IN THE FEDERAL SHARIAT COURT

(APPELLATE JURISDICTION)

PRESENT

JUSTICE IQBAL HAMEEDUR RAHMAN, CHIEF JUSTICE

CRIMINAL REVISON NO.01-L OF 2025

Muhammad Ramzan son of Mukhtar Ahmed,
Caste Dhudhi, resident of Chak No.150/E.B.,
Tehsil Sadiq Abad, District Raheem Yar Khan ……. Petitioner

VERSUS

1. The State

2. Rukhsana Bibi daughter of Abdul Razzaq,
   Dhudhi by caste, resident of Khyber Dairy Farm,
   DakhliChak No.13/4-L, Tehsil & District
   Okara

…… Respondents

Counsel for the Petitioner	:	Mr. Muhammad Imran Ashfaq Chaudhary, Advocate
Date of Impugned Order	:	30.01.2025
Date of Institution	:	18.02.2025
Dates of Hearing	:	12.05.2025
Date of Order	:	15.05.2025

ORDER

IQBAL HAMEEDUR RAHMAN–CJ. The Petitioner through instant Criminal Revision has called in question the order dated 30.01.2025,whereby the learned Additional Sessions Judge Okara, dismissed application of the petitioner for framing amended charge

against the respondent under section 14 of the Offence of *Qazf* (Enforcement of Hudood) Ordinance, 1979 (hereinafter called the *Qazf*Ordinance).

2. The facts divulged from the caseare that the Respondent No.2 Rukhsana Bibi was married with the petitioner on 09.09.2012. Out of this wedlock, one baby namely Mawara was born on 30.07.2013. The Respondent No.2, after having been beaten by the petitioner, was driven out of home on 15.01.2013.Later on, she filed suit for maintenance against the petitioner on 05.05.2014. In response to her suit, the petitioner filed divorced deed dated 23.09.2013 and also in para No.4 of his written statement disowned baby Mawara, who is alleged to be result of adultery.Thereafter, the petitionerfiled an application for conducting DNA test of baby Mawara to ascertain her paternity before learned Family Court, Okara who dismissed the said applicationvide order dated 14.02.2015. The said order was assailed through Writ Petition No.18320 of 2015 before learned Lahore High Court, Lahore which finding no infirmity, legal or factual dismissed the said Writ Petitionvide order 21.09.2015. In the above circumstances, Respondent No.2 was constrained to filecomplaint

under Section 3 of the *Qazf* Ordinanceagainst the petitioner Muhammad Ramzan in the Court of Sessions Judge, Okara, wherein charge was framedunder Section 7 of the Offence of *Qazf* Ordinanceread with Section 496-C PPC on 17.06.2016 and thereafter, prosecution evidence was completed on 23.04.2018 and the matter was adjourned for statement of accused under Section 342 of the Code of Criminal Procedure, 1898 (hereinafter called the Code) for 10.05.2018. However, on 10.05.2018, the accused filed an application under Section 265-K of the Code but the same application was dismissed on 19.05.2018 by the learned Additional Sessions Judge, Okara. The petitioner assailed order dated 19.05.2018 before Hon'ble Lahore High Court, Lahore but the same was also dismissed vide order dated 06.08.2018 passed in Criminal Revision No.217910 of 2018. Thereafter, petitioner filed application for amending charge, which was dismissed by learned trial Court,the learned trial Court while passing the impugned order dated 30.01.2025 had mentioned that the petitioner had earlier also raised the same subject matter before the learned trial Court as well as before the Learned Lahore High Court, Lahore which had also been dismissed by the learned

trial court and thereafter by the learned Lahore High Court, Lahore in Criminal Revision Petition No. 217910 of 2018observing as under:-

> "It has been observed that the petitioner/accused has moved an application under section 265-K of the Code of Criminal Procedure, 1898, on the ground that as he was husband of Respondent No.2, the complainant hence penal provisions of *Qazf* or fornication punishable under Section 496-C do not apply to his case and proceedings of 'Lian' are to be conducted. The perusal of examination in chief of Mst. Rukhsana Bibi respondent recorded as PW.1 transpires that on 14.02.2015 Muhammad Ramzan, the petitioner joined the proceedings of a family suit before the learned Judge Family court, Okara, and produced copy of divorce deed dated 23.09.2013 and got recorded his statement to the effect that he had already divorced her on 23.09.2013 which transpires that at the time of accusation that certainly was leveled after 05.05.2014 when the civil suit was instituted by Respondent No.2, the petitioner had already divorced Respondent No.2. Being so, as per petitioner's own stance taken by him before the learned Family Court he was no more the husband of Mst. Rukhsana Bibi (PW.1), Respondent No.2 after 23.09.2013. Even otherwise, the prosecution evidence stands recorded completely and the case is fixed for recording statement of accused under section 342 of the Code of Criminal Procedure, 1898. So far as the subsequent findings of the learned Judge Family Court regarding dissolution of marriage is concerned, the learned trial court can take notice of the same if the petitioner brings any evidence on record in this regard. For mentioned above, this Court is of the opinion that the order under challenge does not suffer from any illegality or impropriety requiring interference by this Court. Hence, this criminal revision being bereft of any merit is dismissed *inlimine*."

Learned trial Court in the light of order of Lahore High Court, Lahore passed in Criminal Revision Petition, dismissed the

application of the petitioner through the impugned order, as under:

> "From the perusal of order dated 06.06.2018 passed by the Hon'ble Lahore High Court, Lahore, it reveals that the present version of applicant has already been touched upon so, there is no reason to reopen the same question from its beginning. Moreover, the evidence of prosecution has been completed and this court has ample discretion to alter or amend the charge at any stage even at the time of final judgment, so, this aspect is to be seen at the time of final arguments.
>
> For the foregoing reasons, this application is devoid of force is hereby dismissed."

The petitioner feels aggrieved by the impugned order.Hence,this Criminal Revision.

3. Learned counsel for the petitioner contended that the learned trial Court has failed to consider that the marriage between the parties is still intactand the petitioner was husband of the Respondent No.2 till the charge was framed on 17.06.2016,hence, no divorce has taken place.

Continuing the argument, it was submitted that no document of divorce regarding 'divorce certificate' or 'divorce deed' is available on record to show that divorce had taken place between the parties and the alleged divorce deed is a copy produced by Respondent No.2is not owned by herself, therefore, in view of decision of the

Family Court there is no worth of divorce deed.

Summing up the argument, it was submitted that the impugned order is illegal, mechanical, unwarranted and nullity in the eyes of law which suffers from irregularity and is liable to be set-aside.

4. Arguments heard. Record perused.

5. Perusal of record transpires that petitioner, in response to suit for maintenance instituted by Respondent No.2 in the Family Court, Okara, filed written statement wherein he categorically disowned baby Mawara who was alleged to be an illegitimate childof Respondent No.2. The petitioner in para No.4 of his written statement stated as under:

> "4یہ کہ مدعا علیہ مدعیہ نمبر 2 ماورا کو اپنی دختر تسلیم ہی نہ کرتا ہے اور وہ اس بارے میں مدعیہ نمبر 2 کی کسی بھی قسم کی کفالت کا پابند نہ ہے لہذا دعویٰ قابل اخراج ہے۔"

The petitioner also claimed that the marriage between the petitioner and Respondent No.2 had never consummated and denied her maintenance. In order to disprove his relation with said baby Mawara, the petitioner also filed application for conducting D.N.A. test and in the Family Court, Okara which was dismissed on

14.02.2015. The said order also reflects that the petitioner had also delivered the said copy of divorce deeddated 23.09.2013 to the Respondent No.2. Thereafter, in his statement before the Family Court the petitioner again in categorical terms stated as under:-

> "14.02.2015 مدعا علیہ محمد رمضان اصالتاً برحلف
> بیان کیا کہ میں نے مدعلیہ کو بتاریخ 23.09.2013 کو طلاق
> ثلاثہ دے دی ہے۔ میرا مدعلیہ سےاب کوئی رشتہ نہ ہے۔
> سنکر درست تسلیم کیا۔
> مدعا علیہنشان انگوٹھا (محمد رمضان)۔"

Therefore,the contention of the learned counsel regardingexistence of marriage between the petitioner and Respondent No.2 does not find any support from the record. Thus, it is evident from the record that the petitioner/husband executed a written divorce deed dated 23.09.2013, clearly pronouncing *Talaq* to the respondent, Mst. Rukhsana Bibi leaving no ambiguity regarding his intent to dissolve the marriage. This pronouncement was later reaffirmed before the Family Court on 14.02.2015,where the petitioner recorded his statement on oath, explicitly declaring that Mst. Rukhsana Bibi was no longer his wife, consistent with the contents of the divorce deed. His sworn affirmation before the Family Court solidified the effective date of dissolution of matrimonial relationship.

The divorce deed dated 23.09.2013, endorsed by the petitioner, remains valid and effective from that date.

6. It is a well-established principle in Islamic law and Pakistani jurisprudence that when a divorce is pronounced in clear, unambiguous terms and documented in writing, it becomes effective from the date of its execution. It has further been emphasized that a written divorce deed with a specific date, validated under oath, establishes that date as the effective date of divorce.

7. In the circumstances, Section 14 of the *Qazf* Ordinance concerning *Lian*will not be applicable to the present case, as the marital relationship had already been dissolved long before the filing of the application, which appears to have been made solely to inflict mental agony and distress upon the Respondent No.2. This Court, while deciding Criminal Revision No.11/I of 1998 (Mst. Asia Khatoon vs. Muhammad SafdarSatti, etc.)on 11.02.1999 categorically held that:

> "I have given anxious consideration to the respective contentions raised on behalf of the parties. The contention raised by the learned counsel for the petitioner has force. A bare perusal of Section 14 would show that the marriage has to subsist and the relation between the parties as husband and wife existing if the proceedings under the said Section 14 for lian have to be

> ordered. It would also be seen that sub section 2 of section 14 provides that if the procedure prescribed by sub section (I) is complied with the court has to pass an order dissolving the marriage between the husband and wife and therefore it strengthens the position that the relationship between the parties as husband and wife should be subsisting if the proceedings are to be taken thereunder. The marriage having been dissolved already long ago there could be no occasion for taking proceedings under section 14 of the offence of Qazaf (Enforcement of Hudood) Ordinance, 1979. The order passed by the learned trial court in the attendant circumstances to say the least was wholly misconceived and highly uncalled for."

This view was upheld by the Shariat Appellate Bench of the Supreme Court in case of "MUHAMMAD SAFDAR SATTI and another vs. Mst. AASIA KHATOON and 2 others" reported in 2005 SCMR 507, where it was observed:

> "Learned Federal Shariat Court in the impugned judgment has rightly observed that marriage between appellant Muhammad SafdarSatti and respondent No.1 Mst. AasiaKhatoon has already been dissolved as such taking proceedings under Section 14 of the Ordinance would not be appropriate."

8. The expression "Lian" hasbeen defined in Section 14 of the *Qazf* Ordinance, which pertains to the accusation of *zina* made by a husband against his wife before a court of law. This provision outlines the procedure wherein the husband takes an oath before the court, which, if denied by the wife, leads to the dissolution of the marriage

through a judicial decree. Since Section 14 is procedural in nature, it cannot form the basis for framing a charge against an accused person. It is well-established principle of law that courts frame charges under those provisions of law that prescribe punishments, not under sections that merely lay down procedural guidelines.

The complaint lodged by Respondent No. 2 under Sections 3 and 7 of the *Qazf* Ordinance, the learned trial court has rightly framed the charge under Section 7 of the *Qazf* Ordinance. Therefore, the contention raised by the learned counsel for the petitioner regarding the applicability of Section 14 of the *Qazf* Ordinance is misconceived and devoid of merit.

9. In light of the above discussion, prayer of petitioner for framing the charge under Section 14 of the *Qazf* Ordinance is entirely baseless since the marital relationship had already been terminated well before the filing of the application. Therefore, the instant Criminal Revision Petition has no merits and the same is dismissed *in limine*.

10. Since the main Criminal Revision has been dismissed *in limine*, therefore, the Criminal Miscellaneous Application No.01/L of 2025 having become infructuous is also dismissed.

IQBAL HAMEEDUR RAHMAN
CHIEF JUSTICE

Announced in open Court
Dated 15th May, 2025
Lahore.
*Ajmal/**

Approved for reporting.

Chief Justice