

Judgment Sheet

**IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.**
JUDICIAL DEPARTMENT

Criminal Revision No. 48 of 2025.

(**Kaneez Bibi Vs. The State and two others**)

J U D G M E N T

Date of hearing: 30.09.2025

Petitioner by: Mr. Muhammad Imran Pasha, Advocate.

Respondent No.3 by: Ch. Saad Rasool Gill, Advocate.

State by: Mr. Zafar Iqbal Somro, Deputy District
Public Prosecutor

SADIO MAHMUD KHURRAM, J. Through this petition filed under sections 435 and 439 Cr.P.C., the petitioner has assailed the order dated 26.02.2025, passed by the learned Additional Sessions Judge/Special Court Anti-Rape(Investigation & Trial), Chishtian, whereby his application seeking permission to submit documentary evidence in the shape of the judgment and decree dated 11.09.2018, passed in a suit seeking dissolution of marriage as against the respondent No.3 and the certified copy of the *Nikahnama* reflecting the *Nikah* of the petitioner with Muhammad Ameer and the certified copy of the Computerized National Identity Card (CNIC) of the petitioner, was rejected.

2. The brief facts of the case are that the F.I.R No. 33 of 2024 was registered at the Police Station City B-Division, Chishtian, District

Bahawalnagar, on the information of the petitioner with the allegation that the respondent No.3 namely Muhammad Nawaz had raped her. After the investigation of the case, the report under section 173 Cr.P.C. was submitted and the learned trial court framed the charge against the respondent No.3 which was denied by him and he claimed the trial, whereafter the learned trial court proceeded to summon the prosecution evidence. The statement of the petitioner was recorded as PW-1 and after the prosecution evidence was closed on 06.01.2025, the respondent No.3 was examined by the learned trial court under section 342 Cr.P.C. on 28.01.2025 and in answer to the question *why this case against you and why the PWs deposed against you*, the respondent No.3 took a specific stance that he was validly married to the petitioner and no question of raping her existed. Subsequently, the petitioner then submitted an application under section 540 Cr.P.C. seeking permission to reappear before the learned trial court, however, that application was dismissed on 07.02.2025, by the learned trial court, whereafter another application was submitted by the petitioner seeking the production of the documents mentioned above, which application was dismissed by the learned trial court vide order dated 26.02.2025, hence, this petition.

3. The learned counsel for the petitioner submitted that the application filed by the petitioner seeking permission to produce certain documents as evidence during trial of the case F.I.R. No.33 of 2024 dated 24.01.2024 registered at the Police Station City B-Division Chishtian, District Bahawalnagar, was rejected by the learned trial court vide order dated 26.02.2025, which order was liable

to be set-aside being against the facts and the law; that there did not exist any reason for the learned trial court to have rejected the application of the petitioner, which only sought permission to produce certain documents, which were essential for just decision of the case; that production of said documents would not have taken accused facing trial by surprise as existence of said documents was very well in the knowledge of the accused facing trial of the case.

4. The learned counsel appearing on behalf of the respondent No.3 submitted that the order dated 26.02.02025, passed by the learned trial court was in accordance with the law and if the application of the petitioner is allowed it will result in causing serious prejudice to the respondent No.3 in his defence against the charges and that the petitioner had submitted the application after the examination of the respondent No.3 under section 342 Cr.P.C. by the learned trial court, reflecting the malafide of the petitioner.

5. The learned Deputy District Public Prosecutor submitted that the order dated 26.02.2025, passed by the learned trial court did not suffer from any illegality necessitating its setting aside.

6. I have heard the learned counsel for the petitioner, the learned counsel for the respondent No.3, the learned Deputy District Public Prosecutor and have perused the record with their able assistance.

7. The relevant provisions of the law related to the power of a Judge of the learned trial court with respect to the production of any document are contained in Article 161 of the Qanun-e-Shahadat Order, 1984. Under the said Article 161 of the Qanun-e-Shahadat Order, 1984, it has been provided that a Judge may, in order to

discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing. Under the provisions of the Qanun-e-Shahadat Order, 1984, the word *document* has also been defined under Article 2(1)(b), wherein it has been provided that document means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. The Article 2(1)(b) of the Qanun-e-Shahadat Order, 1984 reads as under:

“2. Interpretation. __ (1) In this Order, unless there is anything repugnant in the subject or context, —

(a) -----

(b) "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.”

In this manner, the certified copy of the judgment and decree passed in the suit as filed by the petitioner seeking dissolution of marriage dated 11.09.2018, the certified copy of the *Nikahnama*, reflecting the Nikah of the petitioner with Muhammad Ameer and the certified copy of the Computerized National Identity Card (CNIC) can validly be considered as *documents*. Now the only question which needs to be decided is the question as to whether the production of these documents at this stage of proceedings was necessary to prove a fact in issue or any relevant fact or otherwise. Article 161 of the Qanun-e-Shahadat Order, 1984, is also clear that *no stage for production of any*

document has been set and it has not been directed that a document cannot be produced before the learned trial court after a certain stage rather the use of the words “*at any time*” in the Article makes it abundantly clear that the judge may order the production of a document he considers necessary at any stage. The Article 161 of the Qanun-e-Shahadat Order, 1984, provides as under:-

“161. Judge's power to put questions or order production. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, **at any time**, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Order to be relevant, and duly proved:

Provided also that this Article shall not authorise any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under Articles 4 to 14, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the judge ask any question which it would be improper for any other person to ask under Article 143 or 144; nor shall be dispense with primary evidence of any document, except in the cases hereinbefore excepted.” (emphasis supplied)

Now, as mentioned above, the only fact which needs to be considered is whether the production of the documents sought to be produced by the petitioner is necessary in order to discover and obtain proof of facts in issue and relevant facts or otherwise. Under the Qanun-e-Shahadat Order, 1984, the term “fact” has also been defined under Article 2 of the said order. The Article 2(1)(d) of the Qanun-e-Shahadat Order, 1984 reads as under:

“2. Interpretation.____ (1) In this Order, unless there is anything repugnant in the subject or context, —

(a) -----

(b) -----

(c) -----

(d) "fact" includes—

- (i) anything, state of things, or relation of things capable, of being perceived by the senses; and
- (ii) any mental condition of which any person is conscious.”

As is plentifully clear from the above quoted provisions of the Qanun-e-Shahadat Order, 1984, a fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of the Qanun-e-Shahadat Order, 1984 relating to the relevancy of facts. The provisions related to the relevancy of the facts are provided under Chapter III of the Qanun-e-Shahadat Order, 1984. It has been provided that evidence may be provided on facts in issue and relevant facts and furthermore, under Article 22 of the Qanun-e-Shahadat Order, 1984, it has been provided that facts necessary to explain facts in issue may also be given evidence of. In the present case, it is the stance of respondent No.3 that he was validly married to the petitioner and the fact in issue in the case is that whether the petitioner was raped by the respondent No.3. The relevant fact, which is necessary to prove the fact in issue in this case, is that whether the respondent No.3 was validly married to the petitioner. To prove the said fact, the respondent No.3 has already questioned the prosecution witnesses; however, the petitioner, by way of production of documents, now also wants to produce before the learned Judge the documents in order to prove the relevant facts. As mentioned above, Article 161 of the Qanun-e-Shahadat Order, 1984, itself allows the learned Judge to obtain proof of relevant facts by ordering the production of any document, however, it has been provided that the ultimate judgment of the case must be based on a fact duly proved and

not otherwise. In this manner, the documents sought to be proved by the petitioner may be received in evidence but the question about their relevancy and proof shall be decided by the learned trial court and it will only be after the declaration of the learned trial court that the said documents were not only relevant but also duly proved that the same would be considered in any manner. Therefore, by merely allowing the petitioner to produce the said documents, no prejudice will be caused to the respondent No.3 in his defence. The ultimate judgment to be passed by the learned trial court, shall be based upon the facts duly proved as provided under the Qanun-e-Shahadat Order, 1984, and not otherwise. Reliance in this regard is placed upon the titled “Abdul Hameed Mian Vs. Muhammad Nawaz Qasoori” (2002 SCMR 468).

8. In view of the above discussion, this petition is allowed and the petitioner may produce the certified copies of the documents as mentioned in her application, however, the learned Judge shall only consider them after coming to the conclusion that they were not only relevant but also duly proved and the learned trial court shall base its judgment on the proved facts brought on the record by the parties i.e. the prosecution as well as the accused during the course of the trial.

(SADIQ MAHMUD KHURRAM)
JUDGE

Approved for Reporting

Judge

Rashid