

IN THE FEDERAL SHARIAT COURT

(APPELLATE JURISDICTION)

PRESENT

JUSTICE IQBAL HAMEEDUR RAHMAN, CHIEF JUSTICE

CRIMINAL REVISION NO.01-L OF 2024

Sofia Aslam daughter of Muhammad Aslam, Caste Rajput,
Resident of Waris Colony, Street No.3, Mehboob Town, Okara.

...Petitioner.

VERSUS

1. The State

2. Muhammad Boota son of Shafiq Ahmad, Caste Rajput,
Resident of Chak No.53/2-L, Mehboob Town, Main Street near Madinatul-Ilm School, Okara.

...Respondents.

Counsel for the Petitioner	:	Mr. Nayyer Iqbal Lakhvi, Advocate
Counsel for the Respondent No.2	:	Sardar Nadeem Abbas Dogar,
Counsel for the State	:	Ch. Muhammad Mustafa, Deputy Prosecutor General, Punjab.
Date of Impugned Order	:	04.06.2024
Date of Institution	:	03.07.2024
Dates of Hearing	:	14.05.2025
Date of Judgment	:	14.05.2025

JUDGMENT

IQBAL HAMEEDUR RAHMAN-CJ.The instant Criminal Revision

has been directed against the order dated 4th June of 2024 passed in
complaint of *Qazf* bearing case No.10 of 2024 filed under Section 203-B

of the Code of Criminal Procedure, 1898 (Act V of 1898) (Hereinafter called the Code), whereby the learned Additional Sessions Judge, Okara dismissed the complaint of *Qazfa* after recording cursory statement of the complainant (Petitioner) and her witnesses.

2. By way of present Criminal Revision, the petitioner calls in question the legality and validity of the order impugned seeking its annulment.

3. The facts unfolded by the petitioner in her complaint of *Qazfa* are that petitioner was tied in marital knot with the Respondent No.2 on 26.02.2023 and performed her matrimonial obligations with the Respondent No.2 (Muhammad Boota) at his home. The petitioner claimed that she was ejected from the house on the hearing news of birth of prospective baby girl. Out of the said wedlock, the petitioner gave birth to a baby Anaya on 16.01.2024. The petitioner demanded delivery expenses and maintenance of her minor from the Respondent No.2 who refused to give the same, instead on 30.01.2024 filed a suit for declaration in the court of Civil Judge, Okara, claiming therein that he came to know on 16.01.2024 that the petitioner has given birth to a child whom he disowned and claimed that said baby

was result of illicit relations of the petitioner with the male strangers. Thus, leveling allegation of zina/illicit relations with male strangers, prompted the petitioner to file complaint of *Qazfin* the learned trial Court. After recording cursory statements of the petitioner as well as her witnesses, the learned trial Court dismissed her complaint of *Qazf* vide impugned order dated 04.06.2024, which is reproduced as under:-

“It has been observed that the aforesaid suit of the respondent/accused is pending adjudication before the learned Civil Court. There is no findings of the learned Civil Court regarding the allegation of Zina or illicit relationship of the complainant with strangers. Similarly, respondent/accused had not filed any complaint against the complainant lady with the allegation of Zina u/s 203-A of the Cr.P.C. The complainant lady was not acquitted in any such complaint as the same was never filed by accused/respondent. The mere bald allegation of *Qazf* against the respondent does not justify his summoning in the instant complaint in the absence of any concrete finding of the learned Civil Court with same subject matter in the pending litigation between the parties. It seems that the instant complaint has been filed by the complainant lady as a counter blast to settle the score with the respondent/proposed accused due to his suit against her. The case laws produced on behalf of complainant are most respectfully distinguishable from the facts of the case in hand. Therefore, the instant complaint is hereby dismissed for the above reasons. The file be consigned to record room after its due completion.”

4. The learned counsel for the petitioner contended that pendency

of civil suit cannot be made hurdle in summoning the Respondent No.2 in private complaint of *Qazfas* civil Court is not competent to give finding regarding allegation of zina/illicit relationship, so any finding of civil court in this regard is useless and unwarranted in the eye of law.

Continuing the arguments, it was submitted that filing any complaint with the allegation of *Zina* under section 203-A of the Code and acquittal therefrom is not a pre-requisite for filing a complaint under *Qazf* Ordinance. As there have been many cases in which accused persons were convicted and sentenced by the trial Courts and the convictions were upheld by the Hon'ble Federal Shariat Court without filing complaint under section 203-A of the Code.

Making reference to the suit for maintenance by the petitioner in the Family Court, Okara, it was submitted that the learned Family Judge in his order has observed that admittedly minor baby girl is offspring of Respondent No.2 and ordered to provide maintenance to the minor and the said order has not been assailed by the Respondent No.2.

Concluding his arguments, learned counsel for the petitioner

submitted that the impugned order of the learned trial court is against the law and facts of the case, hence the same is liable to be set-aside.

5. Contrarily, learned counsel appearing on behalf of Respondent No.2 contended that the Respondent No.2 has not filed any complaint of Zina under Section 203-A of the Code against the petitioner, hence her complaint of *Qazfis* not maintainable.

Continuing the arguments, it was submitted that the Respondent No.2 has withdrawn suit for declaration filed in the court of Civil Judge, Okara against the petitioner, hence no case of *Qazfis* made out against the Respondent No.2. The learned counsel also contended that there is no finding of the Civil Court on the allegation of Zina by the Respondent No.2.

Learned counsel for the Respondent No.2 further submitted that the learned trial court has rightly dismissed the complaint of *Qazf* by the petitioner and prayed for dismissal of the instant Criminal Revision Petition.

6. On the other hand, learned Deputy Prosecutor General, Punjab candidly conceded that *prima facie* the allegations of *zina* against the petitioner has been levelled by the Respondent No.2

which could only be decided after summoning the Respondent No.2 and proceeding against him by the learned trial Court. The learned State Counsel frankly did not support the order impugned.

7. Arguments heard. Record perused with the able assistance of learned counsel for the parties as well as learned Deputy Prosecutor General, Punjab.

8. A perusal of the record shows that Respondent No.2 filed a suit for declaration, in which he had stated in categorical terms as under:

۱۔ یہ کہ مدعی پتہ بالا کا رہائشی ہے۔ مدعی کی شادی ہمراہ مدعا علیہا مورخہ 26.02.2023 کو سر انجام پائی چونکہ والدین مدعا علیہا انتہائی غریب تھے جس کی وجہ سے بوقت شادی مدعا علیہا کو اسکے نے کوئی سامان جہیز بھی نہ دیا تھا۔ شادی کے اگلے روز مدعی کے علم میں آیا کہ مدعا علیہا کے غیر مردوں سے ناجائز مراسم ہیں جس وجہ ہی مدعا علیہا شادی کی رات بھی حقوق زوجیت تک ادا نہ کئے اور دوسرے روز رات کے اندھیرے میں مدعا علیہا دو بریف کیس کپڑوں کے طلائی زیورات بوزنی ۳ تولے جو کہ والدہ کے گھر میں پڑے تھے۔ اور نقدی رقم مبلغ 80000\ دیا سرقہ کر کے مدعی دعویٰ کی غیر موجودگی میں گھر سے چلی گئی اور دوبارہ کبھی مدعی دعویٰ کے گھر آباد نہ ہوئی اور نہ ہی حقوق زوجیت ادا کئے جو مدعی برحلف قرآن کہنے کو بھی تیار ہے۔ تاہم مدعی دعویٰ کے مورخہ 16.01.2024 کو علم میں آیا کہ مدعا علیہا نے ایک بچے کو جنم دیا ہے۔ جو مذکورہ بچہ قطعاً مدعی دعویٰ کے نطفہ سے نہ ہے۔ یہ کہ مدعا علیہا کے غیر مردوں سے ناجائز تعلقات کا نتیجہ ہے۔

۲۔ یہ کہ مدعی دعویٰ کے بچے کی پیدائش کا علم میں آنے پر مدعی دعویٰ منجانب مدعا علیہا نوٹس طلاق ثلاثہ بھجوا چکا ہے اس طرح مدعا علیہا اور اسکا بچے کا مدعی دعویٰ سے کسی بھی قسم کا کوئی تعلق واسطہ نہ ہے۔ جو مدعی دعویٰ نے منسوب کر کے برتہ رجسٹر یا دیگر دستاویزات میں مدعی دعویٰ کا بطور والد نام استعمال و تحریر کرنا حقوق مدعی پر غیر موثر کلعدم

باطل دن ابتدا گردانتے ہوئے یا زد ممنوع رہے جو دو یوم قبل سے صاف انکاری ہے۔ لہذا ضرورت دعویٰ ہذا لاحق ہوئی۔"

9. While arguing the case, learned counsel for the petitioner also submitted photo copies of certified copies of the statement of Respondent No.2 while appearing as PW.1 in his suit for declaration in the Civil Court, Okara, wherein the Respondent No.2 in his examination-in-chief stated as under:

"برحلف بیان کیا کہ میری شادی ہمرہ مدعا علیہا سے مورخہ 26.02.2023 کو ہوئی تھی۔ والدین مدعا علیہا انتہائی غریب تھے۔ جس وجہ مدعا علیہا کو کوئی سامان جہیز وغیرہ نہ دیا گیا تھا۔ مدعا علیہا شادی کی پہلی رات میرے قریب نہ آئی تھی۔ دوسرے دن شام ویلے 2 بریف کیس کیڑوں کے، 3 تولہ میری والدہ کا زیور اور -/80000 روپے لیکر چلی گئی۔ چوری چلی گئی۔ دوبارہ ہم 2/3 دفعہ لینے گئے تو اس کے غیر تعلقات کا پتہ چلا۔ مدعا علیہا میرے گھر آباد نہیں ہوئی۔ مورخہ 16.01.2024 مجھے پتہ چلا کہ میرے گھر بچی یا بچہ پیدا ہوا ہے۔ یہ مجھے کسی نے بتایا تھا۔ بچہ میرا نہیں ہے۔ میں حلف اٹھانے کو تیار ہوں۔ میرے نام سے بچے کا برتھ سرٹیفکیٹ نہ بنایا جائے۔ میرا دعویٰ سچا ہے۔ ڈگری فرما یا جائے۔"

Similarly, while during his cross-examination, he stated as under:

"مجھے شادی سے پہلے ہی اس بات کا پتہ تھا کہ مدعا علیہا کے غیر مردوں کیساتھ ناجائز تعلقات ہیں۔ یہ درست ہے کہ میں اور مدعا علیہا دونوں محبوب ٹاون اوکاڑہ کے رہائشی ہیں۔ مجھے مدعا علیہا کے ناجائز تعلقات کا شادی بہت پہلے کا پتہ تھا۔"

10. After filing the suit for declaration by Respondent No.2, the petitioner was left with no option but to vindicate her honor by filing a complaint of *Qazf*. Her cursory statement in this regard was duly recorded by the learned Additional Sessions Judge, Okara alongwith cursory statements of her witnesses, stating thereinspecifically that Muhammad Boota/Respondent No.2 had levelled allegations of Zina against her. In support of her cursory statement, she tendered a copy of the suit for declaration filled by the Respondent No.2 (Exh.PA), in which he had levelled allegation of Zina against her as quoted above in the preceding paras. In light of the cursory statement made by the petitioner as well as her witnesses, the same reflects that prima facie the ingredients of the offence under section 3 of the Qazf Ordinance.

11. According to cursory statements and suit for declaration (Exh.PA), it appears that Respondent No.2 has disowned the child born. The same comes within the circumferences of the Qazf Ordinance mentioned in the second explanation to section 5 of Qazf Ordinance, wherein it has been specifically mentioned as under:-

“5.Qazf liable to hadd.....

Explanation 1.....

Explanation 2. --If a person makes in respect of another person the imputation that such other person is an illegitimate child, or refuses to recognize such person to be a legitimate child, he shall be deemed to have committed *qazf liable to hadd* in respect of the mother of that person. “

12. It is settled law that after recording cursory statement, the learned trial court in case of Qazf takes into consideration the material substance of the statement. Where the contents of allegation of Zina/adultery attributed to the complainant by the respondent is sufficient ground to summon the respondent, no other considerations are to be taken at this stage.

13. In the above circumstances, the petitioner prima facie has made out a case of Qazf against the Respondent No.2 as no deeper appreciation is required at the initial stage. The learned trial Court was required in the circumstances to summon the Respondent No.2 as required by law. The extraneous consideration taken by the learned Trial Court in the impugned order is not sustainable.

14. For the reasons given in the preceding paras, the instant Criminal Revision is accepted. The impugned order dated 04.06.2024 passed by the learned trial Court is set aside and the case is remitted

to learned trial court with direction to summon the Respondent No.2 and proceed with in accordance with law.

IQBAL HAMEEDUR RAHMAN
CHIEF JUSTICE

Announced in open Court
Dated 14th May, 2025
Lahore.
*Ajmal/**

Approved for reporting.

Chief Justice