

Form No.HCJD/C-121  
**ORDER SHEET**  
**LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT

**Crl. Misc. No. 67328/B/2023**

Musawar Hussain                      Vs                      The State and another

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of parties or counsel where necessary
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27.11.2023      Mr. Nisar Ahmad, Advocate, with the Petitioner.  
Mr. Muhammad Mustafa Chaudhry, Deputy Prosecutor General,  
with Qamar Abbas/ASI.  
Mr. Nouman Shams Qazi, Advocate, for the Complainant.  
M/s Asim Murtaza Cheema and Hasnain Ahmed Anwar,  
Research Officers, LHCRC.

**Tariq Saleem Sheikh, J.** – Through this application, the Petitioner, Musawar Hussain, seeks pre-arrest bail in case FIR No.1465/2023 dated 11.8.2023 registered at Police Station Saddar Muridke, District Sheikhupura. The said FIR was initially registered for an offence under section 365-B PPC but during investigation sections 420, 468 & 471 PPC were added vide Case Diary No.29 dated 24.11.2023.

2.                      According to the Complainant, Sabir Ali, his sister Humaira Bibi married the Petitioner about nine years ago, and they had two children. On 30.7.2023, the Petitioner abducted his younger sister, Sumaira Bibi, who is about 18 years old, and forced her to marry him unlawfully. The Complainant alleged that the Petitioner’s marriage with Sumaira was *ab initio* void because his prior marriage with Humaira was still in effect. Sabir Ali claims that Shariah law prohibits an individual from simultaneously having two biological sisters in a nuptial bond. Consequently, he lodged FIR No. 1465/2023, seeking criminal proceedings against the Petitioner and requesting appropriate legal punishment.

3.                      The Petitioner has termed FIR No. 1465/2023 *mala fide*. He claims he has not committed any offence because he divorced Humaira on 10.7.2023 and married Sumaira subsequently on 19.7.2023. During the

investigation, he submitted copies of the Divorce Deed and *Nikahnama* to the Investigating Officer, which he has also appended with the present bail application.

4. The following two legal questions arise in this case:
  - i) Is it permissible for an individual to marry two real sisters concurrently?
  - ii) Can an individual marry the sister of his divorced wife while the latter is undergoing the *Iddat* period?

### **The first question**

5. Different religious and belief systems worldwide have varying views on marriage. Some may consider it as a sacred covenant, while others view it primarily as a social or cultural institution. In Islam, marriage is not only a social contract but also a religious covenant fulfilling both spiritual and worldly purposes. It is a sacred bond that fosters companionship, mutual support, and the fulfilment of natural desires while adhering to the principles of the faith. The Quran says:

“And marry those among you who are single and those who are fit among your male slaves and your female slaves; if they are needy, Allah will make them free from want out of His Grace.”

(Surah Al-Nur 24:32)

“And among His signs is that he created for you mates from among yourselves, that you may dwell in tranquility with them, and He put love and mercy between your hearts. Verily, in that are signs for those who reflect.”

(Surah Al-Rum 30:21)

The Holy Prophet (peace be upon him) said:

“Men marry women for their piety or property or their beauty, but ye marry for piety.”

(Tirmazi, Jami 1331)

6. In Islam, the emphasis on upholding the sanctity of marriage and adherence to the principles of chastity and fidelity is unequivocal. The Quran’s teachings and the Prophet Muhammad’s traditions guide Muslims towards virtuous conduct in marital relationships. The prohibition against premarital and extramarital relationships is not merely a matter of moral guidance but is deeply ingrained in the legal and ethical framework of Islam. The gravity of engaging in illicit sexual relations is underscored by

the classification of such acts as *Zina*, a sin regarded with utmost severity in Islamic jurisprudence. This uncompromising stance reflects Islam's commitment to promoting ethical behaviour, safeguarding the dignity and rights of individuals, and maintaining the integrity of family structures within society.

7. The Holy Quran delineates specific restrictions on marriage, particularly concerning certain categories of women. In *Iftikhar Nazir Ahmad Khan and others v. Ghulam Kibria and others* (PLD 1968 Lahore 587), Muhammad Akram J. identified nineteen classes of women with whom marriage is prohibited.<sup>1</sup> These prohibitions, known as "*Moharramat*", encompass various familial and social relationships, ranging from mothers and daughters to married women and idolaters. Such restrictions aim to preserve domestic harmony, prevent conflicts, and uphold moral integrity within the Muslim community. Importantly, these prohibitions are classified into two categories: perpetual and temporary. Perpetual prohibitions arising from consanguinity, fosterage, and affinity are absolute and eternal, leaving no room for exceptions. Conversely, temporary prohibitions arise from impediments that are not permanent, allowing for the potential removal of obstacles to marriage.<sup>2</sup> The temporary prohibitions are against (i) exceeding the number of wives allowed by law, (ii) conjunction of two sisters, (iii) conjunction of a free woman and a slave girl, (iv) marriage with an idolatress, (v) marriage with another's wife, (vi) marriage with another's *Moattada* (in the *Iddat* of another); (vii) conjunction of two such females as could not have intermarried, if one of them was a male.

8. The Hanafi jurists delineate marriages into three distinct categories: *Saheeh*, *fasid*, and *batil* – depending upon their validity and effect. *Saheeh* is commonly translated as "valid", while *fasid* is

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<sup>1</sup> These 19 classes are: (i) Mothers; (ii) Daughters; (iii) Sisters; (iv) Father's sister; (v) Mother's sister; (vi) Brother's daughter; (vii) Sister's daughter; (viii) Foster-mother; (ix) Foster-sister; (x) Mother-in-law; (xi) Wives' daughters (step-daughters); (xii) Son's wives; (xiii) Father's wife (step-mother); (xiv) Two sisters in conjunction; (xv) married women; (xvi) Idolatress (*Mushrikat*); (xvii) One's thrice divorced wife; (xviii) a woman in *Iddat*; (xix) more than four wives.

<sup>2</sup> Fatawa-e-Kazi Khan (pages 167-169), in the 'Chapter on Muharramat' (women forbidden to be married), has elaborated on this broad division into the two classes of women: *mo-abbada* (permanently prohibited) and *ghair-mo-abbada* (temporarily prohibited) women in marriages.

interpreted as “invalid” or “irregular”, and *batil* as “void”. These terms carry nuanced meanings in Islamic jurisprudence that transcend simplistic English translations. Therefore, using the original Islamic terminology whenever possible is advisable, as relying solely on translations may lead to misunderstandings, especially regarding the term *fasid*. “Irregular” suggests some procedural flaw, “which does not fit within the scheme of Islamic law and jurisprudence. *Fasid* cannot be equated with mere irregularity as employed and used under the common law.”<sup>3</sup>

9. The distinction between the above-mentioned classifications is crucial because it determines the legal status and consequences of matrimonial unions under Hanafi law. A *Saheeh* marriage is free from all defects. It impeccably conforms with all the requirements laid down by the Shariah, e.g., the existence of the proposal and acceptance, the presence of the witnesses, and the competency of the parties involved. Such marriages yield lawful and binding consequences for the parties involved. Conversely, *batil* marriages are those which are deemed void from their inception due to fundamental defects. These marriages lack essential elements required by Shariah, rendering the proposal and acceptance devoid of legal effect. Consequently, *batil* marriages are unlawful unions which fail to produce any legal consequences. Situated between these two extremes are *fasid* marriages, characterized by defects that compromise their validity to a certain extent.

10. It is easy to classify marriages as *Saheeh*, *batil*, and *fasid* in terms of their definitions, but their practical application poses serious challenges. Muhammad Akram J. observes that some Hanafi jurists have conflated the concepts of *fasid* and *batil* marriages, using these terms interchangeably. However, recent authors have diligently recognized and preserved their precise technical meanings in legal discourse.<sup>4</sup>

11. Since there is a clear distinction between *batil* and *fasid* marriages in Islamic jurisprudence, it is necessary to delve into the rights and obligations of the parties involved. Before consummation, both *batil*

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<sup>3</sup> *Adeela Bibi and another v. The State and others* (PLJ 2012 Islamabad 140).

<sup>4</sup> *Ifthikhar Nazir Ahmad Khan and others v. Ghulam Kibria and others* (PLD 1968 Lahore 587).

and *fasid* marriages are considered nugatory and have no legal effect. In the case of a *fasid* marriage, the absence of consummation means that there is no requirement for *Iddat* for the woman, nor is she entitled to the dower. However, certain legal consequences ensue once consummation occurs. The woman is obligated to observe *Iddat* following the dissolution of the marriage. Furthermore, she is entitled to the customary or the specified dower, whichever is less, and *Nasab* (paternity) is established if a child is born to the couple. While there is no *Hadd* (the specific punishment for *Zina*) for engaging in a *fasid* marriage, the parties involved may still face the consequences under *Tazir*, a discretionary sentence imposed by the Qazi. The severity of *Tazir* is contingent upon the circumstances of each case, serving as a corrective measure to deter future transgressions and uphold societal norms. The parties to a *fasid* marriage are under a liability to separate as soon as *Fasad* (illegality) appears or becomes known to them. If they do not, it is the Qazi's responsibility to separate them and dissolve their marriage immediately. In *Iftikhar Nazir's* case, *supra*, a Division Bench of this Court quoted with approval the following excerpt from *Fatawa-i-Alamgiri*:<sup>5</sup>

“When a marriage is found to be invalid, the *Kazi* ‘should effect separation between the husband and the wife. In case there has been no cohabitation, the wife shall not be entitled to a dower nor will she be required to serve out the period of probation (*Iddat*). But in case there has been copulation between the husband and the wife the latter shall get the dower specified for her, or the one customary in her family (*mahr-ul-misl*), whichever is the lesser one. The *mahr* will be allowed only in case it has been fixed, she will get *mahr-ul-misl*, no matter what it may be in amount. In this case, the woman shall have to undergo the period of probation and only the sexual intercourse shall be allowed that has been made and the man has fully enjoyed the object of his contract. The period of *Iddat* shall be computed from the time the cancellation of *nikah* has been made between the pair. This is the opinion held by the three Imams, vide the Mohit.”

Hedaya,<sup>6</sup> *Kanz-ud-Dakik*,<sup>7</sup> *Sharh-i-Vikaya*,<sup>8</sup> and *Digest of Mohammedan Law by Baillie*<sup>9</sup> state the same principle of law.

<sup>5</sup> Urdu translation published by Nawalkishore Press, Lucknow (Volume 11, Chapter VIII, page 241).

<sup>6</sup> Translation by Charles Hamilton, Standish Grove Grady Edition, Volume 1, Book No.11, Chapter III, page 52-53).

<sup>7</sup> Lucknow Edition, page 102

<sup>8</sup> Volume II, page 128

<sup>9</sup> Book 1, Chapter VIII, page 150

12. In Surah Al-Nisa (4:23), the Quran forbids a person from marrying two sisters simultaneously, stating:

“Prohibited to you (for marriage) are: your mothers, daughters, sisters; father’s sisters, mother’s sisters; brother’s daughters, sister’s daughters; foster-mothers (who gave you suck), foster-sisters; your wives’ mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in, no prohibition if ye have not gone in; (those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-forgiving, Most Merciful.”

13. Hadith No. 1129 in Sunan Tirmazi, which is reproduced below, is also instructive:

فیروز دہلوی رضی اللہ عنہ کہتے ہیں کہ میں نبی اکرم صلی اللہ علیہ وسلم کے پاس آیا، میں نے عرض کیا: اللہ کے رسول! میں نے اسلام قبول کر لیا ہے اور میرے نکاح میں دو بہنیں ہیں؟ تو رسول اللہ صلی اللہ علیہ وسلم نے فرمایا: تم ان دونوں میں سے جسے چاہو منتخب کر لو۔

14. There is a consensus amongst Muslim jurists that the conjunction of two sisters is *Haram*, one of the gravest sins. However, there is a difference of opinion on whether such marriage is *batil* or *fasid*. The majority of the Hanafi jurists lean towards categorizing it as *fasid*. Syed Ameer Ali writes:<sup>10</sup>

“Thus, with regard to women who cannot be married by a man at the same time, or to use the language of Arabian lawyers, “who cannot be lawfully joined together,” connection with them is not unlawful in itself but only for a temporary or incidental circumstance. For example, a man is not allowed to marry two women so related to each other that if one of them had been a man, they could not intermarry, but he can at any time make the second woman lawful to himself by divorcing the first, or the first may die which would remove the bar to the second marriage.”

15. Paragraph 263 of *D.F. Mulla’s Principles of Mahomedan Law* classifies a marriage through unlawful conjunction as irregular (read: *fasid*) rather than void. It states:

**263. Unlawful conjunction.** – A man may not have at the same time two wives who are so related to each other by consanguinity, affinity or fosterage, that if either of them had been a male, they could not have lawfully intermarried, as for instance, two sisters, or aunt and niece. The bar of unlawful conjunction renders a marriage irregular, not void.

16. In summary, the differentiation between *batil* and *fasid* marriages carries substantial legal consequences, both civil and criminal. Civil liabilities are not an issue in the present case, so they shall be

<sup>10</sup> Ameer Ali, *Commentaries on Mahomedan Law*, Fifth Ed. (2007), p.1246-7.

discussed in some other proceedings. Regarding criminal liability arising out of a marriage involving the marriage of two sisters, most Hanafi jurists, including Imam Abu Hanifa (R.A), argue that such unions do not warrant the imposition of Hadd punishment. However, they are unanimous that considering its serious repercussions, it must be dealt with seriously, and *Tazir* must be inflicted.<sup>11</sup>

### **The second question**

17. In Islam, a *Talaq* can be effected through several methods, each having its own conditions and procedures. According to *D.F. Mulla's Principles of Mahomedan Law*, the first method, *Talaq Ahsan*, involves a single pronouncement of divorce made during a *Tuhr*, which is the period between menstruations. After this pronouncement, there must be a period of abstinence from sexual intercourse for the duration of the *Iddat*, or waiting period. *Talaq Ahsan* can still be pronounced if the marriage has not been consummated, even if the wife is menstruating. However, if the wife has reached menopause, the requirement of pronouncement during a *Tuhr* does not apply. Additionally, this requirement only pertains to oral divorce, not written divorce. The second method, *Talaq Hasan*, requires three pronouncements made during successive *Tuhrs*, with no sexual intercourse occurring during any of the three *Tuhrs*. The first pronouncement must occur during one *Tuhr*, the second during the next *Tuhr*, and the third during the *Tuhr* following that. Finally, *Talaq-ul-Bidaat* or *Talaq-i-Badai*, the third method, involves either three pronouncements made during a single *Tuhr*, either in one sentence or separately, or a single pronouncement during a *Tuhr* that clearly indicates an irrevocable intention to dissolve the marriage. Examples include pronouncing "I divorce thee thrice" or "I divorce thee irrevocably."

18. It is a well-established principle of Islamic jurisprudence that *Talaq* is not effective until the expiration of *Iddat*. Surah Al-Baqara (2:228) says:

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<sup>11</sup> *Mst. Adeela Bibi and another v. State and 4 others* (PLJ 2012 Islamabad 140).

“Divorced women shall wait concerning themselves for three monthly periods. And it is not lawful for them to hide what Allah Hath created in their wombs, If they have faith in Allah and the Last Day, And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; But men have a degree over them and Allah is Exalted in Power, Wise.

19. Then, Surah Al-Baqara (2:230) states:

“So if a husband divorces his wife (irrevocably). He cannot, after that, re-marry her until after she has married another husband and he has divorced her. In that case, there is no blame on either of them if they re-unite, provided they feel that they can keep the limits ordained by Allah. Such are the limits ordained by Allah, which He makes plain to those who know.”

20. Surah Al-Talaq (65:1) commands:

“O Prophet! When ye do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: and fear Allah your Lord: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness, those are limits set by Allah: and any who transgresses the limits of Allah, does verily wrong his (own) soul: thou knowest not if perchance Allah will bring about thereafter some new situation.”

21. Explaining Surah Al-Talaq (65:1), *supra*, in **Muhammad Arif v. The State** (PLD 1982 FSC 292), the Federal Shariat Court stated that the prohibition against expelling the woman during the *Iddat* by the husband and the explicit restriction on the woman leaving her husband’s house herself during this period indicate that after the pronouncement of *Talaq*, where the marriage has been consummated, the woman remains bound by the marital contract until the prescribed *Iddat* period specified by the Quran and Sunnah has lapsed. This is also why the woman is entitled to maintenance during this period. Additionally, if either spouse passes away before the completion of the *Iddat* period, the surviving spouse is entitled to inherit from the deceased’s estate. As a result, jurists have a consensus that a person cannot marry his ex-wife’s sister until her *Iddat* period has ended. After citing various authorities, the Federal Shariat Court concluded:

"ان اقوال سے یہ بات تو ثابت ہو گئی کہ ایک بہن کو طلاق دے کر عدت گزرنے سے پہلے دوسری بہن سے نکاح ناجائز ہے۔ اس کے بعد اب اس سوال کا جواب باقی رہ جاتا ہے کہ کوئی شخص اگر ایسا ناجائز نکاح کر لے، تو اس کی سزا کیا ہوگی آیا اس پر حد زنا جاری ہوگی یا زنا کی تعزیری سزا ہوگی۔ بعض فقہاء نے اس طرح کے ناجائز اور ممنوع نکاح کے مرتکب کو حد زنا کا مستوجب قرار دیا ہے۔ فقہ حنفیہ کا جہاں تک تعلق ہے وہ اگرچہ اس طرح کے نکاح کو ناجائز ہی قرار دیتے ہیں مگر اسے حد کے بجائے تعزیر کا مستحق قرار دیتے ہیں۔ (فتاویٰ عالمگیری جلد 2 صفحہ 166 پر درج ہے)"



The above dictum was followed in Kundan Mai v. The State (PLD 1988 FSC 89) and Adeela Bibi and another v. The State and others (PLJ 2012 Islamabad 140).

22. Section 7(3) of the Muslim Family Laws Ordinance, 1961 is based on the same principle. It stipulates that unless revoked earlier, expressly or otherwise, *Talaq* shall not be effective until ninety days<sup>12</sup> have elapsed from the day on which notice under section 7(1) is delivered to the Chairman of the Union Council.<sup>13</sup> If the wife is pregnant when *Talaq* is pronounced, it shall not be effective until the period mentioned above expires or the pregnancy ends, whichever is later.

23. If, contrary to Shariah law, a person marries the sister of his divorced wife while she is in the *Iddat* period, there is no bar on him entering into a new marriage contract with that woman after his ex-wife's *Iddat* period ends. Mufti Dr. Khaleeq-ur-Rehman posits:

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<sup>12</sup> In *Allah Dad v. Mukhtar and another* (1992 SCMR 1273), the Shariat Appellate Bench of the Supreme Court of Pakistan highlighted that according to Surah Al-Baqara (2:228), the *Iddat* period prescribed by the Holy Quran is not strictly 90 days, but rather encompasses three menstrual cycles, which may not necessarily span 90 days. Hanafi jurists stipulate that the minimum duration of menstruation is three days, and the minimum duration of *Tuhr* (period of purity) is 15 days. Based on these principles, the minimum *Iddat* period could be 39 days, allowing for three menstrual cycles with two intervening periods of purity. Thus, a marriage conducted 39 days after the divorce may be deemed valid according to Shariah if the woman has completed three menstrual cycles during this time. The Holy Quran and the Sunnah of the Holy Prophet (peace be upon him) do not specify 90 days as the *Iddat* period, except for women who have ceased menstruation due to old age or who have not yet started menstruating due to their young age, whose *Iddat* is mentioned as three lunar months (See Quran 65:4).

<sup>13</sup> In *Syed Ali Nawaz Gardezi v. Lt.-Col. Muhammad Yusuf* (PLD 1963 SC 51), the Supreme Court held that the object of section 7 of the Muslim Family Laws Ordinance 1961 is to prevent hasty dissolution of marriages by *Talaq*, pronounced unilaterally by the husband, without attempting to prevent the disruption of the matrimonial status. If the husband himself reconsiders the pronouncement of *Talaq* and refrains from giving notice to the Chairman, he should perhaps be deemed, in view of section 7 of the Ordinance, to have revoked the pronouncement, which would benefit the wife. Subsequently, in *Allah Dad v. Mukhtar and another* (1992 SCMR 1273), the Shariat Appellate Bench of the Supreme Court held that a notice under section 7 is not mandatory, and divorce becomes effective upon completion of the *Iddat* period under Islamic law, which may be less than 90 days (minimum 39 days).

Later on, the matter once again came under consideration before the Supreme Court in *Kaneez Fatima v. Wali Muhammad and another* (PLD 1993 SC 901). It discussed both the above judgments, pointing out that the jurisdiction of the Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court does not extend to the Constitution and Family laws. Therefore, the court in *Allah Dad's* case should have decided the matter based on the principles outlined in *Mst. Bashiran and others v. Muhammad Hussain and another* (PLD 1988 SC 186), which it referred to in its judgment. "As *Allah Dad's* case could be decided on the principles of *Mst. Bashiran's* case, there was no need to enter into constitutional issues, particularly when it did not fall within the jurisdiction of the court."

Regarding *Syed Ali Nawaz Gardezi*, the Supreme Court observed that failure to send notice of *Talaq* to the Chairman of the Union Council does not automatically lead to the conclusion that *Talaq* has been revoked. It may only render it ineffective but not revoked. This controversy should be considered from a practical and purposive point of view, taking into account the facts and circumstances of each case. The Supreme Court noted that the provisions of section 7 of the Ordinance have remained controversial from the very beginning, with conflicting views in general. Due to constitutional restraints, the courts cannot issue any verdict on conflicting claims challenging or justifying the provisions of section 7 of the Ordinance. However, the applicability and interpretation of section 7 must be construed in light of the facts of each case. In a case where divorce is effected and confirmed in writing with the consent of both parties, section 7 should not be strictly interpreted, particularly in cases where the penal provision of section 7(2) is to be enforced because in such cases, the parties do not willfully breach the law and genuinely believe that they have been divorced with each other's consent. Sending notice to the Chairman of the Union Council is considered merely a formality in such instances. The notice can be sent at any time thereafter to comply with the provisions of section 7. Where such a view has been taken but its validity has been challenged, the court would be justified in refusing to issue a writ and exercise its jurisdiction.

"وہ شخص جس نے بیوی کی موجودگی میں سالی سے شادی رچالی ان کے لیے حکم یہ ہے کہ ان کی باہم تفریق کر دی جاتی ہے طلاق واقع نہیں ہوتی کیونکہ جب نکاح سرے سے ہوا ہی نہیں تو طلاق کا تصور کیسے ہو سکتا ہے لیکن ان میں آپس میں جدائی ڈال دی جاتی ہے یہ جدائی میاں بیوی آپس میں خود ڈال دیں خاندان ڈال دے معاشرہ ڈال دے پنچائیت ڈال دے یا عدالت یہ تفریق کروادے کسی طرح بھی یہ تفریق ہو سکتی ہے تفریق کے بعد عدت گزارنا اس لیے لازم ہوتا ہے کہیں استقرار حمل تو نہیں ہوا۔۔۔ کہیں حمل تو نہیں ٹھہرا۔؟ تو اس تحقیق کے لیے عدت گزارنی جاتی ہے۔ عدت طلاق کی وجہ سے نہیں گزارنی جاتی۔ اب عدت گزارنے کے بعد اس کا نکاح اسی بندے سے جس نے اس کے ساتھ بیوی کے ہوتے ہوئے شادی رچائی تھی ہو سکتا ہے کیونکہ کوئی ایسی ممانعت موجود نہیں ہیں اور قرآن کریم کی ایک آیت ہے: سورۃ النور کی آیت نمبر 3

الرَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ

زانی مرد کو زانیہ عورت سے ہی نکاح کرنا مناسب ہے اور زانیہ عورت کے لیے بھی یہی مناسب ہے کہ وہ زانیہ مرد سے نکاح کرے۔"

### ***The case at hand***

24. The Petitioner, Musawar Hussain, faces an accusation of simultaneously marrying two real sisters, Humaira and Sumaira. While this marriage is deemed *fasid* rather than *batil*, it still carries culpability. The Petitioner's defence hinges on his claim that he divorced Humaira on 10.7.2023 before marrying Sumaira on 19.7.2023. However, this defence falls short as the marriage took place before the completion of Humaira's *Iddat* period. This situation parallels the conjunction of two sisters during the subsistence of the first sister's marriage, which entails criminal liability.

25. During the investigation, the Petitioner provided a photocopy of the Divorce Deed dated 10.7.2023. The Investigating Officer repeatedly asked him to produce the original document but he did not. Shockingly, the Investigating Officer discovered that the deed was neither registered with the relevant Union Council nor recorded in the stamp vendor's register despite bearing his rubber stamp on the back. Considering these circumstances, he added sections 420, 468, and 471 PPC in the FIR through Case Diary No.29 dated 24.11.2023. Out of these, section 420 PPC is cognizable.

26. Mr. Ahmad contends that the police wrongly registered FIR No. 1465/2023 under section 365-B PPC. According to him, at most, the facts of the case attracted section 496 PPC, which is a non-cognizable and bailable offence. In the circumstances, the said FIR was *non est* and a

non-starter. The inclusion of section 420 PPC, a cognizable offence, during the investigation does not rectify the initial defect. Hence, no prosecution can be carried out based on the said FIR. However, Mr. Ahmad's argument overlooks a crucial detail. The Complainant specifically alleged in the FIR that the Petitioner abducted Humaira and coerced her into an illicit marriage. Thus, from the contents of the FIR, section 365-B PPC was made out. Since it is a cognizable offence, the police were justified in registering the FIR. It is well established that when a person approaches the officer in-charge of a police station to register an FIR, the determining factor for him is whether the information laid before him pertains to the commission of a cognizable offence. If, during the investigation, it turns out that a non-cognizable offence, rather than a cognizable offence, had been committed, it does not invalidate the proceedings, as the provisions of section 155 Cr.P.C. do not apply.

27. I have dismissed the Petitioner's application for pre-arrest bail by a short order dated 27.11.2023. Above are the reasons therefor.

28. The observations made in this order on the factual aspects of the case are tentative. The learned trial court shall decide the case in light of the evidence produced during the trial without being prejudiced by these observations.

**(Tariq Saleem Sheikh)**  
Judge

*Naeem*

Approved for reporting

Judge