

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE DR. FIDA MUHAMMAD KHAN

CRIMINAL REVISION NO.03/I OF 2016

Muhammad Riaz Cheema son of Nawab Din,
Presently residing at Cheema House St. No.03,
Shah Khalid Colony, Chaklala Rawalpindi

..... Petitioner

Versus

1. The State
2. Muhammad Akbar son of Fazal Din, resident of Chak Sathwani, P.O. Dhamali Tehsil Kallar Sayedan, District Rawalpindi

.... Respondents

Counsel for petitioner Mr. Zeeshan Riaz Cheema,
Advocate

Counsel for respondent Mr. Talat Mehmood Zaidi,
Advocate

Counsel for State Ch. Muhammad Sarwar Sidhu,
Additional Prosecutor
General, Punjab

Private complaint No.21, dated 09.05.2016

Date of order of trial court 30.07.2016

Date of Institution of appeal 29.10.2016

Date of hearing 22.05.2017

Date of decision 02.06.2017

JUDGMENT

DR. FIDA MUHAMMAD KHAN, Judge.- Through this petition, Muhammad Riaz Cheema, hereinafter referred to as the petitioner, has challenged the order dated 30.07.2016 passed by learned Additional Sessions Judge, Rawalpindi, whereby he has been summoned by the learned trial court in a private complaint filed by the respondent Muhammad Akbar alias Aku.

2. Briefly stated, the respondent Muhammad Akbar alias Aku was challaned under section 376 PPC, in case FIR. No. 159 dated 26.06.2009, lodged at Police Station Kalar Syedan, District Rawalpindi. The allegation against him was that on 04.06.2009, he committed zina with Mst. Zohra Khanam who had gone out to ease herself and the hue and cry raised by her had attracted Surayya Khanam who rushed towards her and saw the respondent Muhammad Akbar alias Aku running after commission of zina with Mst. Zohra Khanam. She disclosed the occurrence to the people of village but since nobody was ready to help her, she narrated the same to the complainant Syed

Manzoor Hussain Shah and he got registered the FIR and the petitioner conducted necessary investigation as required.

3. It may be mentioned that in the meanwhile a report regarding the same incident was published in News paper whereupon a Suo Moto notice was taken by the Honourable Supreme Court of Pakistan and as per Order of the Honourable Chief Justice, the matter was reinvestigated and the above allegations were found false. So far as the FIR dated 26.06.2009 was concerned, the respondent Muhammad Akbar alias Aku faced trial and, on its conclusion, the learned Additional Sessions Judge, Rawalpindi, exercising his powers under Section 265-K Cr.P.C. acquitted him of the charge vide judgment dated 25.02.2010.

4. In the meanwhile, on 02.10.2009, Ahmed Hassan Chohan, SSP registered FIR against the petitioner and several other police officials under section 155-D of Police Order 2002. However, vide judgment dated 27.05.2014 passed by the Judicial Magistrate, Rawalpindi, the petitioner was acquitted alongwith the others

nominated as accused therein. The respondent Muhammad Akbar alias Aku challenged their acquittal in appeal before the Honourable High Court, but his appeal was dismissed vide Order dated 26.01.2016.

5. The respondent/complainant, thereafter filed a complaint under section 7 of Offence of Qazf (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as the said Ordinance) against the petitioner and several others on 09.05.2016. Cursory evidence was recorded and notice was issued to the SHO Police Station, Kalar Syedan to inquire the matter and submit his report. After going through the said report and hearing arguments of the learned counsel for the complainant/respondent, the learned Additional Sessions Judge, Rawalpindi admitted the complaint and summoned the petitioner and others for 29.08.2016. Hence the instant Revision Petition.

6. It may be mentioned that the petitioner alongwith several others has been, thereafter, charged on 04.01.2017 for committing offence punishable under section 7 of the said Ordinance and directed

to face trial thereunder. However, a bare perusal of the charge reveals

that the caption of the charge has been mentioned as under:-

“FIR. No. 112 dated 25.02.2009.
Under Section: 302/324 PPC P/S
Ratta Amral, Rawalpindi”.

It could not be ascertained from the available record, what is the connection of that FIR with the instant charge of Qazf.

7. I have heard learned counsel for the parties as well as learned Additional Prosecutor General. Learned counsel for the petitioner submitted that:-

- * the impugned order passed by learned trial court is not sustainable in the eye of law and it seems that the same has been passed without applying judicial mind;
- * the learned trial court was supposed to record proper reasons for summoning the petitioner but the same was not done.
- * the impugned order passed by the Trial Court is based on surmises and conjectures and the reason assigned in support thereof is not sustainable under the law and is liable to be set aside.

- * The petitioner registered the case firstly on the direction of senior officials and secondly by following the relevant law, for which he had due protection by law and Police Rules. He placed reliance on Section 154 Cr. P.C., Rule 25 of Police Rules, 1934 and Articles 171-173 of Police Order, 2002.
- * the petitioner alleged nothing against the respondent No.2 and investigated the case by following the police rules and norms of natural justice.
- * as per definition of Qazf, the proceedings under section 07 of the said Ordinance can only be initiated against the person who alleges zina.
- * the practice of victimizing the investigating agencies' should not be allowed.
- * the impugned order referred to above is not only illegal and improper but also void at the same.
- * the actual facts were not appreciated by the Learned trial court while passing the above said impugned order.
- * pendency of proceedings against the petitioner is an abuse of the process of law.
- * actually, the petitioner is totally innocent and has been made escape goat in this case.

- * the petitioner has the only option to seeks the proper remedy from this Honourable Court.

8. Learned counsel for the respondent/complainant contended that:-

- * there is no illegality whatsoever in the summoning order.
- * the FIR was registered against the complainant/respondent Muhammad Akbar with the allegation of Zina and he was arrested in the same and sent for trial;
- * the investigation was conducted by the petitioner and found defective during the course of inquiry of the learned Additional Sessions Judge as the same was ordered by the Honourable Chief Justice of Supreme Court of Pakistan;
- * it is another admitted fact that the respondent/complainant Muhammad Akbar was acquitted in the FIR and the allegations were found false and concocted vide judgment dated 25.02.2010 of the Additional Sessions Judge Rawalpindi;
- * from the above said facts which were incorporated by the private complaint and in cursory statement which has been established that the Offence of Qazf was committed against the respondent with the active connivance of the police officials including the I.O. (petitioner);

- * that the some other Offence i.e. under Sections 500, 506, 508 and 496C were also committed during the course of investigation of the above said and those can be tried together with the Offence of Qazf;
- * the acquittal of the accused under the charges of Sections 155(c) and 155(d) of the Police Order, 2002 by the Magistrate would not come in the way as they were not charged in the above said sections and even the charges of abetment and the facilitation are available in the shape of complaint and cursory statement;
- * The false allegation of Zina levelled against the respondent/complainant Muhammad Akbar has ruined the life of the respondent and caused disrespect and disgrace to the good reputation of the family.
- * The petitioner has played a very active role and any opinion regarding the merits of the case would affect the case of either side mere the charge can be amended at any stage of the case and in case of non framing the charge, accused can be convicted in minor nature of charges; and
- * the summoning Order is based on sound reasoning and sufficient evidence available on the record, therefore, the summoning Order of the trial Court may kindly be upheld.

9. The learned Additional Prosecutor General, Punjab for the State supported the impugned order.

10. I have anxiously perused the record in the light of submissions made by the learned counsel for the parties. In this connection it is pertinent to mention that as provided in section 154-156 Cr.P.C., the police officer incharge of a police station is legally required to register a case after receiving information of commission of cognizable offence from any source and has to investigate and submit challan before the Illaqa Magistrate. The investigation has to commence soon after such information. In this background the petitioner who was admittedly posted as SI at Police Station Kalar Syedan at that time and had received an application from the higher ups, duly marked to him, was not supposed to postpone or deny registration of the case as required under the law. Since prima-facie a cognizable offence was reportedly committed, he was duty-bound to proceed against the accused and register FIR under the provision of section 154 Cr.P.C. Thereafter, he had to take various steps to

investigate the matter. Article 171 of Police Order 2002 envisages grant of a due right of protection to such officer/official and he/she cannot be made liable to any penalty or payment of damages on account of acts done in good faith in pursuance of performance of official duties legally assigned to him. Moreover, it is notable that according to Article 172 of Police Order, 2002, suits or prosecution in respect of acts done under colour of duty or in exercise of any such duty or authority of the police order, the prosecution or suit shall not be entertained or shall be dismissed if instituted after more than six months from the date of action complained of. In the instant case the FIR was registered by the petitioner after receipt of an application “duly marked to him by the higher ups” on 26.06.2009 while the instant complaint was lodged against him on 09.05.2016. Thus, it is delayed by six years, ten months and 13 days. In addition to this, it is worth also consideration that if the practice of victimizing the Investigating or Law- enforcing agencies- or for that matter, any one performing his

legal or judicial duties- is allowed, it will jeopardize the whole system and render it ineffective.

11. As discussed above, the petitioner performed his official duty for which he was admittedly appointed and which was legally assigned to him. He might have performed it in defective manner but admittedly there is nothing on record to show that he registered the FIR with any malicious design of his own. He just incorporated the contents of an application initially submitted by complainant Syed Manzoor Hussain Shah to RPO Rawalpindi who had marked the same to SDPO Kahuta and it came finally to the petitioner through SHO, P.S. Kalar Syedan. The very fact that the application was submitted to RPO Rawalpindi on 24.06.2009 and the FIR was registered on 26.06.2009 shows that the petitioner had committed no illegality, otherwise being an experienced police officer, he would have manipulated the date so as to cover the obvious delay of 22 days which was one of the reasons that the accused/respondent was acquitted by the Additional Sessions Judge, Rawalpindi. It transpires that the respondent Muhammad Akbar alias

Aku was acquitted in the FIR and the allegation was found false and concocted by the learned Additional Sessions Judge, Rawalpindi, but there is nothing in the said judgment that the petitioner had in any way connived, initiated or abetted in leveling the allegation of Zina or had himself originated the FIR. There is also nothing on record to show that he himself prepared any forensic report or medical report in respect of the concerned parties. So far as the submissions of learned counsel for the respondent regarding the other offences under sections 500, 506, 508 and 496-C PPC is concerned, it suffices to mention that these sections have been apparently dropped by the learned trial court and the petitioner has only been charged under section 7 of the said Ordinance. Moreover, the available record has no evidence that the petitioner played any active role or maneuvered the report. He was only one of the I.Os who had investigated the case.

12. It is also very pertinent to observe that cases relating to various offences are daily reported to the police and the police officer is indeed duty bound under section 154-156 Cr. P.C. to register cases

pertaining to murder, dacoity and robbery etc. and accordingly investigate into those offences but, so far, there is not a single precedent on record to show that any police official/officer has ever been charged or sentenced for committing any such offence on account of registering an FIR about commission of the same offence.

13. It is also pertinent to refer to the definition of section 3 of the said Ordinance, which has defined Qazf. As per record, the petitioner is neither complainant in the instant case who made or fabricated an accusation of zina against the respondent nor he has ever been a witness, to the offence of alleged zina, who was found to have given any false evidence in this respect.

14. It is also notable that the petitioner was acquitted by the learned Judicial Magistrate, Rawalpindi vide Judgment dated 27.05.2014 and an appeal against the same was also dismissed by the Honourable High Court vide Order dated 26.01.2016.

15. In view of the legal position, explained above, there is nothing incriminating whatsoever on record to proceed with the trial of the petitioner Muhammad Riaz Cheema, SI and the charge against him is groundless. Since there is no probability of the petitioner being convicted of committing the offence of Qazf, the impugned order based on misreading is not at all sustainable. Therefore, I allow this petition, preferred by petitioner Muhammad Riaz Cheema, SI., and set aside the impugned order dated 30.07.2016 passed against him by learned Additional Sessions Judge, Rawalpindi.

JUSTICE DR. FIDA MUHAMMAD KHAN

Announced in open Court
on 02.06.2017 at Islamabad
*Umar Draz/**