings where the matter requires the determination of disputed facts or appraisal of evidence. However, where the allegations in the FIR, taken at their face value, do not disclose the essential legal ingredients of the offence, or where the continuation of proceedings would amount to an abuse of process, the High Court may exercise its jurisdiction to prevent miscarriage of justice.¹² In the present case, the above discussion demonstrates that, as a matter of law, the essential ingredient of section 376 PPC is not attracted. The petition is, therefore, **accepted** and FIR No. 1350/2024 is quashed.

**(Tariq Saleem Sheikh)
Judge**

Naeem

Approved for reporting

Judge

¹² *The State v. Chaudhry Mohammad Khan and others* (PLD 2025 SC 254).