

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.62590 of 2023

Muhammad Adil Nawaz Bhatti
...Versus...
Chairman Union Council and others

JUDGMENT

Date of Hearing: **30.01.2024**

Petitioner(s) for: Malik Muhammad Imtiaz Mahal,
Advocate

Respondent(s) for: Ms. Yasrab Gulzar, Advocate for
respondent No.3

Mian Jaffer Hussain, Deputy Attorney
General for Pakistan

Mr. Qamar Zaman Qureshi, Additional
Advocate General Punjab

SHAHID BILAL HASSAN-J: Facts, in concision, are as such that the petitioner is an Overseas Pakistani and living abroad/Germany, therefore, the instant petition has been filed through his attorney/real father; that the petitioner contracted marriage with respondent No.3 as per Islamic rites and rituals on 18.09.2020, however, the wedlock remained issueless. The petitioner and respondent No.3 went to reside in Germany after their marriage. Some family disputes occurred between the spouse and at the end the parties made a decision of separation. Allegedly, the petitioner sent first notice of

divorce to the respondent No.1 on 03.01.2023, second notice on 03.02.2023 and third/last divorce notice on 06.03.2023 to the respondent No.1 through DHL which were received by the respondent No.1. However, the respondent No.1 wrote an advice letter dated 27.03.2023 to the petitioner to approach the concerned forum abroad. The petitioner through Gmail sent a request to the concerned Authority/Consulate General Pakistan in Germany on 31.03.2023. The petitioner, thereafter, moved a detailed application dated 11.04.2023 with relevant documents to the respondent No.1 requesting him to issue divorce effectiveness certificate. The respondent No.1 vide order dated 19.04.2023 declined the said request of the petitioner. Thereafter the petitioner approached the Consulate General of Pakistan regarding issuance of divorce effectiveness certificate. However, the Consulate General of Pakistan issued letter No.CG-1/3/2023 dated 14.06.2023 with the following observation:-

‘The Islamabad High Court on the Writ Petition No.21 of 2021 had set-aside the notification dated 08.11.1961 (SRO 1086/61), which means that Pakistan Mission abroad may no longer act as Arbitration Councils. The applicant would have to approach Arbitration Council in Pakistan, if so advised.’

After this, the petitioner again moved a detailed application to the ADLG City Lahore with the request of issuance of divorce effectiveness certificate dated 20.06.2023 but the same was

refused by the respondent No.1 vide impugned order dated 27.07.2023; hence, the instant constitutional petition.

2. Heard.

3. Sections 2(b) and 7 of the Muslim Family Laws Ordinance, 1961 and Rule 3(b) of the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961 are necessary, in order to resolve the controversy in hand, which are to be reproduced infra:-

‘Section 2(b):- “Chairman” means the Chairman of the Union Council or a person appointed by the Federal Government in the Cantonment areas or by the Provincial Government in other areas or by any officer authorized in that behalf by any such Government to discharge the functions of Chairman under this Ordinance.’

‘7. “Talaq”. (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the chairman a notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever, contravenes the provisions of subsection (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) Save as provided in subsection (5) a Talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety

days from the day on which notice under subsection (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under Sub-section (1) the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in subsection (3) or the pregnancy, whichever be later, ends.

The petitioner is permanently residing in Germany and respondent No.3 is also there as is evident from her Resident Card and Health Card, effective till February 2025, copy of which has been placed on record, even at the time of alleged notices of *Talaq* the petitioner was not available in Lahore; meaning thereby as per S.R.O.No.1086(K)61 dated 09.11.1961 the jurisdiction for taking up the matter was with the designated officer in the Pakistan Consulate/Mission in Germany. The said S.R.O. reads:-

'In exercise of the powers conferred by clause (b) of section 2 of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), the Central Government is pleased to authorize the Director General (Administration) Ministry of External Affairs to appoint officers of Pakistan Mission abroad to discharge the functions of Chairman under the aforesaid Ordinance.'

Rule 3(b) of the Rules provides:-

'Rule 3. The Union Council which shall have jurisdiction in the matter for the purpose of clause (d) of section 2 shall be as follows, namely:-

(a) -----

(b) in the case of notice of talaq under subsection (1) of section 7, it shall be the Union Council of the Union or Town where the wife in relation to whom talaq has been pronounced was residing, at the time of the pronouncement of talaq:

Provided that if at the time of pronouncement of talaq such wife was not residing in any part of West Pakistan, the Union Council that shall have jurisdiction shall be –

(i) in case such wife was at any time residing with the person pronouncing the Talaq in any part of West Pakistan, the Union Council of the Union or Town where such wife so last resided with such person; and

(ii) in any other case, the Union Council of the Union or Town where the person pronouncing the talaq is permanently residing in West Pakistan;'

In view of the above said provisions of law, the Union Council and/or the Chairman, which would have jurisdiction in the matter would be the Union Council and/or the Chairman within whose territorial jurisdiction the wife was

residing at the time of pronouncement of divorce and in this case the respondent No.3 was residing in Germany as has been admitted by the petitioner. Reliance is placed on *Mt. Sharifan v. Abdul Khaliq and another* (1983 CLC 1296) and *Ms. Sadaf Munir Khan v. Chairman, Reconciliation Committee and 2 others* (PLD 2019 Lahore 285). When the position is as such, as observed above, as per Notification S.R.O.No. 1086(K)61 dated 09.11.1961, *officers of Pakistan Mission abroad are authorized to discharge the functions of Chairman under the aforesaid Ordinance*. Meaning thereby the Chairman, Union Council No.116-EME, DHA-12, ADLG Multan Road, Lahore has no authority to deal with the matter in hand in respect of divorce. This Court in judgment reported as *Mian Irfan Latif through Special Attorney v. Nazim/Chairman Union Council No.100 and another* (2009 YLR 1141-Lahore), has held:-

‘Since both the parties are permanent resident of U.K. and as such as per Notification No. SRO No. 1086(K)/61 the function of Chairman Arbitration Council under the Muslim Family Laws Ordinance, 1961 are to be performed by an appointed offer of the Pakistan Mission abroad.’

The same view was reaffirmed and reiterated in judgments reported as *Mst. Sana Asim Hafeez v. Administrator/Chairman, Arbitration and Conciliation Court* (2016 MLD 1061-Lahore), *Syeda Wajiha Haris v. Chairman, Union*

Council No.7, Lahore (2010 MLD 989-Lahore) and Ms. Sadaf Munir Khan v. Chairman, Reconciliation Committee and 2 others (PLD 2019 Lahore 285).

In addition to the above, the petitioner did not disclose the factum of initiation of proceedings before the District Courts in Germany with regards to complaint against physical assault, claim for separate accommodation and maintenance, meaning thereby the petitioner has not approached this Court with clean hands.

4. So far as the stance that the S.R.O. *ibid* has been struck down by the learned Islamabad High Court is concerned, it is observed that the said S.R.O. is fully in vogue in Punjab as no verdict as such has been passed by this Court, because a relief cannot go beyond the provincial boundary and affect any other province or Area or its people, as has already been held by this Court in a judgment reported as Hassan Shahjehan v. FPSC through Chairman and others (PLD 2017 Lahore 665) that:-

‘As a corollary, the relief granted or the writ issued by the High Court also remains within the territorial jurisdiction of this Court and can only benefit or affect a person within the territorial jurisdiction of the Court. The relief cannot go beyond the Provincial boundary and affect any other Province or Area or its people. So for example, if a federal law or federal notification is struck down by Lahore High Court, it is struck down for the Province of Punjab or in other

words the federal law or the federal notification is no more applicable to the Province of Punjab but otherwise remains valid for all the other Provinces or Area. Unless of course the Federation or the federal authority complying with the judgment of the Lahore High Court, make necessary amends or withdraw the law or the notification.'

5. In view of the above, it is concluded that the order impugned dated 27.07.2023 passed by the respondent No.1-Chairman Union Council No.116-EME, DHA-12, ADLG, Multan Road, Lahore has rightly been passed while construing law on the subject, which does not need any interference by this Court. Resultantly, with the above said observations, the constitutional petition in hand having no force and substance stands dismissed.

(Shahid Bilal Hassan)
Judge

Approved for reporting.

Judge

M.A.Hassan