

IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT:

**MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE MUHAMMAD JEHANGIR ARSHAD**

CRIMINAL REVISION NO.09/I OF 2009

Muhammad Islam son of Khub Janan Khan, Petitioner
resident of Village Chappri, Kamar Mashani,
Tehsil Isa-Khel, District Mianwali.

Versus

1. Aurangzeb son of Anar Hakeem, Respondents
caste Cobler,
2. Anar Hakeem son of Muhammad Ali
caste Cobler,
3. Muhammad Islam Noor
son of Allah Noor Pathan,
4. Habib Khan son of Muhammad Noor
caste Piracha,
5. Mst. Najma Bibi
wife of Muhammad Islam Pathan,

All the respondents are residents of Village Chappri,
Police Station, Kamar Mashani, Tehsil Isa-Khel,
District, Mianwali.

Counsel for the petitioner : In person.

Counsel for the respondents: Mr. Aftab Ahmed Khan,
Advocate

Counsel for the State : Mr. Ahmed Raza Gillani,
Additional Prosecutor General
Punjab for State.

Cr. Revision No.9/I of 2009

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FIR No. and date & Police Station : 139/2006, dated 17.06.2006,
P.S. Kamar Mashani,
District, Mianwali.

Date of impugned judgment : 09.05.2008

Date of Institution : 24.07.2009

Date of hearing : 14.06.2012

Date of Judgment : 14.06.2012

JUDGMENT:

Muhammad Jehangir Arshad, J: This criminal revision is directed against the judgment dated 09.05.2008 handed down by learned Additional Sessions Judge, Mianwali camp at Isa-Khel whereby the learned Additional Sessions Judge while accepting the application filed by Mst. Najma Bibi respondent No.5 closed further proceedings of case FIR No.139/2006, dated 17.06.2006 under sections 10/16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 registered with Police Station Kamar Mashani, District Mianwali, under law of Lian.

2. The facts briefly stated are that petitioner got registered the above noted FIR alleging abduction of his wife namely Mst. Najma Bibi, respondent No.5 as well as commission of zina with her by respondents No.1 to 4. As a result of the above noted registration of case Mst. Najma Bibi and Aurangzeb respondent were arrested on 26.06.2006 whereas the other respondents were arrested on 06.07.2007, however, subsequently all the respondents were bailed out by the learned trial Court.

3. After receipt of the challan in the above noted case, the learned trial Court proceeded with the trial and recorded the entire evidence including statements of the accused/respondents under section 342 Cr.P.C. and also evidence produced by them in their defence. However, before the decision of the said case Mst. Najma Bibi respondent No.5 filed application before the learned trial Court with the prayer that as in the meanwhile suit for dissolution of marriage filed by her was decreed by the learned Judge Family Court on 06.01.2007 and since no appeal was filed against the said decree, the same having attained finality, therefore, proceeding in terms of Lian be conducted and the final decision of the criminal case be made on the basis of Lian. The learned trial Court/Additional Sessions Judge on receipt of the said application conducted Lian proceedings on 06.05.2008 in which statement of Muhammad Islam petitioner on oath of Holy Quran was recorded as below:-

*“Statement of Muhammad Islam complainant on
Oath of Holy Quran.*

States that I repeat four time allegation of adultery/Zina against Mst. Najma Bibi with Aurangzeb accused and I can repeat this allegation for thousand times and I assert that dissolution of marriage if conducted by any court has no value because assert Mst. Najma Bibi to be still my wife who is committing Zina with Aurangzeb accused continuously.

(Allah's curse be upon me if I am a liar in my accusation of Zina against my wife Mst. Najma Bibi)."

4. After the statement of petitioner Muhammad Islam the statement of Mst. Najma Bibi was recorded as below:

"I take oath by holding Holy book of Quran in my hand that I have never committed Zina with anybody and specifically not committed Zina with Aurgangzeb accused. On demand of complainant, I further take oath that he had taken Rs.30,000/- (Rupees thirty thousand only) from somebody to submit myself to sexual intercourse to some unknown person to which I



refused and left his house on the said ground, but I have not committed Zina even on his asking with anybody and even not after desertion from his house. I have contracted second marriage with Aurangzeb accused after having dissolved my marriage with the complainant through decree of family court. I repeat this statement four times in accordance with requirement of law.

5. After completion of proceedings of Lian, the learned trial Court/Additional Sessions Judge vide judgment dated 09.05.2008 accepted application filed by Mst. Najma Bibi respondent No.5 by closing further proceedings of the case under law of Lian and discharged all the accused/respondents of the charge, hence this appeal.

6. Today, petitioner as well as all the private respondents were present in Court. Petitioner opted to argue the case in person whereas the respondents were represented by their counsel namely Mr. Aftab Ahmed Khan. Petitioner present in Court repeatedly

submitted that as there was no relation of wife and husband between the parties on account of decree by the learned Judge Family Court against which the petitioner never filed the appeal, therefore, proceedings in Lian could neither be commenced nor the proceedings of criminal case could be closed on the basis of such proceedings and the trial of the criminal case as it was complete in all respects ~~and~~ should have been decided on merits. Appellant throughout the hearing even before the Court stuck with his claim that all the respondents were guilty of offence of abduction as well as Zina and insisted that the order of the learned trial Court closing the proceedings be set aside and the matter be sent back to the learned trial Court for deciding the same on merits by ignoring the proceedings of Lian.

7. On the other hand, learned counsel for the respondents as well as learned Additional Prosecutor General Punjab for State fully supported the judgment of the learned trial Court as well as the proceedings taken by the learned trial Court on the grounds that the
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proceedings of Lian were correctly initiated and the further proceedings in the criminal case were rightly closed.

8. Arguments considered, record perused.
9. Admittedly, marriage between petitioner Muhammad Islam and Mst. Najma Bibi respondent No.5 was dissolved through a decree passed by learned Judge Family Court, Isa-Khel on 06.01.2007 on the basis of Khula against which no appeal was filed by the petitioner, hence the same became final.
10. In the case of ***Muhammad Azam Versus Muhammad Iqbal and others*** ⁱⁿ apex Court PLD 1984, S.C. P.95 (Shariat Bench) held, "decree passed by Judge Family when attained penalty can neither be challenged nor set aside through collateral proceedings and the same was binding even up to the Supreme Court of Pakistan". It is observed that while deciding the suit for dissolution of marriage even the learned Judge Family Court could itself initiate proceedings of Lian under section 14 of the Qazf (Enforcement of Hadd) Ordinance, 1979, keeping in view the repeated allegations of petitioner about the abduction and commission of zina

specially against respondent No.5 Mst. Najma Bibi in his written statement yet if the said proceedings were not commenced by the learned Judge Family Court, the same could validly be initiated and completed by Criminal Court/learned trial Court while deciding the criminal proceedings pending before it.

11. In this view of the matter, reference can be made to the judgment of Hon'ble Supreme Court of Pakistan in the case of *Maqbool Ahmed Versus Shaikh Muhammad Anwar and others 1999 SCMR P.935*. In this case apex Court after summoning both the husband and wife and after procedure of Lian was completed in Court dissolved the marriage while holding “that no further proceedings under section 10 (2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 were now called for, it was also held by the apex Court in the said judgment “both the parties undergo the procedure by swearing the prescribed oaths, the Court shall pass an order to dissolve the marriage between them which shall operate as a decree for dissolution of marriage and no appeal shall lie against it. Thereafter, all proceedings in connection with the allegation of

Zina will come to an end". Even we have observed that while joining Lian proceedings petitioner Muhammad Islam never raised any objection and voluntarily got recorded his statement four time on oath of Holy Quran.

12. We are, therefore, satisfied that the present appeal is nothing but a malafide attempt on the part of the petitioner Muhammad Islam to further keep on involving the respondents in litigations.

13. In fact, after dissolution of marriage by Court of competent jurisdiction, the matter should have come to end and the petitioner should have also avoided by further pursuing the criminal proceedings. However, after the proceedings of Lian completed by learned trial Court the question of commission of Zina or of Qazf became past and closed transactions and the matter of innocence or guilt of either party is left to the day of final judgment because taking of oath in Lian knowing it to be false is a very grave sin which incurs the Wrath of Allah. Despite repeated query by the Court as for what object this appeal has been filed after the proceedings of Lian, the

petitioner failed to satisfy the Court and we are inclined to infer that the object of the petitioner was only to satisfy his ulterior motive against his wife namely Mst. Najma Bibi as well as other private respondents. We are also not impressed by the fact that in the FIR the petitioner made a sweeping allegation of commission of zina against respondents No.1 to 4, however, we did not propose any action against the petitioner for making such sweeping allegation, in view of the fact, the parties have already facing litigation since 2006.

14. So far the objection of petitioner that as at the time of Lian proceedings, there was no relationship of husband and wife between the parties is concerned, the same is without merit as admittedly when appellant got registered FIR on 17.06.2006 leveling allegation of Zina, the marriage between them was still intact and further the petitioner also repeated the same allegation in written statement filed by him in the said suit on 28.11.2006, therefore, the learned trial Court rightly and lawfully resorted to the proceedings of Lian and the objection of the petitioner to this effect has no force and the same is rejected.

15. Resultantly, we find that the learned trial Court while passing the impugned order committed no illegality rather acted in line with law, therefore, we propose to dismiss this criminal revision

finding no force.

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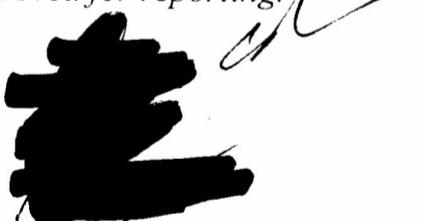
Justice Muhammad Jehangir Arshad

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Justice Dr. Fida Muhammad Khan

Dated Islamabad the
14th June, 2012
Hummayun*-

Approved for reporting.

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Justice Muhammad Jehangir Arshad