

**Form No. HCJD/C-121**  
**ORDER SHEET**  
**LAHORE HIGH COURT,**  
**RAWALPINDI BENCH, RAWALPINDI.**  
**JUDICIAL DEPARTMENT**

**W.P.No.97 of 2024**

**SONIA SHARIEF.   Versus   ADDL. DISTRICT & SESSION**  
**JUDGE, ETC.**

<i>S.No.of order / Proceeding</i>	<i>Date of Order/ Proceeding</i>	<i>Order with signature of Judge, and that of parties counsel, where necessary</i>
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**25.01.2024**   *Mr. Arshad Mahmood Virk, Advocate for the petitioner.*

*The petitioner is an overseas Pakistani and she was married to respondent No.3 (hereinafter referred to as “respondent”) on 21<sup>st</sup> February, 2011. The marriage was registered in Pakistan as well as Norway for migration purpose of the “respondent”. The “respondent” then shifted on spouse visa to Norway and during marital tie, both the spouses were blessed with a child namely Raheel Sharif, who is in custody of the petitioner. It is alleged by the petitioner that the “respondent” came in Pakistan in July, 2022 and contracted second marriage on 25<sup>th</sup> July, 2022 without seeking formal permission from her. This prompted the petitioner to file complaint under section 6 of the Muslim Family Laws Ordinance, 1961) (hereinafter referred to as “Ordinance, 1961”) through her special attorney before the Family Court. The complaint was dismissed preliminary, being not maintainable vide order dated 22<sup>nd</sup> October, 2022. The petitioner then filed a revision petition before the learned Additional District Judge, Sarai Alamgir, which too was dismissed by way of order dated 16<sup>th</sup> November, 2023, hence this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as “Constitution”).*

2. *Learned counsel for the petitioner contended that complaint under section 6 of the “Ordinance, 1961” shall be governed in the light of provisions contained in the Family Courts Act, 1964. He added that section 18 of the Act ibid recognizes appearance of a party through duly authorized agent. Submitted that complaint under section 6 of the “Ordinance, 1961” through attorney was thus proceedable but it has wrongly been dismissed. In order to supplement his contentions, learned counsel has placed reliance on MUZAFFAR NAWAZ v. ISHRAT RASOOL and another (2022 YLR 1920).*

3. *Heard. Record perused.*

4. *The moot point for determination before this Court is as to whether a complaint under section 6 of the “Ordinance, 1961” can be filed and prosecuted through attorney or not?*

5. *Section 6 of the “Ordinance, 1961” places a restriction on the second marriage of husband unless he obtains prior permission in writing of the Arbitration Council. Sub-section 5 of section 6 of the “Ordinance, 1961” provides consequences of contracting second marriage by a man without permission of Arbitration Council, one of which is that he has to face prosecution in complaint and if it is proved that he contracted second marriage without permission of the Arbitration Council, he shall be liable to be convicted and punishable with the simple imprisonment which may extend to one year and with fine of five hundred thousand rupees.*

6. *The petitioner being wife of “respondent” lodged a complaint under section 6 of the “Ordinance, 1961” before the Senior Civil Judge (Family Division), Tehsil Sarai Alambir, District Gujrat through her special*

*attorney Naveed Hanif s/o Muhammad Hanif, which was dismissed being not proceedable through attorney.*

7. *“Ordinance, 1961” does not prescribe any procedure for the trial of the complaint, however, the Rules under the “Ordinance, 1961” (hereinafter referred to as “Rules, 1961”) framed under section 11 pave way for the trial of offences under the “Ordinance, 1961”. Needless to mention here that Rule 21 of the “Rules, 1961” ordains that no Court shall take cognizance of any offence under the Ordinance or these rules save on a complaint in writing by the Union Council, stating the fact constituting the offence. It would not be out of context to mention here that Rule 21 was later on reconstituted by the orders of the Governor of Punjab in exercise of powers conferred upon him by section 11 of the “Ordinance, 1961” through S.O X-1-15/75-Vol.II published in Gazette of Punjab, Extraordinary, 14<sup>th</sup> October, 1976 and words “aggrieved party” were inserted in place of “Union Council” and it now reads as under: -*

*“21. No Court shall take cognizance of any offence under the Ordinance or these rules save on a complaint in writing by the aggrieved party, stating the facts constituting the offence.”*

8. *In the year 1964, sensing a dire need for the speedily and expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith, the Family Courts Act, 1964 (hereinafter referred to as “Act, 1964”) was promulgated. In terms of section 3 of the “Act, 1964”, Family Courts were established within the Province of Punjab. Section 5 of the “Act, 1964” outlines the jurisdiction of the Family Courts, which reads as under: -*

**S. 5. Jurisdiction.** *(1) Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in Part I of the Schedule.*

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Family Court shall have jurisdiction to try the offences specified in Part II of the Schedule, where one of the spouses is victim of an offence committed by the other.

(3) The High Court may with approval of the Government, amend the schedule so as to alter, delete or add any entry thereto.

*It is thus manifestly clear that jurisdiction of the Family Court is exclusive to entertain, hear and adjudicate upon matters specified in Part I of the Schedule and the offences specified in Part II of the Schedule where one of the spouses is victim of an offence committed by the other subject to the limitations prescribed in the Code of Criminal Procedure, 1898 (Act V of 1898) (hereinafter referred to as "Cr.P.C").*

9. Section 18 of the "Act, 1964" though recognizes appearance of a party through agent but it is restricted to the appearance of a person required under the "Act, 1964" before the Family Court, otherwise than as a witness and a pardahnashin lady. Section 20 of the "Act, 1964" bestows power upon a Family Court to exercise the powers of a Judicial Magistrate of the first class under the "Cr.P.C". Before moving further, it would be apposite to mention here that section 20 was initially articulated in the following form: -

**"S. 20. Family Court to exercise the powers of the Judicial Magistrate.—**A Family Court shall have and exercise all the powers of a Judicial Magistrate of the First Class under the Code of Criminal Procedure, 1898 (Act V of 1898)."

*It was, however, amended through the Family Courts (Amendment) Ordinance 2002 (LV of 2002) and now it reads as under: -*

**"S. 20. Family Court as Judicial Magistrate.— (1) A Family Court shall be deemed as the Judicial Magistrate of the first class under the Code of Criminal Procedure, 1898 (V of 1898) for taking cognizance and trial of any offence under this Act; the Muslim Family Laws Ordinance, 1961 (VII of 1961), and the Child Marriage Restraint Act, 1929 (XIX of 1929).**

(2) A Family Court shall conduct the trial of an offence under subsection (1) in accordance with the provisions of Chapter XXII of the Code of Criminal Procedure, 1898 (V of 1898) relating to the summary trial.

(3) An offence other than contempt of a Family Court shall be cognizable on the complaint of the Union Council, Arbitration Council or the aggrieved party.”

(Underlining supplied for emphasis)

10. It is, thus, clear that by virtue of above noted amendment a Family Court was empowered to take cognizance and try any offence under the “Ordinance, 1961” as well. This was the reason that this Court in the case of MUZAFFAR NAWAZ supra heavily relied by the learned counsel for the petitioner, held as under: -

“Before proceeding further relevant provisions i.e. Section 5 and Section 20 (as amended by Family Courts (Amendment) Ordinance 2002) of the West Pakistan Family Courts Act, 1964, are reproduced here under:--

S.5. Jurisdiction--- [(1)] Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in [Part I of the Schedule.]

[(2)] Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Family Court shall have jurisdiction to try the offences specified in Part II of the Schedule, where one of the spouses is victim of an offence committed by the other.

(3) The High Court may with approval of the Government, amend the schedule so as to alter, delete or add any entry thereto.”]

Section 20 (as amended by Family Courts (Amendment) Ordinance 2002)

[Section 20. Family Court as Judicial Magistrate. -

(1) A Family Court shall be deemed as the Judicial Magistrate of the first class under the Code of Criminal Procedure, 1898 (V of 1898) for taking cognizance and trial of any offence under this Act; the Muslim Family Laws Ordinance, 1961 (VII of 1961), and the Child Marriage Restraint Act, 1929 (XIX of 1929).

(2) A Family Court shall conduct the trial of an offence under subsection (1) in accordance with the provisions of Chapter XXII of the Code of Criminal Procedure, 1898 (V of 1898) relating to the summary trial.

(3) An offence other than contempt of a Family Court shall be cognizable on the complaint of the Union Council, Arbitration Council or the aggrieved party.]

The intention of legislature reflected from the amendment introduced above is to fold all family affairs under an umbrella so that sanctity of family affairs and dignity of spouses could be saved from public exposure in ordinary courts. The word "exclusive" used in section 5 makes it vividly clear that no other court can assume jurisdiction in respect of provisions of Muslim Family Laws Ordinance except the court constituted under the West Pakistan Family Courts Act, 1964; it is further clarified that only family court can assume jurisdiction in some offences of P.P.C. as mentioned in Part II of the Schedule, if committed against the spouses. It was the reason that under section 20 Family Court was authorized to act as Magistrate of Ist Class under Code of Criminal Procedure, 1898. At this stage, the Court would like to specifically refer sub-Article (2) of Article 270AA of the Constitution of Islamic Republic of Pakistan, 1973, inserted by way of Eighteenth Amendment Act, X of 2010, which reads as under:--

"270AA (2). Except as provided in clause (1) and subject to the provisions of the Constitution (Eighteenth Amendment) Act, 2010, all other laws including President's Order, Acts, Ordinances, Chief Executive's Orders, regulations, enactments, notifications, rules, orders or bye-laws made between the twelfth day of October, one thousand nine hundred and ninety-nine and the thirty-first day of October, two thousand and three (both days inclusive) and still in force shall, continue to be in force until altered, repealed or amended by the competent authority."

In the presence of above specific saving clause, this Court has been informed that sections 5 and 20 (as amended by Family Courts (Amendment) Ordinance, 2002 (LV of 2002) has not been altered, repealed or amended by the competent authority, as such, the same is in vogue and applicable with all force. Furthermore, Article 175(2) of the Constitution of Islamic Republic of Pakistan, 1973 in clear terms provides that:--

*"No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law."*

Therefore, once it is settled that per force of section 20 (as amended by Family Courts (Amendment) Ordinance 2002) of the West Pakistan Family Courts Act, 1964, only the family court had the jurisdiction to try a complaint under section 6(5)(b) of The Muslim Family Laws Ordinance, 1961; trial conducted by the Magistrate was blatant violation of Article 175(2) of the Constitution, as reproduced above."



11. Sub-section 2 of section 20 of the “Act, 1964” commands that a Family Court shall conduct the trial of an offence under subsection (1) in accordance with the provisions of Chapter XXII of the “Cr.P.C” relating to the summary trial. There, thus, remains no hint of doubt that the trial in a complaint under section 6 of the “Ordinance, 1961” shall be conducted in the manner provided in Chapter XXII of the “Cr.P.C”.

12. Section 262 of “Cr.P.C” forming part of Chapter XXII envisages that in trials under this Chapter, the procedure prescribed in Chapter XX shall be followed except as hereinafter mentioned. Chapter XX of “Cr.P.C” provides the manner of trial of cases by Magistrate. While examining the provisions of Chapter XX of “Cr.P.C”, it becomes crystal clear that appearance of complainant before the Magistrate is necessary and non-appearance contemplates consequences in the shape of dismissal of complaint and acquittal of respondent accused. Reference to the above effect can be made to LIAQAT ALI MIR v. ADDITIONAL SESSIONS JUDGE and others (2017 P Cr. L J 1026).

13. It is an oft repeated principle of law that in criminal proceedings, neither a complaint can be proceeded through attorney nor an accused can defend the charges through his/her attorney. Guidance in this respect can be sought from MUHAMMAD QASIM v. STATION HOUSE OFFICER, POLICE STATION KHUDABAD, DISTRICT DADU and 7 others (2016 MLD 1238). The relevant extract from the same is reproduced below: -

“14. Now let’s examine whether an attorney can act as a complainant or a witness in criminal matters or otherwise? The term “attorney” legally, in most general sense draws a picture of one who is not speaking for himself but for his ‘principal’. As per Black’s Law Dictionary (fourth addition) the term ‘attorney’ is defined as: --

*'In the most general sense this term denotes an agent or substitute or one who is appointed and authorized to act in the place of or stead another'*

*Per Marriam-Webster, it is defined as:*

*'one who is legally appointed to transact business on another's behalf'*

*Since the 'Criminal administration of justice' recognizes only those as a witness for complainant who either have seen; heard or least perceived any fact towards the offence hence an 'attorney', being not speaking of his own knowledge, would not fall within meaning of 'witness/complainant'. Thus, an attorney cannot legally, under such status of attorney, file the FIR or a criminal complaint."*

14. The above conclusion is undoubtedly rested upon the fact that agitating or defending the criminal proceedings is always a personal act of the complainant or accused. The criminal proceedings in the Court, thus, cannot be initiated through attorney as the criminal administration of justice recognizes only those as a witness or complainant who either have seen, heard or least perceived any fact towards the offence. An attorney being not uttering of his/her own knowledge rather deposing the voice of his/her master would not fall within the meaning of witness/complainant. An attorney, thus, is precluded to get register first information report or a criminal complaint. There is no concept or even legal provision allowing initiation of proceedings or recording of evidence through attorney in the criminal law. The concept of representation through attorney either by the complainant or the accused is alien to the criminal jurisprudence so far. To this effect, reference can also be made to KHALID MEHMOOD and 3 others v. SAFDAR IQBAL and another (2017 P Cr. L J 1104), USMAN SALEEM v. ADDITIONAL DISTRICT AND SESSIONS JUDGE III, KARACHI EAST and 7 others (2021 P Cr. L J Note 66) and GHAZANFAR ALI v. M. ZAHID HUSSAIN and others (PLD 2011 Lahore 179).



15.        *The nutshell of above discussion is that the petitioner was precluded to file a complaint through attorney, which was rightly dismissed by the trial Court and the order was affirmed by the revisional Court, which is unexceptionable. The petitioner has failed to point out any perversity or material irregularity, warranting exercise of constitutional jurisdiction by this Court.*

16.        *For what has been discussed above, this petition is bereft of any merits, resultantly, it is **dismissed in limine**.*

**(MIRZA VIQAS RAUF)**  
**JUDGE**

Approved for reporting.

**JUDGE**