

**JUDGMENT SHEET**

**PESHAWAR HIGH COURT  
MINGORA BENCH  
(Judicial Department)**

Cr.R. No. 17-M/2022

**JUDGMENT**


*Date of hearing: - 17.10.2022*

*Petitioners: (Naseeb Khan & others) by Mr. Hazrat Rehman, Advocate.*

*Respondents:- (The State & another) by Mr. Saeed Ahmad, Asstt. A.G and Syed Abdul Haq, Advocate.*

**MUHAMMAD IJAZ KHAN J.-** Through the instant criminal revision petition, petitioners have challenged the legality and propriety of the order and judgment of learned Additional Sessions Judge, Samar Bagh Dir Lower dated 03.02.2022 whereby the application of the petitioners for adjourned *sine die* the proceedings in the complaint filed against them was declined.

2. Precisely the facts leading to the filing of instant petition are that the respondent/complainant namely Muhammad Shah submitted an application to the District Police Officer Dir Lower to the effect that the petitioner No. 2 namely Mst. Rafia is his legally wedded wife and being his legally wedded wife she has entered into a second marriage with petitioner No. 1 namely Naseeb Khan on the instigation of petitioner No. 3 namely Umar Hussain. When the aforesaid application was submitted to the D.P.O who marked

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the same to the SHO of Police Station Haya Serai for report, who after recording statements of various persons opined that it is a case of illegal and void marriage within the meaning of section 494 PPC, therefore, it was recommended that the parties may approach to the family Court vide report dated 07.09.2020.

3. Thereafter, on 3<sup>rd</sup> day of the aforesaid report i.e. on 10.09.2020 the respondent No. 2 namely Muhammad Shah filed a suit before the learned Judge Family Court against Mst. Rafia Bibi, (petitioner No. 2 herein) for restitution of conjugal rights, in which Mst. Rafia Bibi was summoned and who submitted her written statement whereby she has categorically denied the existence of her marriage with the respondent No. 2 namely Muhammad Shah.

4. It is also relevant to mention here that on the day of filing of the aforesaid suit, the respondent No. 2 simultaneously filed a petition under section 22-A Cr. P.C for registration of the case against the present petitioners and in this petition too when the report was called from the local police it was again reported that it is a case of illegal marriage, therefore, it was recommended that the parties may approach to the competent Court of law and as such the petition of

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respondent No. 2 under section 22-A Cr.P.C was dismissed vide order and judgment dated 01.10.2020.

5. The record further shows that on 24<sup>th</sup> day of the aforesaid order i.e. on 24.11.2020 the respondent No. 2 then filed a complaint under section 200 Cr.P.C with the same set of allegations which were earlier agitated in the application to the D.P.O and then in the petition filed under section 22- A Cr.P.C. In the aforesaid compliant notices were issued to the present petitioners and in the process charge has also been framed against them.

6. The record shows that it was during the pendency of this complaint when the present petitioners submitted an application for adjourned *sine die* of the proceedings in the instant complaint till the decision of the family suit pending before the learned Judge Family Court. After hearing both the parties, the learned trial Court has dismissed the application for adjourned sine die of the proceedings through the impugned order dated 03.02.2022. Petitioners have now challenged the aforesaid order and judgment before this Court through the instant petition.

7. Arguments of learned counsel for the parties as well as learned Astt: A.G for the State were heard and the record perused with their able assistance.

8. It is the case of respondent/complainant that the petitioner No. 2 namely Mst. Rafia Bibi is his legally wedded wife and thus his allegations are that during the existence of his marriage, the petitioner No. 1 has entered into an illegal and void marriage with petitioner No. 2 on the instigation of petitioner No. 3, however, it would be relevant to mention here that when the respondent/complainant filed a suit for restitution of conjugal rights then his alleged wife who is petitioner No. 2 herein herself submitted her written statement to the aforesaid suit where in preliminary objection No. vi and Para 2 & 3 on the facts she has categorically pleaded that the respondent/complainant has already divorced her in September 2019 and thereafter after observing the *Iddat* period she has herself married with petitioner No. 1 in August 2020 as by then she was ceased to be the wife of respondent/complainant. The marriage between petitioner No.1 and petitioner No. 2 has been admitted by both the co-petitioner before the Court on the ground that petitioner No. 2 was no more the wife of respondent/complainant due to the divorce which has already been taken place between them in September 2019. The factum of divorce has not been alleged by nobody else but the petitioner No. 2 herself who has categorically pleaded in her written statements that in-

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fact the respondent/complainant has since been divorced her, therefore, she has entered into a legal and lawful marriage with petitioner No. 1. The Court was also informed that the couple has now been blessed with a child as well. Whether in the given admitted facts and circumstances the charge made in the complaint could be brought home against the present petitioners or not, the same is left to the wisdom of the learned trial Court who is seized of the complaint, however, since the existence of essential ingredients to constitute an offence of illegal and void marriage is totally and obviously dependent upon the existence of the previous marriage between the complainant and petitioner No. 2 and as these questions are to be determined and adjudicated by the learned Judge Family Court while deciding the suit for restitution of conjugal rights filed by the respondent/ complainant and as such for the time being the proceedings in the complaint would be proceedings having an uncertain and guessing end. It may be noted that if the proceedings in the complaint are allowed to continue and the present petitioners are convicted in the said complaint and then at the end of the day the respondent/complainant could not succeed to get a favourable decree in the suit filed for restitution of conjugal rights on the ground that there is no valid

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*Nikah* between the parties, then in such eventuality no repair could be made of the suffering faced by the present petitioners in the instant complaint.

9. It is settled since long that when a civil Court and criminal Court are seized of the matter and the result of one proceedings is having a direct bearing on the result and outcome of another then in such state of affairs the proceedings before the criminal Court has to be halted till the decision of the case pending before the civil Court. It may also be noted that an order of adjourned sine die of the proceedings in a criminal complaint would not at all prejudice the right of the respondent/complainant as if he succeeds to establish his valid *Nikah* with the petitioner No. 2 then he can revive and restore the proceedings of the complaint, but as against this, the continuation of the proceedings in the compliant would definitely prejudice the interest of the petitioners, as stated hereinabove, that if the same are allowed to continue and petitioners are convicted and thereafter the learned Judge Family Court dismissed the suit for restitution of conjugal rights then in such eventuality they will be allowed to suffer for no fault on their part. In the case of "Muhammad Akbar v/s The State" reported as PLD 1968 Supreme Court 281, the Hon'ble Apex Court has held that normally it is true, that criminal proceedings should not be postponed pending the disposal of civil litigation

connected with the same subject-matter. But where it is clear that the criminal liability is dependent upon the result of the civil litigation or is so intimately connected with it that there is a danger of grave injustice being done in the case if there be a conflict of decision between the civil Court and the criminal Court. In such event it is equally clear that the criminal Court has not only the right to but should also stay its hands until the civil litigation is disposed of, for, it is not desirable that when the title to the property itself is in dispute, the criminal Courts should give a finding in respect of the same question. This is not a case in which the criminal litigation is being stayed by an order of the civil Court, but this is a case where the High Court, exercising its inherent criminal jurisdiction under section 561-A of the Code of Criminal Procedure, has in the interests of justice ordered the stay of the criminal proceedings. Similarly, in the case of "Abdul Ahad v/s Amjad Ali & others" reported as PLD 2006 Supreme Court 771, the Hon'ble Apex Court has reiterated the same rationale by observing that there is now consensus of opinion that there is no invariable rule that a criminal proceeding should be stayed pending the decision of civil suit but the matter is one of discretion entirely. While exercising discretion the guiding principle should be to see as to

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whether the accused is likely to be prejudiced if the criminal proceedings are not stayed in case of dispute regarding title where it is difficult to draw a line between a bona fide claim and the criminal action. All the Courts below had exercised discretion in favour of the respondent keeping in view the guiding principles laid down by the superior Courts. See Muhammad Akbar v. The State PLD 1968 SC 281; Sheikh Ahmad v. Sheikh Muhammad Younis 1971 PCr. LJ 331 and Mansharam Madhavadas v. Chetanram Rupchand and others AIR 1945 Sindh 32. In a situation akin to the present one this Court in the case of "Ikram Ullah Khan v/s The State & 05 others" reported as 2011 YLR 437 has held that normally criminal proceedings should not be postponed pending the disposal of civil litigation with the same subject-matter but where it is clear that the criminal liability is dependent upon the result of the civil litigation and is so intimately connected with it, that there is a danger of grave injustice being done in case if there be a conflict of decision between the civil court and the criminal court then in such event it is equally clear that the criminal court not only has the right to but should also stay its hands until the civil litigation is disposed of, for, it is not desirable that when the title to the property is itself

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in dispute, the criminal courts should give a finding in respect of the same question.

10. In view of the above discussion and exposition of law, this petition is allowed and the consequently the impugned order and judgment dated 03.02.2022 passed by Additional Sessions Judge, Samar Bagh Dir Lower is set aside and the proceedings pending before the Court of learned Additional Session Judge Samar Bagh Dir Lower in a complaint No. 1/2 of 2021 filed under section 200 Cr.P.C are adjourned sine die till the decision of the family suit filed by the respondent/complainant for the restitution of the conjugal rights, however, both the parties shall be at liberty to revive and restore the proceedings in the instant complaint after the outcome of the aforesaid suit.

Announced  
Dt. 17.10.2022

  
JUDGE

Office  
26/10/2022