

[Quetta]

Before Qazi Faez Isa, C.J.

ATTA MUHAMMAD and another---Petitioners

Versus

THE STATE and another---Respondents

Criminal Quashment Application No. (s) 06 of 2010, decided on 29th April, 2010.

(a) Criminal Procedure Code (V of 1898)---

---S.561-A--- Offence of Zinc: (Enforcement of Hudood) Ordinance (VII of 1979), S.11--- Abduction---Quashing of F.I.R., application for---Allegation in the F.I.R. was that accused female was abducted by male accused with the help of his brothers---Accused persons (male and female), however, had stated that they got married and their Nikah was duly performed--- Copy of Nikah Nama was attached with the application filed by them for quashing of F.I.R.-- -Complainant/ mother of alleged abductee appeared in the Court along with her counsel and stated that alleged abductee had married without her permission and that if male accused was to provide a lady member of his family for marriage to the complainant's daughter she would compromise the matter and withdraw the complaint---Fact that alleged abductee appeared in the Court and denied her alleged abduction, there remained no case---Alleged abductee had married of her own free will which fact was not stated in the application, but also in the affidavit submitted in the Court---F.I. R. had clearly been lodged to harass accused persons and to settle the scores---High Court invoking its inherent powers, quashed the F.I.R., in circumstances.

(b) Criminal Procedure Code (V of 1898)---

---S.561-A---Inherent powers of High Court---Scope---Section 561-A, Cr.P.C. stipulated that inherent powers vested in the High Court to prevent the abuse of the process of any Court or otherwise to secure the ends of justice were not limited.

M.S. Khawaja v. The State PLD 1965 SC 287 and Mairaj Khan v. Gul Muhammad 2000 SCMR 122 ref.

Shaukat Ali Qadri for Petitioner.

Mrs. Noor Jehan Kahoor for the State.

Nadir Ali Chalgari for Respondent No.2.

ORDER

QAZI FAEZ ISA C.J.---Through this petition filed by Atta Muhammad son of Mehmood Khan and Mst. Shah Gul wife of Atta Muhammad quashment of F.I.R. No.113 of 2009 lodged at Police Station Saddar, Dera Murad Jamali, District Naseerabad on 12-6-2009 has been sought. In the said F.I.R. it is alleged that petitioner No.2 was abducted by petitioner No.1 with the help of his brothers on the night of 11th June, 2009.

2. The petitioners however state that on 9th June, 2009 they got married and Nikah was performed by Maulana Muhammad Younas of Killi Pirkani Abad, Sariab Road, Quetta, copy of the Nikah Nama has been attached with the petition. It is further submitted that the parents of the petitioner No.2 wanted to get her married to someone else without her consent and F.I.R. has been lodged with mala fide intention and ulterior motives.

3. On 9th April, 2010 the following order was passed in this case:-

"Learned counsel for the petitioner has produced the originals of the affidavits, which according to the learned counsel confirm that the petitioners Nos. 1 and 2 freely entered into Nikah on 9-6-2009. Mrs. Noor Jahan Kahoor, learned counsel appearing for the State, states that the photograph of petitioner No.2 appearing on the affidavit is a true likeness of the lady present in the Court today. Mrs. Noor Jahan Kahoor has also separately enquired from petitioner No. 2 whether she is married with petitioner No.1 and whether she wants to live with him on her own free will. Mrs. Noor Jehan Kahoor reports that having consulted the petitioner No.2, she wants to live with the petitioner No.1 and further states that petitioner No.2 has informed her that she is five months pregnant."

4. On 23rd April, 2010 the mother of the petitioner No.2, who lodged the FIR., appeared along with her counsel Mr.Nadir Ali Chalgari, Advocate and stated that the petitioner married without her permission and that if the petitioner No.1 was to provide a lady member of his family for marriage to the complainant's son, she would compromise the matter and withdraw the complaint. Mr.Nadir Ali Chalgari, Advocate tried to effect reconciliation, but failed.

5. In view of the fact that the alleged victim/abductee, namely Mst. Shah Gul (Petitioner No.2) appeared before the Court and denied her alleged abduction, there remains no case, for those nominated in the F.I.R. to answer. The petitioner No.2 has married of her own free will, which fact is not only stated in the petition but also in the affidavit submitted in Court. Moreover, learned State counsel has reported that she has spoken to the petitioner No.2 in the absence of petitioner. No.1 and that she is satisfied that the petitioner No.2 decided to get married without any threat or pressure exerted on her and that she was never abducted.

6. Section 561-A, Cr.P.C., stipulates that the inherent powers vested in the High Court to prevent the abuse of the process of any Court or otherwise to secure the ends of justice are not limited. In the case of M.S. Khawaja v. The State PLD 1965 SC 287, the Hon'ble Supreme Court held:-

"To quash a judicial proceeding in order to secure the ends of justice would involve a finding that if permitted to continue, that proceeding would either operate or perpetuate an injustice. To find an 'abuse' it would be necessary to see in the proceeding, a perversion of the purpose of the law such as to cause harassment to an innocent party, to bring about delay, or where the machinery of justice is engaged in an operation from which no result in furtherance of justice

can accrue, and similar perverse results."

In the case of Mairaj Khan v. Gul Muhammad reported in 2000 SCMR 122 the following dicta was laid down by the honourable Supreme Court:-

"The main consideration to be kept in view would be whether the continuance of the proceedings before the trial forum would be futile exercise, wastage of time and abuse of process of Court or not. If on the basis of facts admitted and patent on record no offence can be made out then it would amount to abuse of process of law to allow the prosecution to continue with the trial. If the facts of the present case are scrutinized on touchstone of the above criteria then it would be obvious that the further proceedings in the Court on the basis of impugned F.I.R. would be sheer wastage of time."

The aforesaid judgment of the Hon'ble Supreme Court are fully attracted in the instant case and if the criminal proceedings are permitted to continue the same would perpetuate an injustice. The F.I.R. has clearly been lodged to harass the petitioners and to settle scores. Under such circumstances the inherent powers of this Court are invoked and F.I.R. No.113 of 2009 lodged at Police Station Saddar Dera Murad District Naseerabad is quashed. S.H.O. Police Station Saddar, Dera Murad Jamali, District Naseerabad is directed to ensure the safety of the petitioners, whenever the petitioners or either one of them convey to the S.H.O. an apprehension to their security. Copy of this order to be sent to the said S.H.O. for information and compliance.

H.B.T./87/Q

F.I.R. Quashed.