

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**MINGORA BENCH (DAR-UL-QAZA), SWAT**  
*(Judicial Department)*

**W.P. No. 153-M/2017**

**JUDGMENT**

Date of hearing: **15.05.2017.**

**Petitioner:- (Aman Ullah) by M/S Hazrat Rehman & Abdul Halim Khan, Advocates.**

**Respondents:- (SHO P.S. Munda & others) by Mr. Rafiq Ahmad, A.A.G. and M/S Shah Salam Khan and Shah Faisal Khan, Advocates.**

**MOHAMMAD IBRAHIM KHAN, J.-** Aman Ullah

Petitioner herein, is imploring the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 with the following perspective prayer:-

*" On acceptance of instant writ petition, the impugned order/judgment of Respondents No. 4 dated 20.02.2017 may kindly be declared as without lawful authority and of no legal effect. Consequently directions may be passed for registration of FIR against Respondent No. 2 & 3, according to the facts of petition dated 22.12.2016, filed by the Petitioner."*

2. Brief but precise facts as deciphered from the available record are that Respondent No. 2 by the name of Mst. Ayesha is the real daughter of the Petitioner, who has been previously engaged with one Saif-ur-Rahman resident of Paktiya Afghanistan in June 2016. As per contents of the petition, the Petitioner alongwith his family members including the Respondent No. 2 were settled in Pakistan as Afghan refugees and later on shifted to their native country Afghanistan who were without proper documentation upon instructions of the Government of Pakistan.

3. On 10.11.2016 daughter of the Petitioner Mst. Ayesha mislaid from her house in Afghanistan. After thorough search and on getting an information it came into the knowledge of the Petitioner, his daughter had fled to Pakistan with the active connivance of the Respondent No. 3 (Fawad) son of Akbar resident of Mian Kalay Munda District Dir Lower. In this quandary, the Petitioner lodged a report in shape of Mad No. 34 dated 28.11.2016

with regard to missing of his daughter. Thereafter, the Respondent No. 2 Mst. Ayesha was recovered upon the report of the Petitioner from the house of Respondent No. 3 Fawad and after her recovery she recorded her statement before the Magistrate concerned U/S 164 Cr.P.C, wherein she in clear terms admitted to have fled from Afghanistan to Pakistan through mountainous path and also affirmed the factum of Nikah with the Respondent No. 3 Fawad being her lawful husband. Subsequently she was later shifted to Dar-ul-Aman. An application has been preferred by the Petitioner before the Court of learned Executive Magistrate/Assistant Commissioner Samarbagh Dir lower with regard to deporting of the Respondent No. 2, Mst. Ayesha while at the same time the Respondent No. 3 Fawad also moved an application for release/custody of Mst. Ayesha being his lawful wife. Both these applications were dismissed by the order dated 16.12.2016. The Petitioner preferred an application to the Station House Officer of Police Station Munda

for registration of the case against the Respondents No. 2 (Mst. Ayesha) & 3 (Fawad), which was not given any heed, therefore another application with the similar plea was presented to the DPO Dir Lower, which was also answered in negative.

4. Next off, the matter was taken to the Court of learned Additional Sessions Judge/Izafi Zila Qazi Samarbagh Dir Lower by filing an application within the meaning of Section 22- A Cr.P.C for registration of the case against the Respondents No. 2 (Mst. Ayesha) & 3 (Fawad). Likewise, the Respondent No. 2 (Mst. Ayesha) also filed Criminal Revision before the said learned Court against the order of the learned Executive Magistrate Samarbagh dated 16.12.2016, wherein the Present Petitioner was arrayed being necessary party and after hearing learned counsel for the parties both the applications and criminal revision were dismissed through separate orders dated 20.02.2017 respectively. Hence, being aggrieved from orders of the learned *fora* below

the Petitioner approached this Court through the writ petition in hand *inter-alia* on the grounds mentioned therein.

5. Having heard arguments of learned counsel for the parties, available record with their able assistance gone through.

6. Learned counsel for the Petitioner relied on oral submissions while learned counsel for the Respondents No. 2 (Mst. Ayesha) & 3 (Fawad) referred to **PLD 1997 Lahore 666 "**  
**Mst. Sajida Bibi and another vs Incharge**  
**Chowki No.2", 2006 MLD 298 (Lahore) "**  
**Mst. Zohra Bibi vs Superintendent Dar-ul-**  
**Aman and another", PLD 2010 Quetta 61 Mst.**  
**Giran Naz alias Shagufta Bibi vs the State and**  
**2 others"**. In the light of these dictums of the Hon'ble superior Courts submitted that Respondent No. 2 (Mst. Ayesha) being '*sui juris*' contracted marriage with her own sweet will with the Respondent No. 3 (Fawad) as right to marry was a constitutional protected right in terms of Article 35 of the Constitution.

7. The available record transpires that the Petitioner has failed to bring on record any documentary evidence in respect of his deportation to his native country Afghanistan, rather the Respondent No. 2 Mst. Ayesha has been shown card-holder of the registration card issued by the Government of Pakistan being Afghan refugee, thus, plea of the Petitioner in respect of initiation of criminal proceedings against the Respondent No. 2 (Mst. Ayesha), being illegal migrant within the meaning of Section 14 (2) of the Foreigners Act, 1946 could not be advanced.

8. The purpose behind the perception prayer of this writ petition is to set aside the impugned order/judgment of the Respondent No. 4, Justice of Peace/Additional Sessions Judge Dir Lower which require to be declared as without lawful authority and of no legal effect and to pass directives for registration of an FIR against Mst. Ayesha daughter of the Petitioner and Respondent No. 3 (Fawad),

according to the facts of the petition dated 22.12.2016 filed by the Petitioner.

9. As subject for the registration of the case as highlighted in the petition pertains to Section 14 (1) against Respondent No. 3 Fawad and sub-section 2 against Respondent No. 2 Mst. Ayesha of the Foreigners Act 1946, thus it reads as under:-

**14. Penalties:- If any person contravenes the provisions of this Act or of any, order made thereunder, or any direction given in pursuance of this Act or such order, he shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine, and if such person has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or, show cause to the satisfaction of the convicting Court why such penalty should not be paid.**

**(2) Where any person knowingly enters into Pakistan illegally, he shall be guilty of an offence under this Act and shall be punished with imprisonment for a term which may extend to ten years and fine which may extend to ten thousand rupees.**

**10.** The Foreigners Act, 1946 (XXXI of 1946) has conferred certain powers upon Federal Government in respect of foreigners. The preamble reveals that whereas it is expedient to provide for the exercise by the Federal Government of certain powers in respect of the entry of the Foreigners into Pakistan, their presence and their departure therefrom. It is extended to the whole of Pakistan including Tribal areas and it shall come into force on the 23rd day of November 1946. Section 3 of the Foreigners Act, 1946 empowers Federal Government by its orders for making provision either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed Class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into Pakistan, or their departure therefrom of their presence or continued therein. The powers for any action under the Foreigners Act, 1946 has been specifically delegated to the Provincial Government and individual like Aman Ullah the



Petitioner herein has no *locus standi* to move any application for registration of the case under section 14 (1) and (2) of Foreigners Act, 1946 as such like powers are exclusively within the domain of either of the functionaries of Federal Government or Provincial Government extending these powers even to the Tribal Territories.

**11.** In our view and while considering the matter from every possible angle, the order of the learned Justice of Peace has been decorously passed which calls for no interference under the constitutional jurisdiction of this Court. Ergo this petition stands dismissed.

Announced  
Dt: 15.05.2017.

**JUDGE**

**JUDGE**