

Form No: HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Case No. Writ Petition No.6123/Q/2015

Sadaf Bibi **Versus** **The State etc.**

| S.No. of order/ Proceedings | Date of order/ Proceedings | Order with signature of Judge and that of Parties of counsel, where necessary. |
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| 07.05.2015 | Malik Saeed Hassan, Advocate for the petitioner. Mr. Muhammad Afzal Shad, Advocates for respondent No.4. Ch. Iftikhar Iqbal Ahmad, Assistant Advocate General. Aslam, SI. |
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Through this constitutional petition, the petitioner impugns the FIR No.420 dated 04.08.2014 offences under Sections 496-A, 420, 468, 471 and 494 PPC registered with Police Station Satellite Town, District Jhang, and the brief facts narrated in the FIR are that on 03.03.2014 respondent No.4 (complainant of the FIR) was married with Mst. Sadaf Bibi (petitioner). Meanwhile one Saif ul Malook developed illicit relations with the petitioner, wife of respondent No.4 and later on abducted her for the purpose of zina. The gold ornaments, cash amount and other household articles were also taken away by the accused persons.

2. Learned counsel for the petitioner inter-alia, contends that the story of impugned crime report is based on false and concocted facts and the petitioner never contracted ‘Nikah’ and marriage with complainant/respondent No.4; that she had married Saif-ul-Malook the co-accused, on 28.02.2014 and when she was residing with her husband, her father, brother and others abducted her on 12.07.2014 whereupon her husband/co-accused

Saif-ul-Malook filed habeas petition in the court of learned Sessions Judge, Jhang, for her recovery whereupon she was recovered and learned court sent her to 'Dar-ul-Aman'. Thereafter the petitioner through an application, got recorded her statement before the learned Additional Sessions Judge, Jhang to the effect that she wanted to accompany her husband, she was released from 'Dar-ul-Aman' Jhang on 08.08.2014 and since then she is residing with her husband Saif-ul-Malook. Learned counsel for the petitioner after referring the documents available on the file in support of his above contentions further maintains that the petitioner is happily residing with her husband and that despite her statement respondent/police officials being in connivance with respondent No.4 are not ready to prepare the cancellation report of the case. Learned counsel also contends that article 35 of the Constitution of The Islamic Republic of Pakistan, 1973, provides protection to the marriage and family life but the petitioner is being deprived of the same. Learned counsel finally argues that petitioner is carrying eight months pregnancy out of her wedlock with Saif-ul-Malook and craves for quashing of the FIR by invoking constitutional jurisdiction of this Court to rescue the petitioner and her husband and to provide them the protection guaranteed by the Constitution.

3. Conversely, learned counsel appearing on behalf of respondent No.4 maintains that the petitioner is also the accused of impugned crime report and she is continuously misusing the concession of pre-arrest bail. He further contends that 'Nikah' of petitioner with Saif-ul-Malook co-accused is a forged and fabricated document. In fact she is wife of the complainant/respondent No.4. The petitioner herself filed a suit for dissolution of marriage on 05.07.2014 before the learned Senior Civil Judge, Toba Tek Singh, wherein she admitted that

four months earlier she entered into marriage with Ghulam Shabbir complainant and performed her marital obligations. In the said suit, she has nowhere mentioned that her thumb impression on 'Nikah Nama' was obtained forcibly by her elders and her signatures in English were fake. Learned counsel further contends that she also mentioned in her said suit that Ghulam Shabbir her husband is a man of bad character and she was not being provided her maintenance and he (Ghulam Shabbir) also used to ask her to bring cash from her parents; that petitioner is living an immoral life with her co-accused Saif-ul-Malook and is liable to be punished through the prosecution of the instant case under the law. Learned counsel for respondent No.4 finally argues that after the completion of investigation as directed by this Court while passing the order dated 30.10.2014 in connection with Writ Petition No.22253 of 2014 purely on merits, the police has sent report under Section 173 Cr.P.C to the learned trial court on 13.02.2015 and now learned trial court is ceased with the trial which is in progress.

4. Learned Assistant Advocate General opposes the petition on the ground that the FIR is not to be quashed especially when the challan has been submitted before the learned trial court.

5. Having heard the learned counsel for the parties, learned Assistant Advocate General and perused the available record, this Court has observed that petitioner earlier filed a writ petition No.22253 of 2014 for the same relief and on 30.10.2014 while disposing of the same, my Hon'ble brother Manzoor Ahmad Malik, J. observed as under:-

“The matter involves factual controversy which cannot be resolved by this Court in writ jurisdiction. The investigating officer of this case is directed to conclude the investigation on merits after considering all the material

available on record. With the above direction, this petition stands disposed of.” (underlined by this Court)

which transpires that the instant writ petition is second petition on the same subject by the petitioner which is barred by law, the principle of res judicata. In this regard reference can be made to the case titled Ghulam Akbar Lang v. Dewan Ashiq Hussain Bukhari and others (2012 SCMR 366). The Honourable Supreme Court of Pakistan has also deprecated the practice of filing more than one writ petition on the same facts with different pleas at different times as is evident from the observations made by the august Court in case titled Mirza Muhammad Yaqub v. (1) The Chief Settlement Commissioner, Lahore, and (2) Syed Sadiq Hussain Zaidi (PLD1965 Supreme Court 254) that reads as under:-

“A petitioner is not entitled to take different pleas at different times so as to file more than one writ petition on the same facts. For a further plea the proper course would be to file a petition for review if such a petition be maintainable. The general principle of res judicata is applicable to writ petitions also.”

Moreover, the trial of this case is pending before the competent court and petitioner is having alternate remedy in the form of filing application under Section 249-A Cr.P.C. In such like situation, guidance can be sought from the esteemed judgment passed by the Hon’ble Supreme Court of Pakistan in the cases titled Muhammad Abbasi v. S.H.O. Bhara Kahu and 7 others (PLD 2010 SC 969) and Director-General, Anti-Corruption Establishment, Lahore and others v. Muhammad Akram Khan and others (PLD 2013 Supreme Court 401). It would be advantageous to reproduce the relevant portion of the above latter referred judgment which reads as under:-

“The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under sections 249-A/265-K, Cr.P.C. to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction.”

6. In view of all discussed above, the instant petition is dismissed being not maintainable.

(Syed Shahbaz Ali Rizvi)
Judge

Approved for reporting:

Judge

Nazir