

FORM No. HCJD/C-121
Order Sheet
IN THE LAHORE HIGH COURT
MULTAN BENCH, MULTAN
Judicial Department
W.P. No. 3022 of 2023

Muhammad Akhtar Shah. Vs. Judge Family Court, Kot Addu & others.

<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
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03.10.2024. Sheikh Jamshaid Hayat, Advocate for petitioner.
Mr. Ijaz Ahmad Gurmani, Advocate for respondents.

Instant constitutional petition impugns concurrent decisions, in terms whereof suit for jactitation of marriage, instituted by respondent No.3, was decreed by the Family Court and same was affirmed by the Appellate Court, consequently alleged Nikah between the petitioner and respondent No.3 was declared void for all intents and purposes.

2. Facts, essential for adjudication, are that petitioner alleged marriage with respondent No.3 and brought action for restitution of conjugal rights. Conversely, respondent No.3 sought declaration against alleged claim of marriage, who alleged that she was abducted and subjected to sign documents and made statements without freewill and affording independent decision-making choice. Trial court framed issues and recorded evidence which declared marriage invalid. Petitioner remained unsuccessful before the Appellate Court.

3. Learned counsel for the petitioner emphasized that respondent No.3 renegaded from her previous position/stand, who had filed various petitions and made statements, including statement under section 164 of

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Criminal Procedure Code 1898, acknowledging her status as lawfully wedded wife of the petitioner. Submits that Nikah Khawan appeared before the criminal court, in case FIR No. 203 dated 07.06.2020 under sections 365-B of Pakistan Penal Code 1860, who affirmed solemnization of *Sharai nikah* between petitioner and respondent No.3.

4. Conversely, learned counsel for respondent No.3 supported concurrent decisions, hereby impugned.

5. Heard. Record perused.

6. Evidence is examined threadbare. Conduct, relationship and execution of Nikah Nama was categorically denied by respondent No.3 in the plaint and as witness. Petitioner, who alleged existence of valid marriage, and sought decree of conjugal rights utterly failed to prove conduct of marriage, who was evasive regarding *sharai nikah* in the written statement, later pleaded conduct of *sharai nikah*, which obviously is an afterthought. Petitioner produced Nikah Nama Exh.D-2 but failed to prove execution, validity and lawfulness thereof. Even otherwise requirements of a valid Nikah in terms of Muslim Family Laws Ordinance, 1961 were not proved. Petitioner testified that Nikah was arranged and conducted in the office of the lawyer, where good 10-12 persons were sitting, none of which was produced as witness. Evidence of DW-2-Muhammad Arshad-did not inspire any confidence, who submitted affidavit – [Mark-B]- stating against marriage between petitioner and respondent No.3, but when confronted with it, he stated that he was under pressure. Muhammad Arshad was shown as representative of the bride, who admitted

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having acquaintance with the lady because she worked at the medical clinic of the petitioner – this substantiates allegation by respondent No.3 against petitioner that latter abducted her. Arshad's evidence had no weightage or value. No witnesses of Nikah Nama were produced. Advocate in whose chamber Nikah was allegedly solemnized was not produced. Assertion that respondent No.3 submitted petitions and appeared in courts, made statement before Magistrate, have had little value in the context of allegations levelled by respondent No.3 against the petitioner. Even otherwise voluntariness and truthfulness, essential ingredients of statement under section 164 of Criminal Procedure Code, 1898 were not proved. No lawyer was produced to prove that lady had signed petitions / affidavit and appeared in person before the court. It is not denied that respondent No.3 worked at Medical Clinic, run by the petitioner. Respondent No.3 appeared as PW-1, who was cross examined on the point of her affidavit and statements made but she categorically denied. In suit(s) for jactitation of marriage, where lady had disowned marriage and her statement, when she had denied having exercised free-will and was terrorized or put in awful fear of harm / injury and physical abuse, is critical. Even otherwise self-harming statements carry more authenticity, high evidentiary value and deserve more credibility and weightage, as compared to the evidence of the petitioner, read in the context of the apparent motive, intending to avoid incriminating charges in criminal case – which manifest tendency of misrepresenting the facts.

Insistence of learned counsel on the statement of Nikah Khawan in criminal case has no evidentiary

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value, which piece of evidence is otherwise inadmissible, for failing to undergo test of confrontation. Nikah Khawan/Nikah Registrar appeared as PW.6, who was never confronted with alleged statement before criminal court, alleging solemnizing of *sharai nikah*. Nikah Khawan otherwise testified against petitioner. In the circumstances, statement, not confronted to the witness, had no evidentiary value, besides being otherwise attracting inadmissibility. Case-law cited by counsel for the petitioner, reported as “MST. FARHAT JABEEN. VS. MUHAMMAD SAFDAR and others.” (2011 SCMR 1073) is distinguishable on facts. Conversely, ratio of the decision in the case of “MATLOOB HUSSAIN. VS.MST. SHAHIDA and 2 others.” (PLD 2006 SC 489) is more proximate, illustrative and supports the case of respondent No.3.

7. No interference warranted to disturb concurrent findings and conclusions under constitutional jurisdiction, in absence of any illegality and material defect.

8. Petition is meritless and same is, hereby, dismissed.

(Asim Hafeez)
Judge

M.R.Shad

APPROVED FOR REPORTING

Judge