

JUDGMENT SHEET
LAHORE HIGH COURT, BAHAWALPUR BENCH,
BAHAWALPUR
JUDICIAL DEPARTMENT

Writ Petition No.6782 of 2019/BWP
Mst. Asma Bibi Vs. Chairman Reconciliation Committee, etc.

J U D G M E N T

Petitioner (s): Mr. Muhammad Ayaz Kalyar, Advocate

Respondent(s): Mr. Zohaib Abdullah Akhtar, Advocate for
respondent No.4

Mazhar Hussain Anjum, Secretary, Union
Council Chak 94/NP No.83, Tehsil
Khanpur, District Rahim Yar Khan

Date of hearing: 28.01.2020

SHAHID BILAL HASSAN-J: Precisely, the petitioner contracted marriage with Imdad Ullah/respondent No.3, who is residing in USA. The respondent No.3 sent a visa to the petitioner and her real daughter aged 5 years, so they could settled there (USA). Allegedly, the respondent No.3 on the instigation of respondent No.4, his brother, prepared a fake, forged and bogus divorce deed in the name of the petitioner and then sent her back to Pakistan; that the divorce deed was not in the knowledge of the petitioner and her daughter, which fact was intimated to them after four months of returning back to Pakistan, hence, the petitioner enquired about the said fact from the Union Council concerned, then on query it was informed that the divorce had been confirmed ex parte, allegedly, in connivance of respondents No. 1 and 4 without issuing any notice to the petitioner or her family members including her father, because the respondents NO.1 and 2 did not serve any notice to the petitioner or her family members. The respondent No.3 issued a *Salsee Nama* in favour of respondent No.4

regarding performance of his role as Arbitrator (*Salis*) in this matter on 20.11.2013. Allegedly, the respondent No.3 through his brother respondent No.4 had written a divorce deed on a blank paper on 01.08.2018, while the respondent No.3 had not affixed his thumb impressions or his signatures upon the said divorce deed, however, the respondent No.4 affixed his thumb impressions and signatures upon the same. Upon said divorce deed, the respondent No.1 issued notice of divorce through respondent No.4 and then through respondent No.1 himself on 01.08.2018 on the same date; that on 01.10.2018, the respondent No.1 again issued a notice for 01.11.2018 in the name of the petitioner. On 14.11.2018, the respondent No.1/ The Chairman, Reconciliation Committee, Union Council Chak No.94/NP, Khanpur, District Rahim Yar Khan passed an ex parte order for confirmation of divorce to the petitioner on behalf of respondent No.3 through respondent No.4, wherein presence of respondent No.3 was never shown; that the Secretary, Union Council *ibid* issued impugned divorce registration certificate bearing No.Z10224574 on 21.01.2019. Through the instant constitutional petition, the impugned divorce registration certificate dated 21.01.2019 and impugned order of confirmation dated 14.11.2018, have been challenged contending the same to be illegal, void ab initio, against the facts, ex parte, without any notice to the petitioner or her father and hence, liable to be set aside.

2. Heard.

3. The only point in issue is the assumption of jurisdiction by the respondent No.1/Chairman, Union Council Chak No.94/NP, Khanpur, District Rahim Yar Khan in order to pass the impugned order dated 14.11.2018 and to issue the impugned divorce registration certificate dated 21.01.2019. Section 2(b) and 7 of the Muslim Family Laws Ordinance, 1961 and Rule 3(b) of the West Pakistan Rules under the Muslim

Family Laws Ordinance, 1961 are necessary to be reproduced, which read:-

‘Section 2(b):- “Chairman” means the Chairman of the Union Council or a person appointed by the Federal Government in the Cantonment areas or by the Provincial Government in other areas or by any officer authorized in that behalf by any such Government to discharge the functions of Chairman under this Ordinance.’

‘7. “Talaq”. (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the chairman a notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever, contravenes the provisions of subsection (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) Save as provided in subsection (5) a Talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under subsection (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under Sub-section (1) the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the

period mentioned in subsection (3) or the pregnancy, whichever be later, ends.

In order to resolve the matter in hand, as the respondent No.3 is permanently residing in USA and petitioner was also there at the time of alleged Talaq, Notification/S.R.O.No. 1086(K)61 dated 09.11.1961 is also relevant, which reads:-

'In exercise of the powers conferred by clause (b) of section 2 of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), the Central Government is pleased to authorize the Director General (Administration) Ministry of External Affairs to appoint officers of Pakistan Mission abroad to discharge the functions of Chairman under the aforesaid Ordinance.'

Rule 3(b) of the Rules provides:-

'Rule 3. The Union Council which shall have jurisdiction in the matter for the purpose of clause (d) of section 2 shall be as follows, namely:-

(a)-----

(b) in the case of notice of talaq under subsection (1) of section 7, it shall be the Union Council of the Union or Town where the wife in relation to whom talaq has been pronounced was residing, at the time of the pronouncement of talaq:

Provided that if at the time of pronouncement of talaq such wife was not residing in any part of West Pakistan, the Union Council that shall have jurisdiction shall be –

(i) in case such wife was at any time residing with the person pronouncing the Talaq in any part of West Pakistan, the Union Council of the Union or Town where such wife so last resided with such person; and

(ii) in any other case, the Union Council of the Union or Town where the person pronouncing the talaq is permanently residing in West Pakistan;'

In view of the above said provisions of law, the Union Council and/or the Chairman, which would have jurisdiction in the matter would be the Union Council and/or the Chairman within whose territorial jurisdiction the wife was residing at the time of pronouncement of divorce. Reliance is placed on Mt. Sharifan v. Abdul Khaliq and another (1983 CLC 1296) and Ms. Sadaf Munir Khan v. Chairman, Reconciliation Committee and 2 others (PLD 2019 Lahore 285). The petitioner has categorically asserted in the instant constitutional petition which is supported by an affidavit that at the time of alleged pronouncement of talaq she was residing in USA, so as per Notification/S.R.O.No. 1086(K)61 dated 09.11.1961, *officers of Pakistan Mission abroad are authorized to discharge the functions of Chairman under the aforesaid Ordinance*. Meaning thereby the Chairman, Union Council Chak No.94/NP, Khan Pur, District Rahim Yar Khan had no authority to exercise that authority which he has exercised, because in absence of a counter affidavit or other material in rebuttal, the averments of facts made in a petition, which is supported by an affidavit, the same is to be accepted as correct as has been held in Islamic Republic of Pakistan through Secretary, Ministry of Defence, Government of Pakistan, Rawalpindi and another v. Amjad Ali Mirza (PLD 1977 Supreme Court 182) and followed by this Court in the judgment of **Ms. Sadaf Munir Khan** *ibid*.

In addition to the above, it is an admitted fact on record that Imdad Ullah-respondent No.3, husband of the petitioner, is permanently residing in USA, so any affidavit or divorce deed, allegedly executed by him or any authority letter or *Salsee Nama*, rendered and executed by him in favour of respondent

No.4 must have been attested by the Consulate of Pakistan at USA, but the record shows that such procedure has not been adopted and affidavit allegedly executed by him (Imdad Ullah) on 01.04.2019 is on a simple paper and seems to be a fax copy, without being attested by the Consulate of United States of USA and same is the position in case of Talaq Nama, which is on simple paper and that too without any date that on what date the pronouncement of talaq was made; thus, the said documents could not be considered and relied upon. Moreover, all the proceedings were conducted and joined by Hammad Ullah, brother of Imdad Ullah, who was not authorized person as has been observed above, because if a husband is a Pakistani national, he can divorce in Pakistan. Even if a husband is not a Pakistani National or even if both husband and wife are not Pakistani national they can get divorce in Pakistan provided that the marriage is registered in Pakistan by adopting following procedure, in case of husband:-

1. Husband will send a power of attorney to his lawyer;
2. Power of attorney should be attested from the Pakistani embassy or consulate of the country where he is residing;
3. Where a lawyer receives the power of attorney, he will proceed according to law;
4. Proceedings of overseas divorce in Pakistan are conducted in Arbitration council;
5. Minimum 90 days proceedings will be conducted by lawyer in arbitration council;
6. After the proceedings of overseas divorce in Pakistan, a divorce certificate will be issued by NADRA through arbitration council and this certificate is considered as sole and only proof of divorce.

In the present case as stated above, the process provided under law has been bypassed; thus, the impugned divorce registration certificate dated 21.01.2019 and impugned order of confirmation dated 14.11.2018 are declared to be of no legal effect and value, set aside, accordingly, by allowing the constitutional petition in hand.

(Shahid Bilal Hassan)
Judge

M.A.Hassan

Approved for reporting.

Judge