

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT,**  
**BAHAWALPUR BENCH, BAHAWALPUR.**

(JUDICIAL DEPARTMENT)

**CRIMINAL REVISION No.168/2019.**

Muzaffar Nawaz

vs

Ishrat Rasool and another

**JUDGMENT**

DATE OF HEARING: 13.09.2021.

APPELLANT BY: Malik Imtiaz Mahmood Awan, Advocate  
with petitioner.

STATE BY: Mr. Muhammad Latif, Additional  
Prosecutor General.

RESPONDENT: Hafiz Khaliq Ditta Langah, Advocate.  
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**MUHAMMAD AMJAD RAFIQ, J:-** Briefly the facts of the case giving rise to the instant criminal revision are that Mst. Ishrat Rasool/respondent No.1, as first wife of Muzaffar Nawaz accused/petitioner, filed a private complaint under section 6 (5)(b) of The Muslim Family Laws Ordinance, 1961 against said Muzaffar Nawaz contending that she contracted marriage with him on 02.09.2013, during subsistence of that marriage and without getting her permission, Muzaffar Nawaz contracted another marriage with Mst. Sitara Jabeen on 15.04.2015. The said complaint was marked to the Magistrate Section 30, Rahim Yar Khan, who after recording cursory evidence, summoned the accused, framed the charge, recorded evidence of respective parties and on conclusion of trial vide judgment dated 17.05.2019 convicted the accused/petitioner under section 6(5)(b) of The Muslim Family Laws Ordinance, 1961 and

sentenced him to simple imprisonment for three months with fine of five hundred thousand rupees, in case of default in payment of fine, the accused was to further suffer simple imprisonment for two months. Against his said conviction and sentence, the accused/petitioner filed an appeal before the learned Additional Sessions Judge, Rahim Yar Khan, which was dismissed vide judgment dated 12.09.2019, hence, the instant criminal revision.

2. The main stance of learned counsel for the petitioner is that the complaint filed by the respondent could only be tried by the Family Court and not by a Magistrate and here in this case as the complaint was tried by a Magistrate, who had no jurisdiction in the matter, therefore, the entire proceedings including the trial would stand vitiated.

3. On the other hand, learned counsel for complainant/ respondent opposed the above arguments and contended that even if there was some error in the forum of trial, the same stood rectified in appeal before the learned appellate court. In support of his contentions learned counsel placed reliance on the case “NASEEM AKHTAR DURRANI versus Mst. ABIDA SULTAN and 3 others” (1992 MLD 93), “ISHTIAQ AHMAD versus THE STATE and others” (PLD 2017 SC 187), “BSHRAT IQBAL versus THE STATE and another” (1993 SCMR 1901), “SHAUKAT ALI versus KALSOOM AKHTAR and another” (PLD 1991 Lahore 247) and “Mst. FAUZIA HUSSAIN versus Mian KHADIM HUSSAIN” (PLD 1985 Lahore 165).

4. After hearing the arguments of learned counsel for the parties, the moot point here in this case turns out to be that what would be the proper forum to try a complaint under section 6(5)(b) of The Muslim Family Laws Ordinance, 1961 i.e. a Judicial Magistrate simplicitor or necessarily it be a Judge Family Court who may also enjoy the powers of a Judicial Magistrate, as required by section 20 of the West Pakistan Family Courts Act, 1964 (*amended by Family Courts (Amendment) Ordinance 2002*)?

Before proceeding further relevant provisions i.e. Section 5 and Section 20 (*as amended by Family Courts (Amendment) Ordinance 2002*) of the West Pakistan Family Courts Act, 1964, are reproduced here under: -

*S.5. Jurisdiction--- [(1)] Subject to the provisions of the Muslim Family Laws Ordinance, 1961, and the Conciliation Courts Ordinance, 1961, the Family Courts shall have exclusive jurisdiction to entertain, hear and adjudicate upon matters specified in [Part I of the Schedule.”]*

*[(2)] Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the Family Court shall have jurisdiction to try the offences specified in Part II of the Schedule, where one of the spouses is victim of an offence committed by the other.*

*(3) The High Court may with approval of the Government, amend the schedule so as to alter, delete or add any entry thereto.”]*

Section 20 (*as amended by Family Courts (Amendment) Ordinance 2002*)

*[Section 20. Family Court as Judicial Magistrate. - (1) A Family Court shall be deemed as the Judicial Magistrate of the first class under the Code of Criminal Procedure, 1898 (V of 1898) for taking cognizance and trial of any offence under this Act; the Muslim Family Laws Ordinance, 1961 (VII of 1961), and the Child Marriage Restraint Act, 1929 (XIX of 1929).*

*(2) A Family Court shall conduct the trial of an offence under subsection (1) in accordance with the provisions of Chapter XXII of the Code of Criminal Procedure, 1898 (V of 1898) relating to the summary trial.*

*(3) An offence other than contempt of a Family Court shall be cognizable on the complaint of the Union Council, Arbitration Council or the aggrieved party.]*

The intention of legislature reflected from the amendment introduced above is to fold all family affairs under an umbrella so that sanctity of family affairs and dignity of spouses could be saved from public exposure in ordinary courts. The word “exclusive” used in Section 5 makes it vividly clear that no other court can assume jurisdiction in respect of provisions of Muslim Family Laws Ordinance except the

court constituted under the West Pakistan Family Courts Act, 1964; it is further clarified that only family court can assume jurisdiction in some offences of PPC as mentioned in Part II of the Schedule, if committed against the spouses. It was the reason that under section 20 Family Court was authorized to act as Magistrate of Ist Class under Code of Criminal Procedure, 1898. At this stage, the Court would like to specifically refer sub-Article (2) of Article 270AA of the Constitution of Islamic Republic of Pakistan, 1973, inserted by way of Eighteenth Amendment Act, X of 2010, which reads as under:-

*“270AA (2). Except as provided in clause (1) and subject to the provisions of the Constitution (Eighteenth Amendment) Act, 2010, all other laws including President’s Order, Acts, Ordinances, Chief Executive’s Orders, regulations, enactments, notifications, rules, orders or bye-laws made between the twelfth day of October, one thousand nine hundred and ninety-nine and the thirty-first day of October, two thousand and three (both days inclusive) and still in force shall, continue to be in force until altered, repealed or amended by the competent authority.”*

In the presence of above specific saving clause, this Court has been informed that Section 5 and 20 (*as amended by Family Courts (Amendment) Ordinance 2002* (LV of 2002) has not been altered, repealed or amended by the competent authority, as such, the same is in vogue and applicable with all force. Furthermore, Article 175(2) of the Constitution of Islamic Republic of Pakistan, 1973 in clear terms provides that: -

*“No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law.”*

Therefore, once it is settled that per force of Section 20 (*as amended by Family Courts (Amendment) Ordinance 2002*) of the West Pakistan Family Courts Act, 1964, only the family court had the jurisdiction to try a complaint under section 6(5)(b) of The Muslim Family Laws Ordinance, 1961; trial conducted by the Magistrate was blatant violation of Article 175(2) of the Constitution, as reproduced above.

5. As a corollary, the offence under section 6(5)(b) Muslim Family Laws Ordinance, 1961 would only be tried by family court constituted under West Pakistan Family Courts Act, 1964. The Magistrate has erroneously assumed the jurisdiction; hence, the trial stands vitiated. Consequently, the instant criminal revision is allowed, the judgments of both the courts below are set-aside and all the proceedings conducted by these courts are quashed.

(Muhammad Amjad Rafiq)  
Judge.

Approved for reporting.

Judge.

Javed\*