

ORDER SHEET

Writ Petition No.84511 of 2023

Additional Sessions Judge,
Lahore etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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21.12.2023 Mr. A. W. Chaddha, Advocate for the petitioner.

The petitioner has invoked constitutional jurisdiction of this Court to challenge the orders dated 03.06.2022 and 31.10.2023 passed by the learned Judge Family Court, Lahore and the learned Additional Sessions Judge, Lahore respectively whereby her private complaint under section 6(5) of Muslim Family Laws Ordinance, 1961 ('Ordinance') was entertained to the extent of respondent Feroz Usmani and dismissed to the extent of remaining respondents and the criminal revision preferred there-against was dismissed.

2. The facts giving rise to the titled petition briefly are that the petitioner filed a complaint under section 6(5) of the Ordinance accusing respondent Feroz Usmani of contracting second marriage with respondent Aniqqa Azam during subsistence of marriage with her whereas respondents Younas Ahmad, Muhammad Bashir Ahmad and Muhammad Kashif were accused of being facilitators and respondents Hafiz Dilawar and the Secretary, Union Council were accused of facilitating the offence being Nikah reciter and registration of the Nikah. The Judge Family Court, Lahore after recording cursory evidence of the petitioner, summoned the accused Feroz Usmani and dismissed the complaint to the extent of remaining

respondents vide order dated 03.06.2022. Feeling aggrieved, the petitioner preferred criminal revision before the Additional Sessions Judge, Lahore which was dismissed vide order dated 31.10.2023 impugned herein.

3. While dismissing criminal revision of the petitioner, the Additional Sessions Judge, Lahore recorded following reasons: -

“3. Application of mind by the Magistrate before issuance of process means that Magistrate has to satisfy himself while going through the available record that trial of respondents is necessary and only then further proceedings are to be undertaken against the respondents then the Magistrate would issue process to summon the respondents. Courts cannot be expected to act like silent spectators, rather, precedents of the Honourable Superior Courts of Pakistan impel subordinate Courts to nip the evil in the bud. Mere institution of private complaint and recording of cursory evidence does not absolve complainant to bring on record the sufficient material justifying the summoning of record. No incriminating material is available on record against the respondents to summon them. Private complaint and the cursory statements do not support the version of complainant to the extent of involvement of respondents in the instant case. Impugned order is well-reasoned and unexceptionable.”

4. Learned counsel for the petitioner contends that the impugned orders are against the law and facts of the case. He maintains that sufficient evidence in the shape of second *Nikahnama* was available to proceed against the respondents/accused but the same has been ignored by both the Courts below. He further contends that no solid reason has been recorded in the impugned orders explaining refusal to summon the respondents-accused except Feroz Usmani.

5. Heard.

6. The complaint filed against any accused must state the facts disclosing existence of both the unlawful act and the criminal intent so that the Court may be satisfied regarding existence of every ingredient of the alleged offence. The Court is not required to casually accept the written complaint until it has satisfied itself that *prima*

facie the case has been made out against the persons who have been accused of the criminal offence. In order to arrive at just evaluation, the Court ordinarily examines the complainant and the witnesses as cursory evidence. The purpose behind that practice is to protect the public from false and frivolous complaints filed against them in criminal Courts.

7 The subject of polygamy is governed by the provisions of section 6 of the Ordinance. In order to properly adjudicate upon the plea taken by the petitioner, it would be advantageous to refer to the text of the relevant provisions of the aforementioned section which are reproduced herein below: -

“6. Polygamy. (1) No man, during the subsistence of an existing marriage, shall except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.

(2)

(3)

(4)

(5) Any man who contracts another marriage without the permission of the Arbitration Council shall,

(a) pay immediately the entire amount of the dower whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and

(b) on conviction upon complaint be punishable with the simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.”

From perusal of above provisions of law, it is manifest that according to sub-section (1) of section 6 *ibid*, no man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under the Ordinance whereas sub-section (5) of section 6 of the Act provides penalties for contracting another marriage making the man liable to pay

immediately the entire amount of the dower, whether prompt or deferred, due to existing wife or wives, if not so paid, recoverable as arrears of land revenue and on conviction be punishable with simple imprisonment which may extend to simple imprisonment of one year, or with fine which may extend to five thousand rupees, or with both. It is pertinent to note that section 6 *ibid* neither makes the registration of another marriage contracted without permission of the Arbitration Council an offence nor the Ordinance prescribes any *inchoate offence* in relation to polygamy such as attempt, solicitation or conspiracy. Section 6 of the Ordinance does not prescribe any punishment or penalty against anyone other than the husband who contracts another marriage without permission of the Arbitration Council concerned.

8. It is a cardinal principle of interpretation of criminal statutes that enactments prescribing an offence are to be construed strictly and the words used therein cannot be extended by construction. In the case of Mirza Shaukat Baig and others vs. Shahid Jamil and others (PLD 2005 Supreme Court 530), the Supreme Court of Pakistan quoted with approval the following passage of lord Halsbury from the English judgments reported as (1891) AC 107 and (1952) AC 189:

“It seems to me that, construing the statute by adding to it words which are neither found therein nor for which authority could be found in the language of the statute itself, is to sin against one of the most familiar rules of construction, and I am wholly unable to adopt the view that, where a statute is expressly said to codify the law, you are at liberty to go outside of the code so created, because before the existence of that code another law prevailed. In the construction of statute the duty of the Court is limited to interpret the words used by the legislature and it has no power to fill in any gaps disclosed. To do so would we do use of the function of the legislature”.

9. For being a special statute, in the absence of any specific provision in the Ordinance permitting

applicability of the Pakistan Penal Code, provisions such as section 109 of the PPC for the offence of abetment cannot be read into and made applicable to broaden scope of the offence prescribed under section 6(5) of the Ordinance. Reliance in this regard is placed on the cases of Ex-Lance Naik Mukarram Hussain and others v. Federal Government , Ministry of Defence through Chief of Army Staff and others (2017 SCMR 580) and Basharat Iqbal v. Nargis Rehana (1993 MLD 571).

10. The complaint in hand does not disclose commission of any offence, much less the offence prescribed under section 6(5) of the Ordinance allegedly committed by any of the respondents except Feroz Usmani who, being accused of contracting another marriage without permission of Arbitration Council, has been lawfully summoned by the Court of competent jurisdiction. Learned counsel of the petitioner has not been able to point out what offence, if any disclosed in the complaint filed by the petitioner, is *prima facie* made out against other respondents.

11. For the foregoing reasons, this Court does not find any illegality or jurisdictional error in the impugned orders passed by the Courts below warranting interference in exercise of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. This petition is accordingly dismissed in *limine* being devoid of any merit.

(RAHEEL KAMRAN)
JUDGE

APPROVED FOR REPORTING

JUDGE