

IN THE SUPREME COURT OF PAKISTAN  
( Appellate Jurisdiction )

**Present:**

Justice Jamal Khan Mandokhail  
Justice Syed Hasan Azhar Rizvi  
Justice Naeem Akhtar Afghan

**CRIMINAL PETITION NO.128 OF 2024**

(On appeal against the order dated 04.12.2023 passed by the  
Islamabad High Court, Islamabad, in Criminal Revision No.163/2023)

Mst. Uzma Mukhtar	...	...	Petitioner
<b>Versus</b>			
The State thr. Deputy Attorney General and another	...	...	Respondent(s)
For the petitioner	:	Agha Muhammad Ali Khan, ASC Syed Rifaqat Hussain Shah, AOR	
For the State	:	Mr. Irfan Zia, Addl. PG Pb.	
Date of hearing	:	24.05.2024	

**JUDGMENT**

**Naeem Akhtar Afghan, J.** On the basis of application dated 03.08.2016 (Exh.PE) submitted by the petitioner (Mst. Uzma Mukhtar) to Federal Investigation Agency (**FIA**), FIR No.45/2016 was registered on 18.08.2016 with Police Station (**PS**) FIA, Cyber Crime Circle, Islamabad, u/s 36 and 37 of Electronic Transactions Ordinance (**ETO**) 2002 r/w section 500, 506 and 509 of Pakistan Penal Code (**PPC**) against respondent No.2 (accused Muhammad Zain-ul-Abideen Sagheer).

2. In her application dated 03.08.2016 submitted to FIA, the petitioner stated that she had a pure relationship with respondent No.2 to turn into a legitimate one; she has no idea as to how respondent No.2 took her personal pictures without her consent; respondent No.2 has been harassing, threatening and blackmailing her for the last one year by sending her personal pictures on her cell phone through *whatsapp*; so far she has given an amount of Rs.2,00,000/- to respondent No.2 for keeping her dignity and honour intact; whenever she shows any kind of resistance,

respondent No.2 threatens that he will show her absurd/personal picture to everyone through social media.

3. After registration of FIR investigation was conducted by FIA and interim, supplementary as well as final reports u/s 173 Cr.P.C. were submitted on different dates. The trial proceedings commenced before learned Judge, Prevention of Electronic Crimes Court, Islamabad, (**PECC**).

4. After reading over charge u/s 36 and 37 ETO, 2002 r/w section 500, 506 and 509 PPC to respondent No.2, statements of 09 prosecution witnesses were recorded at the trial. The statement of respondent No.2 has also been recorded u/s 342 Cr.P.C. on 02.11.2022.

5. On the basis of statement made by Assistant Director (Legal) FIA, about non attraction of section 36 and 37 of ETO 2002, the learned Judge, PECC deleted section 36 and 37 of ETO 2002 and transferred the case to the Court of competent jurisdiction vide order dated 17.07.2023

6. The above order was challenged by the petitioner before Islamabad High Court by filing Criminal Revision No.121/2023 which was accepted vide order dated 04.09.2023. After setting aside the order dated 17.07.2023, Islamabad High Court directed the learned Judge PECC to decide the matter afresh by providing proper opportunity of hearing to the complainant and accused and to pass a speaking order with reasonings for non-attraction of section 36 and 37 of ETO.

7. In the meanwhile, petitioner submitted an application u/s 227 Cr.P.C. for altering the charge and to read over charge to respondent No.2 u/s 20, 21 and 24 of Prevention of Electronic Crimes Act (**PECA**) 2016, instead of section 36 and 37 ETO 2002 r/w section 500, 506 and 509 PPC.

8. After hearing learned counsel for the parties and learned Assistant Director (Legal), FIA, the learned Judge PECC concluded vide order dated 23.09.2023 with detailed reasonings that section 36 and 37 of ETO 2002 are not attracted to the facts of the instant case; the proceedings cannot be continued u/s 54 of PECA 2016 as the provisions of PECA 2016 are also not attracted in the instant case for the reason that at the time of commission of alleged offences i.e. one year prior to the application dated

03.08.2016 submitted by the petitioner to FIA for registration of FIR, PECA 2016 was not in field as it came into force on 18.08.2016.

In view of the above conclusions, after deletion of section 36 and 37 of ETO 2002, learned Judge PECC ordered to place the case file before learned Sessions Judge (West) Islamabad for its further entrustment to the court of competent jurisdiction.

9. The petitioner challenged the order dated 23.09.2023 of learned Judge PECC before Islamabad High Court by filing Criminal Revision No.163/2023 which has been dismissed in limine vide order dated 04.12.2023. Feeling aggrieved, the petitioner has filed the instant Criminal Petition for Leave to Appeal.

10. After hearing learned counsel for the petitioner and learned APG, we have perused the available record which reveals that assent of the President of Pakistan was received on 18.08.2016 for promulgation of PECA 2016 and notification dated 19.08.2016 was published in the Gazette of Pakistan on 22.08.2016. The offences mentioned by the petitioner in her application dated 03.08.2016 (Exb.PE) were allegedly committed by respondent No.2 since the last year i.e. much prior to promulgation of PECA 2016.

While providing protection against retrospective punishment, Article 12 of the Constitution of the Islamic Republic of Pakistan, 1973 lays down that no law shall authorize the punishment of a person for an act or omission that was not punishable by law at the time of the act or omission.

11. In view of the above it is concluded that both the Courts below have not committed any illegality in rejecting the application of the petitioner for altering the charge/reading over the charge to respondent No.2 u/s 20, 21 and 24 of PECA 2016.

12. Sections 36 and 37 of ETO 2002 read as follows:

*"36. **Violation of privacy of information:-** Any person who gains or attempts to gain access to any information system with or without intent to acquire the information contained therein or to gain knowledge of such information, whether or not he is aware of the nature or contents of such information, when he is not authorised to gain access, as aforesaid, shall be guilty of an offence under this Ordinance punishable with imprisonment of either description of a term not exceeding seven years, or fine which may extend to one million rupees, or with both.*

37. **Damage to information system etc:-** (1) any person who does or attempts to do any act with intent to alter, modify, delete, remove, generate, transmit or store any information through or in any information system knowingly that he is not authorised to do any of the foregoing, shall be guilty of any offence under this Ordinance.

(2) Any person who does or attempts to do any act with intent to impair the operation of, or prevent or hinder access to any information contained in any information system, knowingly that he is not authorised to do any of the foregoing, shall be guilty of an offence under this Ordinance.

(3) The offences under sub-section (1) and (2) of this section will be punishable with either description of a term not exceeding seven years or fine which may extend to one million rupees or with both"

The allegations levelled by the petitioner against respondent No.2 in her application dated 03-08-2016 (Exh.PE) and the incriminating material collected during investigation do not attract section 36 and 37 of ETO 2002 as respondent No.2 has neither attempted nor gained access to any information system with or without intent to acquire the information contained therein; he has neither attempted nor done any act with intent to alter, modify, delete, remove, generate, transmit, or store any information through or in any information system being not authorised to do so; he has neither attempted nor done any act to impair the operation of any information system; he has neither attempted nor done any act to prevent or hinder access to any information contained in any information system.

13. In view of the above it is concluded that both the Courts below have not committed any illegality in concluding that section 36 and 37 of ETO 2002 are not attracted to the facts and circumstances of the instant case.

The above are the reasons of our short order dated 24.05.2024 whereby while refusing leave to appeal, the petition was dismissed.

Judge

Judge

Judge

Islamabad:  
11.06.2024  
(M. Saeed/Zohaib Afzal, LC

NOT APPROVED FOR REPORTING.

