

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

Quashment Petition No. 78-M/2021
With Cr.M No. 324-M/2021

(Muhammad Karim versus Muhammad Imran and others)

Present:

Mr. Shah Wazir, Advocate for petitioner.

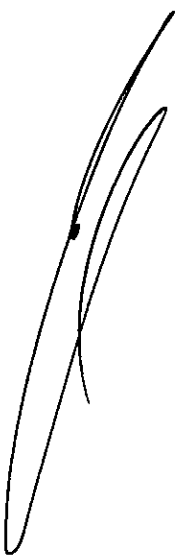
Mr. Razauddin Khan, A.A.G. for State.

Mr. Hamayoon Khan Torwali, Advocate for
Respondent No.7.

Mr. Adalat Khan Torwali, Advocate for
Respondents No. 1 & 2.

Date of hearing: 27.01.2022

JUDGMENT



ISHTIAQ IBRAHIM, J.- This petition u/s 561-A, Cr.P.C is directed against the judgment dated 12.10.2021 of the learned Additional Sessions Judge/Izafi Zilla Qazi, Swat at Bahrain whereby criminal revision petition of Respondents No.1 to 3 (accused) was accepted and order dated 27.08.2021 of the learned Judicial Magistrate, Bahrain was set aside who vide the same order had accepted application of complainant (herein petitioner) for amendment/alteration of formal charge already framed against the said respondents.

2. Brief facts of the case are that on report of the present petitioner, case vide FIR No. 386 dated 07.11.2019 was registered against

accused/respondents No. 1 to 3 at P.S Bahrain, Swat wherein he charged accused-respondent Muhammad Imran initially u/s 496-A for enticing away his wife Mst. Musarrat Bibi for the purpose of illegal marriage at the instigation of his father Baboo Khan and brother Muhammad Saleem.


3. During the course of investigation, the alleged abductee was recovered from the house of accused-respondents and her statement was recorded u/s 164, Cr.P.C on 09.04.2020. According to her narrations in the said statement, she had illicit relations with accused-respondent Muhammad Imran but after her marriage she was living her matrimonial life happily. The said accused used to go to the house of his maternal uncle by using the thoroughfare in front of her house, therefore, her in-laws used to tease her on the pretext of her illicit relations with accused Muhammad Imran who came to the door of her house on the day of occurrence and enticed her away to a deserted house in jungle where he kept her for four months and committed sexual intercourse with her. Lastly they were arrested by police when they had come to the house of accused Baboo Khan, father of the remaining accused.

4. After completion of investigation, challan was put in Court against all the accused. Formal charge was framed against them on 20.08.2020 wherein they were initially indicted u/s 496-A/109 PPC. After recording statements of 16 witnesses, the alleged abductee was examined as PW-17 on 26.08.2021 wherein she leveled the allegations against accused Imran and three others for abducting her from her house on gun point. She further alleged that the accused forcibly took her to a deserted house in jungle and raped her for four months.

In light of the above statement recorded by alleged abductee, prosecution submitted an application before the trial Court for alteration of formal charge with the prayer for addition of sections 376, 365-B/ 34 PPC. The learned trial Court accepted the said application vide order dated 27.08.2021. Since the trial Court lacked the jurisdiction in respect of trial of the accused under the proposed penal sections, therefore, vide order dated 28.08.2021 the case was ordered to be sent to the Court of learned Additional Sessions Judge, Bahrain for further proceedings.

5. Being aggrieved, accused-respondents challenged the order of learned trial Court through a revision petition which was accepted by learned revisional Court vide judgment dated 12.10.2021, resultantly order dated 27.08.2021 of the learned trial Court was set aside and the case was sent to trial Court for disposal in accordance with law, hence, this petition.

6. I have heard the arguments and perused the record with able assistance of learned counsel for the parties including the learned Assistant A.G for State.



7. There is no denial of the fact that trial Court is vested with the powers u/s 227 of the Code of Criminal Procedure to alter or add to the formal charge at any time before pronouncement of judgment, however, these powers should not be arbitrarily exercised in a manner prejudicial to any of the parties. In the present case, the trial is at the verge of conclusion and almost all the PWs, including the alleged abductee, have already been examined.

8. The contents of FIR suggest that complainant had reported the matter to police

regarding willful departure of the alleged abductee from her house. After recovery of the lady, she recorded her statement u/s 164, Cr.P.C before the Judicial Magistrate in line of FIR but during her examination before the trial Court as PW-17 on 26.08.2021, she altogether changed her initial version after 16 ½ months and charged the accused for her abduction on gun point with further allegation of subjecting her to rape. Though two accused namely Baboo Khan and Muhammad Saleem are on bail but accused Muhammad Imran is behind the bars since the date of his arrest. Alteration of the charge at this stage, as suggested by prosecution, would obviously inject a new life into the trial proceedings already initiated almost one and half a year ago and the last sufferer thereof would be the accused who is facing the agonies of trial from jail. Learned counsel for the respondents/ accused mainly stressed on the improved version of prosecution. At this stage, this Court will not delve deep into merits of the case lest it may prejudice the case of either side, however, I feel no hesitation in observing that presumption of truth is attached to the statement recorded by alleged abductee u/s 164, Cr.P.C and effect of her improved version on

prosecution case will be looked into by trial Court at the time of final decision. For the time being, alteration of the charge has prejudiced the accused, therefore, the findings of learned trial Court cannot be verified rather I find myself in agreement with the observations of learned revisional Court.

9. It appears that the issue has been raised for further perpetuation of the trial proceedings in the garb of amending formal charge, therefore, the order of trial Court, while accepting the application of prosecution, was in violation of settled principles of criminal justice. This Court has already observed that although alteration of the charge can be sought at any time before pronouncement of judgment and the trial Court can exercise its powers in this regard u/s 227, Cr.P.C but the jurisdiction is required to be exercised if so warranted by the circumstances of the case in the interests of justice and not to prolong the proceedings. Reliance in this regard is placed on 'Muhammad Afzal Vs. The State' (1990 SCMR 267). In the said case application for alteration of formal charge was filed at the stage of arguments which was concurrently dismissed by trial Court and High Court. The august Supreme Court, while

hearing petition against the orders of the lower fora,
observed that:

On the other hand, we cannot avoid the impression that the prayer now being made by the petitioners for amendment of the charge is intended to prolong the proceedings. In the circumstances we are not prepared to intervene in the matter.

9. In light of the above discussion, the impugned judgment of the learned revisional Court, being in accordance with law, does not call for any interference. Resultantly, this petition, having no merits, is accordingly dismissed. Cr.M No. 324-M/2021 is also dismissed for having become infructuous.

Announced.
Dt: 27.01.2022

JUDGE

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