

W.P.No.26026 of 2014

Syed Muhammad Ali Raza

The Province of Punjab, through DCO
Lahore etc.

19.05.2015 Mr. Ijaz Ali Akbar Sabzwari, Advocate for the petitioner.
Mr. Saad Rasool, Advocate for respondent No.3.

Through this Constitutional petition the petitioner challenges the certificate dated 28.06.2014 issued by respondent No.2, giving effectiveness of the divorce as having been issued in excess of jurisdiction.

2. Brief facts giving rise to the filing of this writ petition as contained in paragraphs thereof are that respondent No.3 and the petitioner contracted marriage under “Shia” sect of the religion on 02.06.2013 and the Nikahnama was registered with Union Council No.59, of Shah-Kazmain Mosque, Al-Faisal Town, Lahore. Shortly after the marriage their relationship became strained, therefore, respondent No.3, while exercising the delegated powers of divorce contained in column No.18 of the Nikahnama issued an undated divorce deed and sent it to respondent No.2. The petitioner challenged the said mode of divorce through a suit for declaration on 03.02.2014 which was contested by respondent No.3 by filing a written statement. On 27.06.2014 the said divorce became effective whereafter

the certificate was issued on 28.06.2014, which has been challenged through this writ petition.

3. Learned counsel for the petitioner contends that under sections 7 & 8 of the Muslim Family Laws Ordinance, 1961 read with Rule 3(b) of the Rules made thereunder, respondent No.2 had no territorial jurisdiction in the matter of divorce as the Union Council No.59 was not the place of residence of respondent No.3. Submits that in Fiq-e-Jafferia a divorce takes place only if the required “Segheas” in Arabic are read in the presence of the parties, therefore, prays that the said divorce certificate be declared illegal and without jurisdiction. Places reliance upon Khawaja MUHAMMAD SHOAIB versus NAZIM UNION COUNCIL and others (2010 YLR 1), Syed ASAD RAZA NAQVI versus Mst. SAIMA FATIMA and another (2014 MLD 254), Maj. Zahid Hussain versus Chairman, Arbitration Council, Cantonment Board, Lahore and 3 others (2005 SLR 626), Syed ALI NAWAZ SHAH GARDEZI versus LT. COL. MUHAMMAD YUSUF KHAN, COMMISSIONER, QUETTA DIVISION (PLD 1962 (W.P.) Lahore 558) and Syed ALI NAWAZ GARDEZI versus LT.-COL. MUHAMMAD YUSUF (PLD 1963 SC 51).

4. Conversely, learned counsel for respondent No.3 submits that the Muslim Family Laws Ordinance, 1961 was promulgated for the convenience of the women which has to be interpreted for the benefit of the women. Adds that the judgments cited by the learned counsel for the petitioner do not override the intention of the legislature which encourages the women to conveniently go through the procedure of the divorce. Submits that the ex parte divorce was pronounced after when the petitioner has failed to join the efforts for reconciliation by the council. Refers to Sura-e-Baqra the Holy Verse of The Holy Quran in which it is provided that the women should not be compelled for undue advantage. Places reliance upon MINAS PARVEEN versus ADDITIONAL SESSIONS JUDGE/EX-OFFICIO JUSTICE OF PEACE, SHORKOT and others (PLD 2015 Lahore 231), Mst. KHURSHID MAI versus THE ADDITIONAL DISTRICT JUDGE, MULTAN and 2 others (1994 MLD 1255), INAMUL HAQUE versus Mst. SHARIFAN BIBI and 2 others (1993 CLC 46), Mst. GHULAM ZOHRA versus FAIZ RASOOL and others (1988 MLD 1353). Also submits that the petitioner has been issued a Fatwa from Dar-ul-efta & Shareat Board, Idara Minhaj-ul-Hussain, Muhammad Ali Johar Town,

Lahore declaring that required Segheas had been read and the Talaq has been issued.

5. Arguments heard. File perused.

6. The proposition raised before this Court is as to whether the woman while exercising delegated right of divorce, is required to send a notice to the union council of a place where she resides or to a union council where the marriage was registered as required under sections 7 & 8 of the Muslim Family Laws Ordinance, 1961 read with Rule 3(b) of the Rules framed thereunder. To find the answer to this legal question, learned counsel for the petitioner has referred to Khawaja MUHAMMAD SHOAIB versus NAZIM UNION COUNCIL and others (2010 YLR 1) and Maj. Zahid Hussain versus Chairman, Arbitration Council, Cantonment Board, Lahore and 3 others (2005 SLR 626), in which it was held that the divorce notice has to be sent by the husband to the union council where the wife resides but nowhere it was held that in case of divorce by the wife she must send a notice to a union council of her own residence. Under section 8, the provisions of section 7 mutatis mutandis applies to a woman pronouncing the divorce on herself under delegated authority would mean that since the Union Council of the residence of the bride is the one where marriage is performed, therefore, the respondent rightly sent

the divorce to the union counsel where Nikahnama was registered. In Syed ASAD RAZA NAQVI versus Mst. SAIMA FATIMA and another (2014 MLD 254), it was held that the divorce pronounced by a Shia husband without reading “Segheas” will not be effective against the wife. However, in the instant case there exists a certificate dated 20.10.2014 issued by Dar-ul-Efta & Shareat Board, Idara Minhaj-ul-Hussain, Muhammad Ali Johar Town, Lahore, declaring that the relevant “Seghea” has been read on 20.10.2014. The view in Syed ALI NAWAZ GARDEZI versus LT.COL. MUHAMMAD YUSUF KHAN, COMMISSIONER, QUETTA DIVISION (PLD 1962 (W.P.) Lahore 558) upheld in **PLD 1963 SC 51** (same parties) is that the reading of “Segheas” in presence of parties is a part of substantial law, which has been followed by reading the “Segheas” before an “Alim” under authority since, keeping the facts and circumstances of the case, the petitioner has been hiding and creating hurdles against the mandatory provision of law. In my humble view, Shia Personal Law of divorce is not so strict so as to make a woman slave of the man who would always remain unable to get divorce without his permission.

7. Under section 8 of the Muslim Family Laws Ordinance, 1961 a wife who has been delegated the right of

divorce by the husband, can pronounce divorce by invoking the provisions of section 7 and under sub-section (1) of which a notice in writing has to be sent to the Chairman, Union Council and under Rule 3(b) of the West Pakistan Rules made under the Muslim Family Laws Ordinance, 1961, such notice has to be sent to the union council of the union where the wife in relation to whom Talaq has been pronounced was residing at the time of the pronouncement of Talaq. The interpretation of the above clause leads this Court to an irresistible conclusion that since it is the place of residence of the wife where the Nikahnama is registered, therefore, in case of divorce by the wife with delegated powers by the husband the notice has to be sent to the union council where Nikah was registered. More so, since it is not the case of the petitioner that notice should have been sent to the union council where the husband was residing as the Talaq was pronounced by the wife to the husband. The only objection raised by the petitioner is that it is the place of residence of the wife where the notice has to be sent under the delegated right of divorce by the wife herself. I am afraid, this interpretation is not in accordance with the spirit of the statute and in line with the intention of the legislature as it will be entirely against the convenience of a woman.

8. In this view of the matter, no illegality was committed by respondent No.2 who has issued the certificate of effectiveness of the divorce which does not require interference while exercising the constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, as a result of which this petition is dismissed.

(ALI BAQAR NAJAFI)
JUDGE
Special Bench Family-I

Approved for reporting.

JUDGE

Hashmi