

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W. P. No. 5819 / 2017

Bakhtawar Bibi

Versus

Additional District Judge & two others

JUDGMENT

Date of Hearing:	31.10.2022
Petitioner By:	Ch. Tanveer Ahmad Hanjra, Advocate
Respondent No. 3 By:	Ch. Umar Farooq, Advocate

ABID HUSSAIN CHATTHA, J: This constitutional Petition is directed against the impugned Judgments & Decrees dated 28.10.2014 & 11.11.2016 passed by Judge Family Court, Arifwala and Additional District Judge, Arifwala, respectively.

2. Briefly, the Petitioner instituted a suit for jactitation of marriage against Respondent No. 3 (the “**Respondent**”) averring therein that the Respondent in connivance with the Nikah Registrar and other witnesses prepared a forged and bogus *Nikahnama* dated 28.03.2012 and started to mention the Petitioner as his wife, even though, the Petitioner never contracted *Nikah* with the Respondent. The Respondent was asked to cancel the aforesaid *Nikahnama* and upon his refusal to do so, the Petitioner was constrained to file the suit.

3. The suit was resisted by way of filing written statement by the Respondent. After framing issues out of divergent pleadings of the parties, *pro & contra* evidence was recorded and eventually, the Family Court dismissed the suit vide Judgment & Decree dated 28.10.2014. An Appeal filed by the Petitioner in this behalf was also dismissed vide Judgment & Decree dated 11.11.2016.

4. Learned counsel for the Petitioner contended that the impugned Judgments passed by the Courts below are against the law and facts of the

case. The Courts below have badly failed to consider that the Petitioner did not contract *Nikah* with the Respondent and the registration of *Nikahnama* was collusively managed by the Respondent in league with the witnesses and the Nikah Registrar as was evident from the surrounding circumstantial evidence which was completely ignored. As such, the impugned Judgments are result of misreading and non-reading of evidence on record, hence, the same are liable to be set aside.

5. Conversely, learned counsel for the Respondent submitted that the Respondent, witnesses of the *Nikah* and the Nikah Registrar had testified the solemnization of *Nikah* and its registration which disproved the stance of the Petitioner and unequivocally established that *Nikah* was validly executed and registered. Therefore, this Court cannot interfere in the concurrent findings of fact recorded by the Courts below in exercise of constitutional jurisdiction.

6. Before proceeding further, it would be advantageous to reproduce the reasoning of the Courts below in dismissing the suit of the Petitioner. The Family Court, while recording its findings on issue No. 1 as to whether the Petitioner is entitled for decree of Jactitation of Marriage concluded as under:-

“9. The onus to prove this issue was on the plaintiff. The plaintiff in support of her claim got examined herself as PW1 and also her real maternal uncle (Mamu) Lal Muhammad S/O Noor Muhammad as PW2. Initially, the plaintiff in her plaint and her evidence on oath categorically stated that there was no Nikah at all. No offer and acceptance was there but during her cross-examination as suggested by the defendant, she replied that “it is incorrect to suggest that defendant and his Chacha (paternal Uncle) got her thumb impressions by enticing or pretending her to get premium of Benazir Income Support program”. By doing that, she had impliedly admitted the existence of Nikahnama in question. Moreover, If this was the cause of obtaining her thumb impression, that must be pleaded specifically in her body of plaint. Thereby she remained failed to prove that Nikahnama was not prepared.

10. The plaintiff took the stance that after getting knowledge of impugned Nikahnama, the notables of her family conducted Panchayat, wherein, the defendant pronounced oral Talaq followed by a written one in the

presence of Lal Muhammad S/O Noor Muhammad PW2 and Kaleem Ullah Chishti S/O Habibullah Chishti and others but no independent witness was produced to prove this fact except PW2, who is related to her in such a way that he is inimical to defendant whose testimony cannot be considered in such circumstances when the fact of forged divorce deed against them has already been subjudice before the court of competent jurisdiction at Pakpattan Sharif vide case FIR No. 45 / 13 offences u/s 420/468/471 PPC, P.S, Kalyana Pakpattan Sharif.

11. The plaintiff also admitted that the defendant claimed herself as his wife for one month. She also admitted that his father has divorced her mother due to the fact that she had been taken divorce from the defendant and contracted second marriage thereafter. It shows that the factum of marriage of plaintiff with defendant Moazzam Ali was within the knowledge of her father who had not agitated it to be annulled rather satisfied. But when this marriage contracted dispute emerged, he divorced her wife (The mother of Plaintiff). If the Nikahnama would have been prepared without their knowledge, then naturally her father must have stood behind her daughter.

12. As far as the alleged divorce by defendant is concerned for the limited purpose of this suit, the defendant categorically and vehemently contested that he had never ever prepared this forged deed and any further Certificate of Effectiveness of Divorce deed. The copy of report of Fingerprints Bureau Mark-D also shows prima facie that the thumb impression of defendant did not match with that one at deed.

13. The Nikahnama of plaintiff with Qurban as Mark-DE also shows that the word "Divorcee" in Column No. 5, and if she did not accept her marriage in dispute with the defendant she would not have conceived this handicap.

14. On the other hand, the defendant in order to prove that the marriage was actually taken place. He produced both the witnesses of Nikahnama, the Nikah Khawan and Secretary Union Council concerned. He also produced documents of registered Nikahnama in dispute as Exh.D2, Computerized marriage Registration Certificate as Exh.D3 and other documents as mentioned in Para No. 5 ibid by which he proved that Nikahnama was registered. All the witnesses and Nikah Khawan were firm in their statements and nothing was brought on record favourable to plaintiff. As both the documents of Nikahnama carries presumption of truth. So in these circumstances, it has been concluded that plaintiff herself contracted her marriage with the

plaintiff and her allegations leveled against the defendant regarding her Nikah being forged are not plausible. Therefore, she has not proved this issue and same is decided against the plaintiff.”

7. While dismissing the Appeal, the Appellate Court recorded its findings in paragraph Nos. 9 to 12 of its Judgment which are reproduced below:-

“9. Perusal of case file has transpired that the present appellant Bakhtawar Bibi has filed the main suit for 'Jactitation of Marriage' before the learned trial court with the contention that on the basis of fabricated and bogus Nikahnama dated 28.03.2012, the present respondent/defendant of the main trial suit has been pretending the present appellant Bakhtawar Bibi as his wife, whereas, no such Nikah has ever been recited, no offer or acceptance have been made and the present appellant has never been got habilitated in the house of present respondent whereas the present respondent side while negating and nullifying the version of the present appellant has produced oral as well as documentary evidence and in support of oral evidence the present respondent has also produced attested copy of the Nikahnama Exh-D2, in which it has been mentioned that a Nikah between Moazzam Ali son of Ghulam Ali groom and Bakhtawar Bibi bride has been contracted on 28.03.2012 and the said Nikahnama Exh-D2 also bears the signatures of spouses as well as signatures of the witnesses; that Nikah and the said Nikahnama Exh-D2 also bears the signature of Nikah Khawan being Author namely Muhammad Ramzan.

10. Moreover, it is also significant to mention here that the respondent's side has also produced the original marriage registration certificate of the above said Nikah and the said certificate has been placed on the file as Exh-D3 and perusal of the said Exh-D3 has categorically demonstrated that the particulars of bride groom and bride have been mentioned in detail in the said Exh-D3 and the name of Nikah Khawan has also been specifically been mentioned and the said certificate Exh-D3 has also been duly issued by the concerned authority i.e Union Council No. 103 Urban Pakpattan Sharif.

11. Moreover, it is also significant to mention here that the respondent's side has also produced an affidavit Exh-D4 on the file which bears the thumb impression of the present appellant Bakhtawar Bibi and same has also been got issued in the name of present appellant and on the said affidavit Exh-D4, the photograph of the

appellant has also been appended, which also bears the thumb impression of the appellant Bakhtawar Bibi. Perusal of the contents of the Exh-D4 has demonstrated that appellant has categorically stated that she is sui-juris of 18-years and she has not been abducted by anyone nor has been raped by anyone and she has not stolen any gold ornaments or clothes etc from her house and left her house in three clothes and she has contracted marriage with his paternal cousin Moazzam Ali (present respondent) with her own free will and consent who is also his fiancée.

12. Now, it is quite clear, vivid and obvious that the contention of the present appellant Bakhtawar Bibi is merely based on oral claim and verbal version whereas the respondent's side has successfully and quite vehemently negated, rebutted and nullified the mere oral version of the present appellant about 'Jactitation of Marriage' by counter alleging the same through production of the above mentioned documentary proof in shape of Exh-D1 to Exh-D4. It is quite understandable in the light of plethora of judgment of Hon'ble Apex Court that documentary proof excludes the oral version. It is also crystal clear that present appellant Bakhtawar Bibi has merely adopted an oral contention in comparison with the documentary counter version of the present respondent and in the light of above given detailed observation, the version of the present appellant has been found much shallow, fluffy, trembling based on weak footings and the same is just talk in the vaccume. Therefore, for the foregoing reasons as mentioned above, the learned trial court has made a very correct, judicious and right decision while deciding issue No. 1 against present appellant."

8. In a similar case titled, "Matloob Hussain v. Mst. Shahida and 2 others" (PLD 2006 Supreme Court 489), the Hon'ble Supreme Court of Pakistan held that where the claim of the woman is in negative form and nature, obviously she could not have been burdened to substantiate the same by producing further evidence as she did not in the exercise of her own free will and accord enter into a contract of marriage, especially when the alleged *Nikah* was not performed where the woman ordinarily resides but much away from her ordinary abode. In such a case, the surrounding circumstances were required to be examined to determine that *Nikah* between the parties was validly and lawfully performed by the lady in exercise of her free will and consent being *persona majora*.

9. Perusal of the plaint reveals that the Petitioner filed a suit for jactitation of marriage claiming therein that she is a house woman and the Respondent has prepared forged and bogus *Nikahnama* dated 28.03.2012 and has started to show the Petitioner as his wife, whereas, she did not enter into any *Nikah* with him. She categorically stated that no marriage, *Nikah* or *Rukhsti* ever took place and she never resided in the house of the Respondent. It was specifically alleged that the Respondent for a long period of time held bad intentions about her and in connivance with the *Nikah* Registrar and witnesses of the *Nikah*, hatched a conspiracy to maliciously register the *Nikahnama*. She was constrained to bring the aforesaid fact in the knowledge of her parents and relatives, whereafter, *Panchayat* was held between her relatives and the Respondent in which the Respondent acknowledged his mistake and pronounced verbal *Talaq* on 30.03.2012 before the witnesses, namely, Lal Muhammad, Kaleem Ullah Chishti and others. Afterward, he executed written *Talaqnama* and delivered it by hand. Thereafter, the Petitioner remarried with one Qurban Rasool on 03.12.2012. After the said marriage, the Respondent with *mala fide* intentions and ulterior objectives registered an FIR No. 45 / 2013 dated 09.02.2013 against her and her husband in Police Station Kalyana, Tehsil and District Pakpattan by contending therein that he did not divorce the Petitioner, rather, *Talaqnama* was forged and fictitious. As such, after two months of her marriage, the Respondent resiled from his *Talaq* and again started to assert his right as husband on the basis of collusive *Nikahnama* with the intention to destroy her matrimonial life which constrained her to file the suit.

10. Her story was simple and straight forward and she had asserted specific facts of bad intentions and ulterior objectives upon the Respondent including that he had managed to register the *Nikahnama* with connivance of *Nikah* Registrar and witnesses of the *Nikah*, whereas, she had categorically denied having consented to the *Nikah* and having executed the *Nikahnama*. Her *Nikah* with Qurban Rasool was cited as the reason for resiling from *Talak* by the Respondent.

11. The Petitioner in her examination-in-chief has categorically deposed that she did not know the *Nikah* Registrar nor she appeared before him. She

explained that the Respondent was son of her paternal uncle and their houses were located in the same village. She conceded that earlier relations between the family members of the Respondent and the Petitioner were cordial but on account of the present episode, their relations are soared. She deposed in her cross-examination that she only contracted marriage with one Qurban Rasool and never with the Respondent. She also testified that when she got married with Qurban Rasool, her family members participated in the marriage and the same was contracted with their consent, although, the *Nikah* was solemnized through Court and she had also given a statement in the Court that she is marrying with Qurban Rasool with her own consent and free will. The Petitioner faced lengthy cross-examination but she remained consistent with respect to her basic pleadings in the plaint. The stance of the Petitioner was duly corroborated by PW-2 who was her maternal uncle. PW-2 also narrated the episode of *Panchayat* and stated that the same took place at his Dera. Column No. 7 of the *Nikahnama* depicts that there was no 'Wakeel' of the bride and her name is written there as *sui juris*. There are only two witnesses and the name of Nikah Khawan / Nikah Registrar on the *Nikahnama*. It is also quite strange that the witnesses of the *Nikahnama* are not related to the Petitioner and the Respondent although they were cousins.

12. In contrast, the Respondent in his written statement had alleged that the Petitioner resided with him for eight days and that the *Nikahnama* was validly executed and that she had developed illicit relations with one Qurban Rasool which instigated her to prepare a forged *Talaqnama* dated 30.03.2012 regarding which he registered an FIR No. 45 / 2013 dated 09.02.2013. It is also noted that it is conspicuously missing in the written statement that who else was present during the marriage and whether the same was solemnized with the consent of parents of the spouses and other family members.

13. DW-1 deposed that both the witnesses were from different areas. The *Nikah* took place in Mohallah Sufiya Abad in Union Council No. 3, Pakpattan Sharif and *Rukhsti* took place from there. At the time of *Nikah*, father of the Respondent was not present, however, his grandfather was present but he did not become a witness of the *Nikah*. The Petitioner only

remained *Abad* for eight days with him. He categorically deposed that both the witnesses were his friends who did not know the Petitioner. He also stated that at the time of *Nikah*, the Petitioner did not have her CNIC, therefore, he pasted her photograph in lieu thereof. He also deposed that the Petitioner did not admit the *Nikah* because he had registered an FIR against her. DW-2 stated that only five to six persons were present on the event of *Nikah* and he did not know all of them. He also deposed that he did not know the Petitioner. DW-3 also stated that he did not know the Petitioner at the time of *Nikah*. DW-4, *Nikah Khawan* deposed that at the time of *Nikah*, three to four persons were available alongwith the grandfather and paternal uncle of the Petitioner and that *Nikah* was solemnized by him which was with the consent of the Petitioner but he did not remember whether he entered the CNIC of the Respondent or not and he did not verify that the Petitioner was not resident of that area. He also deposed that he did not know both the witnesses.

14. From perusal of the aforesaid facts, it is clear that the entire episode of alleged registration of marriage of the Petitioner was surrounded by mystery. It is quite apparent that the *Nikah* was solemnized through a plan and collusive arrangement. In these circumstances, there is no reason to disbelieve the simple story put forward by the Petitioner since had she been actually married and wanted to remarry with another person, she had the option to file a suit for dissolution of marriage in the Court instead of filing the instant suit through a concocted story. The Petitioner successfully discharged the burden of proof that *Nikah* had not taken place with her free consent and will, whereafter, the burden of proof shifted upon the Respondent to establish her free will and consent to *Nikah* as well as that *Nikah* ceremony had actually taken place. The place of *Nikah* was not the village where both the parties were residing. The absence of the parents of the bride and her relatives was proved without any corresponding reasons of their absence. The witnesses of *Nikah* were the friends of the Respondent and were strangers to the Petitioner. The *Nikah Registrar* neither knew the Petitioner nor had verified her place of abode. The pleadings and deposition of holding of *Panchayat* by the Petitioner went un-rebutted. There is a difference of about a year between the date of the

Talaqnama and the date of registration of the said FIR. The delay is unexplained. As such, the Respondent failed to establish the free consent and will of the Petitioner with respect to the alleged *Nikahnama* and failed to discharge the burden of proof regarding registration of a valid and lawful marriage. Hence, the Courts below have grossly misread and non-read the evidence on record and the impugned Judgments are not sustainable in view of the law developed by the Hon'ble Supreme Court of Pakistan in the Matloob Hussain case (supra). As such, this is a fit case for interference in exercise of constitutional jurisdiction vested in this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

15. In view of the above, this Petition is **allowed**; the impugned Judgments & Decrees dated 28.10.2014 & 11.11.2016 are set aside and in consequence thereof, the suit for Jactitation of marriage filed by the Petitioner is decreed. Decree sheet be drawn, accordingly.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

**Ahsan*