

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

In the matter of an Application for Leave to Appeal
under and in terms of Section 62(1) of the Muslim
Marriage and Divorce Act No 13 of 1951.

Court of Appeal Case No.

CA/LTA/0003/2024

Ahamed Masdook Shaheed
No. 33/1 Kuruppu Road
Colombo 8

PETITIONER

Vs.

Noorul Shahama Shaheed
No.10/1 Ridgeway place
Colombo 4

RESPONDENT

Before: **M. T. MOHAMMED LAFFAR, J.**
P. KUMARARATNAM, J.

Counsel: Murshid Maharooof with Shoaib Ahamed for the Petitioner.

Faiz Musthapha, PC with Rushdhie Habeeb and Bishran Iqbal for
the Respondent.

Supported on: 21.01.2025
Decided on: 20.03.2025.

MOHAMMED LAFFAR, J.

The respondent-appellant-petitioner (hereinafter referred to as the "Petitioner") is seeking leave to appeal from the order of the Board of Quazi dated on 06/01/2024. We heard the learned Counsel for the petitioner in support of this application. We heard the learned President's Counsel for the applicant-respondent-respondent (hereinafter referred to as the "Respondent") as well.

The petitioner married the respondent in 2014, under the Muslim Marriage and Divorce Act no 13 of 1951. There is a son born out of this marriage on 15/03/2016. In January 2019, the respondent made an application for a Fasah divorce before the Quazi Court of Colombo South, seeking a divorce from the petitioner. The petitioner made an application in the District Court of Colombo for the custody of the said child and the said case is pending before the District Court.

The petitioner states that inadvertently it was recorded in the District Court that the parties have divorced. Subsequently, the said erroneous proceedings were rectified. The learned counsel for the petitioner states that the learned Quazi was influenced by the aforesaid inadvertent recording before the District Court. It is born out from the proceedings of the learned Quazi of the Colombo South that he was not influenced by the said inadvertent recording before the District Court. The learned Quazi has not granted Fasah divorce upon the inadvertent proceedings before the District Court stating that parties have divorced.

It is evident that the learned Quazi had empanelled three accessors throughout the proceeding to assist him in hearing the application and the end of the proceedings the accessors have placed their signatures. Moreover, through the accessors the learned Quazi had taken necessary steps for reconciliation.

At one point, on the application of the parties, the learned Quazi decided to inform the judicial service commission for the purpose of transferring the case to another Quazi Court. However, later he had decided to hear the case. It appears to this court that even though the petitioner was given notice to be presented before the Quazi, the petitioner had not complied with the said notice.

Having scrutinized the proceedings of the Quazi Court of Colombo South, it is apparent that the learned Quazi had obtained adequate evidence to grant Fasah divorce. Specially, the attention of the learned Quazi was drawn to the fact that the respondent (wife) informed Quazi that she was not in a position to live with the petitioner due to his cruelty.

In the case of Deed V Rauf (1977 2S. L.R P253) it was observed by Ismail J that

- I. "Habitual physical ill-treatment is not necessary to establish a 'fasah' divorce. The method, degree and standard of ill-treatment required to constitute a 'fasah' divorce amongst Muslims belonging to the Shafie sect are much less than that is required under the common law. No physical ill-treatment is necessary for a fasah divorce according to the Shafir Law. If a husband makes his wife's life miserable by cruelty of conduct even when it does not amount to physical ill-treatment, the wife can claim a 'fasah' divorce.
- II. Under the Muslim Law, a husband who habitually makes false allegations of adultery against his wife is guilty of cruelty and that such cruelty is a valid ground for divorce.

In these circumstances, we are of the view that there is no basis to interfere with the orders of the learned Quazi of Colombo South and the Board of Quazi.

For the foregoing reasons, we see that there is no legal basis to grant leave to appeal against the impugn order of the Board of Quazi. Thus, the leave is refused, and the application is dismissed without costs.

Leave refused, Application Dismissed. No costs.

JUDGE OF THE COURT OF APPEAL

P. KUMARARATNAM, J.

I agree.

JUDGE OF THE COURT OF APPEAL