

Date of hearing : 4.4.2006.

Order

Petitioner Muhammad Nawaz through the instant petition has sought direction to Respondent No. 3 for registration of criminal case against the Accused/Respondents Nos. 4 to 13 according to complaint (annexure-H) of the petitioner.

2. Learned counsel for the petitioner contends that Nikah of his brother Ejaz was performed with Mst. Nasreen Bibi d/o Falaksher Respondent No. 5 in presence of her father when she was of the age of 5/6 years and after attaining the puberty, Mst. Nasreen never repudiated her Nikah and without dissolution of marriage from Ejaz Hussain, brother of the petitioner, she performed another Nikah with one Muhammad Rafique on 8.10.2005. The petitioner made certain Jirgas for Rukhsati of Respondent No. 5 but of no avail and on his complaint, she filed a suit for dissolution of her marriage on 23.12.2005 which was withdrawn and thereafter filed a suit for jactitation of marriage. Further contends that second nikah is illegal and, therefore, a direction be issued to the police for the registration of the case.

3. On the other hand, learned AAG opposed the instant petition and contends that no nikah was ever performed with Ejaz and only Due-e-Khair to this effect has been made, when she was of the age of 4/5 years.

4. Arguments heard. Record perused.

5. According to Section 2 of Muslim Marriage Act which provides that a woman marriage under Muslim Law shall be entitled to obtain a decree for dissolution of her marriage on any one or more than of the following grounds. Sub-section (7) of Section 2 is reproduced below:--

"When she having been given in marriage by her father or other guardian before she attained the age of 16 years repudiated the marriage before attaining the age of 18 years provided that the marriage has not been consummated".

6. The law does not prescribe any particular form of the procedure for repudiation of marriage, it may be by oral or even by conduct seeking rejection of marriage and if the minor is entered into second marriage on attaining the age of puberty it would have sufficient proof of repudiating her marriage and subsequent marriage would be valid.

7. In view of the above, prima facie no offence is made out against Respondents Nos. 4 to 13, therefore, no direction could be issued for registration of criminal case as prayed for. Hence, this petition is dismissed.

(Rafaqat Ali Sohal)      Petition dismissed