HCJDA 38 JUDGMENT SHEET LAHORE HIGH COURT, LAHORE JUDICIAL DEPARTMENT

Writ Petition No.45708 of 2022

Mehr Shaukat

VS

Ex-Officio Justice of Peace/ASJ, etc.

JUDGMENT

Date of hearing:	28.09.2022
Petitioner by:	Major (R) Arshad Mahmood Khan alongwith Mr. Asif Ali Kamboh, Advocates.
State by:	Ch.Khaliq-uz-Zaman, Prosecutor General Punjab assisted by Mr.Abdul Samad, Additional Prosecutor General, Ms.Nuzhat Bashir, Deputy Prosecutor General, Mr.Haroon Rasheed and Mr.Sarfraz Khichi, Deputy District Public Prosecutors for the state. Mr.Ahmad Suleman Tipu, Additional Advocate General Punjab for respondents No.2 to 4 alongwith Mr.Ghulam Mehmood Dogar, CCPO, Lahore, Mr.Ghulam Hussain Chohan S.P. Legal, Ameen A.S.I. with record, Mr.Muhammad Aslam Khan Balouch, Director Local Government Lahore Division and Mr.Arslan Ali Deputy Secretary (Regulation), office of Secretary Local Government and Community Development Department Punjab, Lahore.
Respondents by:	Ch.Tanveer Akhtar, Advocate for respondents No.5 to 8.

Farooq Haider, J:- This constitutional petition in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has been filed by Mehr Shaukat (petitioner) with the following prayer:-

"In view of above it is therefore respectfully prayed that titled petition may kindly be accepted and while setting aside inquiry report by respondent No.2 dated 30.06.2022 order of Justice of Peace, the respondents No.2-4 may kindly be directed to proceed in accordance with law and register FIR against the respondents No.5-8.

Any other remedy which this Hon'ble court deems fit and appropriate may also be granted in the interest of justice."

2. Necessary facts are that petitioner and Behzaad Qureshi (now arrayed as respondent No.5 in the instant petition) contracted marriage on 25.03.2017 through Nikahnama (copy whereof has been annexed with this petition as Annex-B comprising its Urdu version from Page No.16-17 whereas its English version from Page No.18-19). Petitioner moved application to the Station House Officer, Police Station: Green Town, Lahore (copy whereof has been appended with this petition as Annex-D at Page No.22) for registration of criminal case with the allegation that

Behzaad Qureshi (respondent No.5, mentioned above) posed and got mentioned himself as bachelor in the Nikahnama though he was already married and had divorced his first wife but did not mention said fact in the Nikahnama. Petitioner also moved application for registration of case to the Superintendent of Police (copy whereof has been annexed with instant petition as Annex-E at Page No.24) but police did not register the case. Then petitioner filed application under Section: 22-A, B Cr.P.C. for registration of case but same was dismissed *vide* order dated: 03.10.2019 passed by learned *Ex-Officio* Justice of Peace/Additional Sessions Judge, Lahore (copy whereof is available at Page No.34-36 of the petition). Petitioner while challenging said order filed Writ Petition No.63520/2019 before this Court which was disposed of *vide* order dated: 07.06.2022; relevant portion of said order is hereby reproduced:-

"In view of above, with the concurrence of learned counsel for the petitioner, learned counsel for respondents No.6 & 7 and learned Assistant Advocate General, Punjab, copy of instant petition alongwith its all annexures is ordered to be sent to Capital City Police Officer, Lahore, who will entertain oral as well as documentary version of all concerned and after affording an opportunity of hearing to all concerned, deal with the matter strictly in accordance with law and uninfluenced by the observations mentioned in the impugned order dated: 03.10.2019 passed by learned Additional Sessions Judge/Ex-Officio Justice of Peace, Lahore within a period of two weeks from the date of receipt of attested copy of this order under intimation to Deputy Registrar (Judicial) of his Court. In view of this, instant petition stands disposed of."

Capital City Police Officer, Lahore *vide* his order No.1806/Legal-972/WP/19 dated 30.06.2022 filed the application of the petitioner; relevant portion of said order is hereby reproduced:-

- "6. As per section 5(i) & (ii) of the Family Courts Act, 1964, the family court shall have jurisdiction to try the offences specified in part I & II of the schedule, where one of the spouses is victim of an offence committed by the other. Furthermore, according to section 20 of the same Act, Family Court shall be deemed to be Judicial Magistrate of 1st Class under Cr.P.C. 1898 for taking cognizance of trial of offence under this Act, the Muslim Family Laws Ordinance 1961 and Child Marriage Restrain Act, 1929.
- 7. Since, the matter is pending in the learned Family Court, Lahore and the petitioner has specifically taken the stance about the misrepresentation, cheating and fraud of her former husband Behzaad Qureshi in her suit, hence the Family Court is a proper forum to adjudicate the matter. If any offence has been committed by the Behzaad Qureshi then petitioner has a right to file a complaint there. The police lacks the jurisdiction in family matters. Therefore, the application of the petitioner is hereby filed."

- 3. Learned counsel for the petitioner submits that respondent No.5 was already married with one Tina Marie Thoemke in United States of America in 2005. However, said marriage was dissolved through judgment for dissolution of marriage dated: 19.01.2011 passed by the Court in United States of America (copy of said judgment is available at Page No.20-21 of the instant petition as Annex-C); further submits that as per said judgment no children were born or adopted by the parties and even Tina Marie Thoemke was not pregnant but as respondent No.5 married with Tina Marie Thoemke and was divorcee at the time of contracting marriage with present petitioner, therefore, he was bound to disclose said fact in column No.21-A of the Nikahnama Form but he did not mention the same in said column of the Nikahnama Form, hence, cognizable offence has been committed and finally requests for issuance of direction to the police for registration of the case in said regard.
- 4. Learned Prosecutor General Punjab assisted by Mr.Abdul Samad, learned Additional Prosecutor General, Ms.Nuzhat Bashir, learned Deputy Prosecutor General, Mr.Haroon-ur-Rasheed and Mr.Sarfraz Khichi, learned Deputy District Public Prosecutors submit that marriage is a very sacred relationship and it should not have been based upon any cheating, forgery, fraud or misrepresentation, however, since column No.21-A of the Nikahnama Form executed between the parties contains compound language and does not expressly require bridegroom to disclose that either he is widower or divorcee, therefore, criminal law cannot be invoked in the circumstances.
- 5. Learned Additional Advocate General Punjab submits that in column No.5 of aforementioned Nikahnama Form (Annex-B) it was to be mentioned that either bride was maiden or widow or divorcee but any column was not available in said Nikahnama Form i.e. Annex-B which required mentioning of such information about bridegroom; further submits that column No.5-A and 21-A of the Nikahnama Form (Annex-B) only required bride and bridegroom to disclose that if they were widower or divorcee and have children then to mention name and number of their children and this column does not require to disclose earlier status that bride or bridegroom were earlier widow/widower or divorcee and since there was no column expressly requiring bridegroom to state that either he was widower or divorcee, therefore, respondent No.5 has not made any wrong statement in the Nikahnama. Finally adds that no criminal offence has been committed.
- 6. Learned counsel appearing on behalf of respondents No.5 to 8 submits that though respondent No.5 contracted marriage with Tina Marie Thoemke in United States of America in the year 2005, however, said marriage was dissolved through order of the Court (mentioned above) on 19.01.2011 and he was having no children out of said wedlock and said fact is even mentioned in said judgment for dissolution of marriage; further adds that respondent No.5 disclosed said fact to the petitioner and her parents before contracting marriage with the petitioner and even sent relevant papers including aforementioned judgment of dissolution of marriage to the

petitioner as well as in the Embassy of United States of America for processing of application for grant of visa to the petitioner; also adds that since there was no column in Nikahnama Form executed by the parties in this case, requiring respondent No.5 to mention that he was earlier widower or divorcee, therefore, respondents No.5 to 8 have committed no offence and this petition is liable to be dismissed.

7. After hearing learned counsel for the parties, learned Prosecutor General Punjab assisted by learned Additional Prosecutor General, learned Deputy Prosecutor General and learned Deputy District Public Prosecutor, learned Additional Advocate General Punjab and going through the available record with their able assistance, it has been noticed that Form of Nikahnama is Form No.II prepared under Rules 8, 10 of the Muslim Family Laws Ordinance, 1961, which was being used for entering contract of Nikah between the spouses; copy whereof is hereby scanned below:-

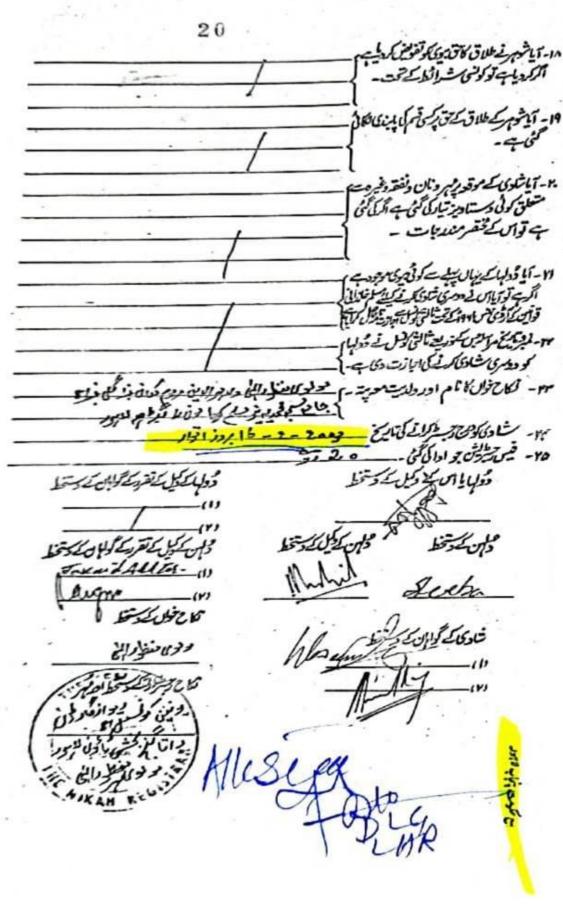
	FORM II	
	[See RULES 8 AND 10]	
	FORM OF NIKAH NAMA	
1.	Name of the WardTown/Union Tehsil/Thanaand District	
	and District in which the marriage took place.	
2.	Name of the bridegroom and his father, with their respective residence.	
3.	Age of the bridegroom	
4.	Name of the bride and her father, with their respective residences.	
5.	Whether the bride is a maiden, a widow or a divorcee	
6.	Age of the bride	
7.	Name of the Vakil, if any, appointed by the bride, his father's name and his residence:	
8.	Names of the witnesses to the appointment of the bride's Vakil, with their father's names, their residences and their relationship with the bride.	
9.	Name of the Vakil, if any, appointed by the bridegroom, his father's name and his residence:	
10.	Names of the witnesses to the appointment of the bridegroom's Vakil, with their father's names, and their residences.	

1	1. Names of the witnesses to the marriage, their father's names	(1)
	and their residences.	(2)
12	Date on which the marriage was contracted.	
13	Amount of dower	
14.	How much of the dower is <i>mu'</i> wajjal (prompt) and how much ghair mu, wajjal (deferred)?	
15.	Whether any portion of the dower was paid at the time of marriage. If so, how much:	
16.	Whether any property was given in lieu of the whole or any portion of the dower, with	
	specification of the same and its valuation agreed to between the parties:	
17.	Special conditions, if any:	
18.	Whether the husband has delegated the power of divorce to the wife, if so, under what conditions.	
19.	Whether the husband's right of divorce is in any way curtailed.	
20.	Whether any document was drawn up at the time of marriage relating to dower, maintenance, etc. If so, contents thereof in brief:	
21.	Whether the bridegroom has any existing wife, and if so, whether he has secured the permission of the Arbitration Council under the Muslim Family Laws Ordinance, 1961, to contract another marriage:	

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22.	Number and date of the communication conveying to the bridegroom the permission of the Arbitration Council to contract another marriage;	
23.	Name and address of the person by whom the marriage was solemnized.	
24.	Date of registration of marriage	
25.	Registration fee paid	
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Director Local Government (mentioned above) has submitted copy of Urdu version of one Nikahnama prepared in the year 2003 (as specimen) which is also scanned below:

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Perusal of aforementioned Nikahnama Form reveals that it was to be mentioned in its column No.5 that whether bride is maiden, a widow or a divorcee whereas no such information was to be mentioned regarding bridegroom in the entire Nikahnama Form.

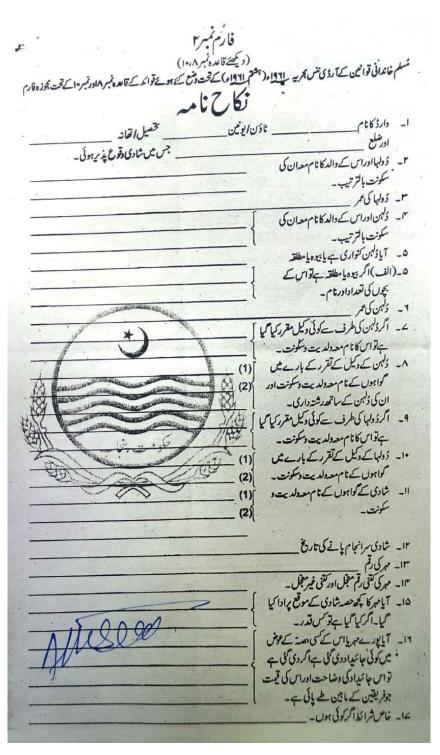
It is important to mention here that Nikahnama Form was amended through Notification No.SO (Judl.III)-4-9/2006, dated: 10th July, 2006 by the

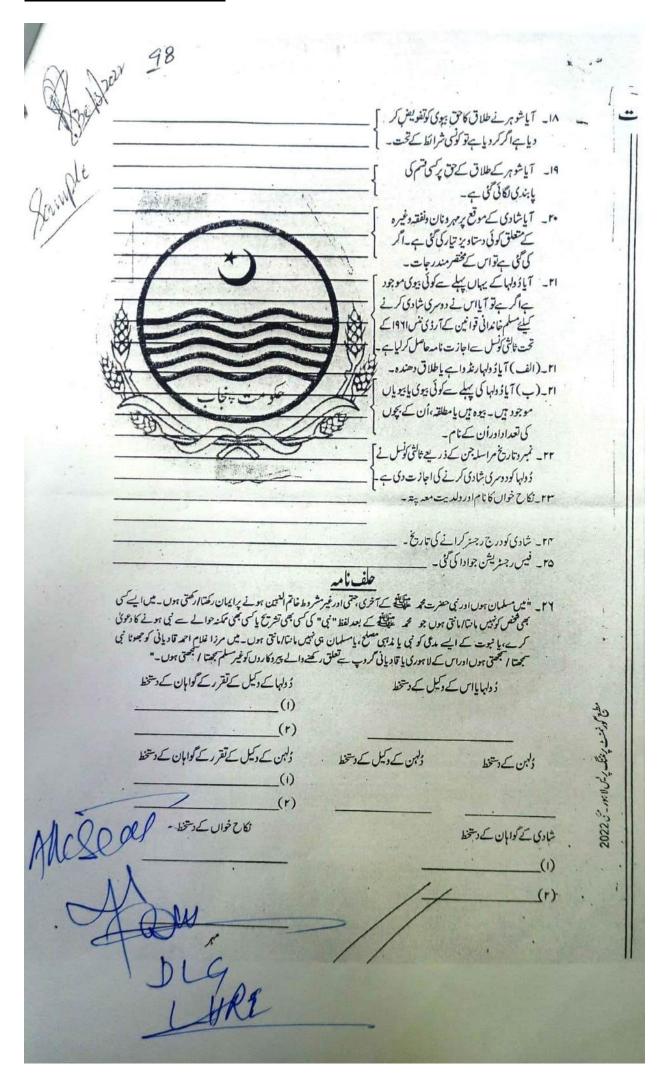
Government of the Punjab, Home Department and said notification is hereby scanned below for ready reference:-

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children, if any	"(5-A) Where the bride is a wide	ow or divorcee, the number and names of her	
3. be inserted:-	In the said rules, after column (2	1), following columns (21-A) and (21-B) shall	
	"(21-A) Whether the bridegroom i	is a widower or divorce	
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	widower or Divorcee, the number	and names of his children	
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Through said amendment column No.5-A and column No.21-A & B were added in the Nikahnama Form. Column No.5-A requires that if bride is a

widow or divorcee, the number and names of her children, if any are to be mentioned whereas in column No.21-A, it is to be mentioned that whether bridegroom is a widower or divorcee and in column No.21-B it is to be incorporated whether the bridegroom has an existing wife or wives, is a widower or divorcee, the number and names of the children. So, prior to aforementioned amendment, no column was included in the Nikahnama Form to show that whether bridegroom was widower or divorcee and it was after said amendment in 2006 that column No.21-A & B were introduced and copy of Nikahnama Form (produced by Director Local Government) after said amendment is hereby scanned below:-



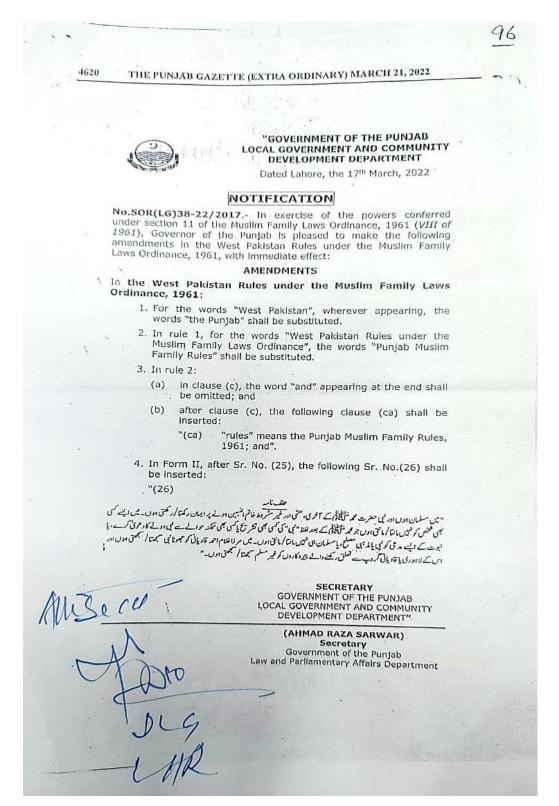


Copy of one Nikahnama Form prepared in 2015 (submitted as specimen by Director Local Government) is also scanned below:

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Then in 2022 through Notification No.SOR(LG)38-22/2017, dated: 17th March, 2022, oath (حلف نامه) was added at Serial No.26 in the Nikahnama Form; copy of the Notification is also scanned below:



It has been noticed that though in 2006 after aforementioned amendment, Nikahnama Form was containing column No.21-A & B which required bridegroom to disclose that either he was widower or divorcee as well as name and number of the children from earlier wives, and marriage in the instant case was contracted in 2017 yet Nikahnama Form which was used in this case for incorporating contract of Nikah was not containing complete columns; copy of the Nikahnama Form used in this case (appended with the petition) is hereby scanned below for ready reference:

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Nikah Nama (Ma	rriage Certificate)
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	EHZAAD QUREISHY S/O BAINAM MIREISH
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1.	EDIAN ROAD LAHORE CANTT.
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4. Name of the bide and har father with their respective M	EHR SHOUKAT D/O SHOUKAT HAYAT
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5. Whollier the bride is maiden, a wirlower a divorces:	G-GOLFER LANGIMAUZA THETHAN
5-A If the bride is widow or divorced and she has children then	MEDIAN HOAD LAHORE CANTT.
monllon the number & names.	AAIDEN.
6. Age of the bride and NIC#: DOB. 25.08.1979	35 2 0 2 - 2 5 5 8 2 7 3 - 2
7. Name of the Valul (Representative), if any, appointed by the	SHOUKAT HAYAT S/O GHULAM HUSSAIN KH
bride, his father's name and bis residence;	SD-336, PAP FALCON COMPLEX
	GULBERG-III, LAHORE.
0. Names of the witnesses to the appointment of the bride's	(1) REESHAN HAIDER S/O SHOUKAT HAYAT
Valid (Representative) with their Fallypt's namps, their	50-336, PAF PALCON COMPLEX
te de la destada de la collection de la fina la felar	TIT LAHORE.
*	(2) KHAR HAIDER S/O SHOUKAT HAYAT SD-336, PAF FALCON COMPLEX GULBERG-III, LAHORE.
Name of the Vakil (Representative), if any, appointed by the buildepreen, his fether's name and his residence:	RRIDEGROOM IS PRESENT HIMSELP.
10. Names of the witnesses to the appointment of the	(1)
hildpercom's Vakii (Representative), Will and tours	
* numes and their residences;	(2)
	11 TAMASH OUREISHY S/O BAIRAN QUE
11. Names of the witnesses to the marriage, their fother's	
names and their residences:	
	11. NO. 19, ST NO. 15, CAVELARY GROUND LAF
	25 MARCH, 2017.
12. Date on which the marrings was contracted:	RS. 5, 555/-(RUPEES PIVE THOUSAND
- 13. Amount of downr:	113. J. 113.11 City
	FIVE HUNDRED AND FIFTY KIVE ONLY).
14. The amount of Maher Mooljal (Prompt Dower); and the	
amount of Mahar Mownijat (Odiotros Domes)	MOTAL MAHAR WILL PAY ON THE SPOT.
15. Whether any portion of the dower was paid at the line of marriage, if so, how much:	
duting along in light of the whole or an	y
 Whether any propony was given the series and it portion of the dower, with specifications of the same and it valuation agrees to between the parties; 	, MO
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17. Special Condition(s) If any;

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1 3 3	1.9 Wantherthe husband has delegated the power of divorce to the wife tise, what conditions:				4
1	the wife the a vival conditions:	X-US JOHN BURES		* .	0.53
1	19. Whether the bustons	PHILE OF THE CONDITIONAL			- "
	19. Whether the husband's right of divorce is in any way curtailed:	NO.	*.		
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	marriagerolating to down maintanance, etc. If so, contents thereof labriot:	No	1		
	27. Wother he bridgeness to	,300.		1//	
	21. Welhor he bridgroom has any existing wife, and, if so, whather he has secured the permission of the Arbitration Council under the Musica Provided to				
	Council under the Markey Park and of the Arbitration	NO.			
		/ · · · · · · · · · · · · · · · · · · ·	1) .		
	If the green is widower or diverce and he has children then mention be number & names;	NO		14	
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	22. Number and date of the communication conveying to the	TTA	127	1.45	
	bridgeroon the permission of the Arbitration Council to contract another marriage:	NO.	171		
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	23. Name and address of the person by whom the manlage	Dr. SARFRAZ AHMAD AWAN			
	was solomnized:	DETERICE HOUSING AUTHORITY LARGE			
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	25. Registration fee paid: Paid As F	Per Law.			
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Column No.5, 5-A and 21-A of the Nikahnama Form executed by the parties in the case are reproduced for ready reference:

5. Whether the bride is maiden, a widow or a divorcee.

۵_(الف)ا گردلهن بیوه پامطلقه ہے اور

5-A. If the bride is widow or divorced and she has children <u>then</u> mention the number & names.

21-A. If the groom is widower or divorcee and he has children **then** mention the number and names.

(emphasis added)

Bare perusal of column No.5 and 5-A of Nikahnama Form (used in this case) makes it crystal clear that column No.5 required to mention that whether bride was maiden, a widow or a divorcee and column No.5-A of the Nikahnama Form required to mention that if bride is a widow or a divorcee and she has children then mention number and names whereas column No.21-A required to mention that whether bridegroom is widower or divorcee and has children then to mention the number and names. It goes without saying that word "then" used in column No.5-A and 21-A is of vital importance and as per P RAMANATHA AIYAR'S **ADVANCED LAW LEXICON** (THE **ENCYCLOPAEDIC** LAW DICTIONARY WITH WORDS & PHRASES, LEGAL MAXIMS AND LATIN TERMS) 4th Edition, Volume 4, word "then" means "in that event" or "in that case". As per WORDS AND PHRASES PERMANENT EDITION, Volume 41B, word "then" is an adverb of time, it also means "in that case or event" and perusal of column No.5-A reflects that if bride is widow or divorcee and she has children only in that event or in that case she has to mention the number and names of the children and if she does not have children then there is no need to mention the same and this column is not requiring to disclose that whether bride is maiden, widow or divorcee and for said purpose column No.5 is crystal clear which expressly requires bride to mention that either she is maiden, widow or divorcee and if in column No.5-A intention of the Legislature would have been to get disclosed that bride is maiden, widow or divorcee then there was no need to separately incorporate column No.5 prior to that in sequence, hence plain reading of column No.5 and column 5-A reflects that column No.5 requires bride to mention that either she is maiden, widow or divorcee whereas column No.5-A does not require so and only requires to mention number and names of children if she is widow or divorcee and having children but any column having language like column No.5 was not available in the Nikahnama Form (used in this case) for bridegroom and its column No.21-A is having same language as of column No.5-A, therefore, in its column No.21-A, bridegroom was not required to tell that he was widower or divorcee but if he was widower or divorcee and having children from said marriage(s) then to tell number and names of the children. Wisdom of Legislature behind column No.5-A and 21-A is that bride and bridegroom must know liabilities of children (if any) of each other from earlier marriage(s); and in this case it is admitted fact that respondent No.5 was having no children from earlier marriage. So, any column expressly requiring bridegroom to disclose that he was widower or divorcee was not available in the Nikahnama Form used in this case.

Though in 2017 when this marriage was contracted, Nikahnama Form which was to be used, of course, requires bridegroom to expressly mention that either he is widower or divorcee yet Nikahnama Form which was used in this case was not containing the column to expressly mention said fact. If Nikah Registrar has not incorporated contract of Nikah of the parties on appropriate and amended Form then it is no fault on part of bridegroom. It is well settled principle of law that for the purpose of invoking criminal law, benefit of each and every doubt at each and every stage goes to the accused/proposed accused and when it is not the case of the petitioner that Form of Nikahnama (Annex-B) was used in this case due to any act or omission of respondents No.5 to 8 and admittedly said Nikahnama Form was not containing any column which expressly required to mention that either bridegroom/respondent No.5 was widower or divorcee then respondents No.5 to 8 cannot be burdened with any criminal liability.

- 8. In view of what has been discussed above, instant petition is without any merit/force and same is hereby **dismissed.**
- 9. Registrar of this Court is directed to transmit a copy of this judgment immediately to the Secretary, Government of the Punjab, Local Government and Community Development Department, Lahore who will ensure preparation of Nikahnama Form containing all the amendments and availability of the same with all the Nikah Registrars in the Province of Punjab.

(Farooq Haider) Judge

APPROVED FOR REPORTING.

(Farooq Haider) Judge