

**Criminal Revision Petition No.1/I of 2016**

1

**IN THE FEDERAL SHARIAT COURT**  
**(Appellate/Revisional/Original Jurisdiction)**

**PRESENT:**

**JUSTICE DR. FIDA MUHAMMAD KHAN**  
**JUSTICE MRS. ASHRAF JAHAN**

**CRIMINAL REVISION PETITION NO.1/I OF 2016**

Dr. Tariq Shamim Choudhry, Petitioner  
s/o Noor Hussain Choudhry,  
natively resident of Choudhry Farm House Tharpal,  
Tehsil, Chakwal and permanently,  
residing at Choudhry Castle, Street 1,  
Lane 4, Peshawar Road, Rawalpindi Cantt.

Versus

1. The State Respondents  
2. Farhat Sultana d/o Wazir Hussain  
3. Matloob Hussain s/o Wazir Hussain  
4. Muhammad Azam s/o Gulistan Khan  
5. Tahir Abbas s/o Ghulam Mustafa  
all residents of Tharpal, Tehsil & District, Chakwal.  
6. Khalid Ali Khan s/o Muhammad Khan,  
resident of Karriala, Tehsil, Chakwal.

Learned counsel for the : Mr. Abdul Hayee Alvi,  
Petitioner Advocate  
Learned counsel for the : Malik Altaf Hussain Kandowal,  
respondents: Advocate  
Learned counsel for the State : Ch. Muhammad Sarwar Sidhu,  
Additional Prosecutor General  
Punjab for State.  
Complaint No. and date : No.3, dated 25.01.2016, D& SJ  
Chakwal.  
Date of impugned : 22.02.2016  
Order of Trial  
Court  
Date of Institution of : 08.04.2016  
appeal in FSC  
Date of hearing in FSC : 11.01.2017 & 01.02.2017

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**JUDGMENT**

**Justice Mrs. Ashraf Jahan:** These are the reasons for our short order dated 01.02.2017, whereby the present criminal revision petition under Article 203-DD of the Constitution and under section 435/439-A Cr.P.C., filed by the petitioner against the order dated 22.02.2016 passed by learned Additional Sessions Judge Chakwal, was dismissed.

2. The facts emanating from this Criminal Revision petition are that the petitioner filed a private complaint under section 7 of the Offence of Qazf (Enforcement of Hadd) Ordinance VIII of 1979, alongwith sections 420, 468, 471, 419, 500, 501 PPC read with section 476 Cr.P.C. before the Court of learned District & Sessions Judge, Chakwal, which was entrusted to the Court of learned Additional Sessions Judge, Chakwal. The learned trial Court recorded the evidence of the petitioner and thereafter dismissed the private complaint under section 203 Cr.P.C. vide order dated 22.02.2016, which is now impugned before this Court. The case of the petitioner is that impugned order is contrary to Islamic law; in contradiction of facts and is result of misreading and non-reading of the material available on record, constituting an Offence of Qazf.

3. Notices were issued to the respondents. We have heard learned counsel for the petitioner as well as learned counsel for the respondents and the State counsel.

4. It is contended by the learned counsel for the petitioner that respondent No.2 (Mst. Farhat Sultana) and respondent No.3 (Matloob Hussain) had filed suit for damages against the petitioner, wherein they got recorded their statements alleging false and baseless assertion of zina and birth of an illicit child against the petitioner. He further argued that Mst. Farhat Sultana got married with the petitioner in the year 1997, later on the petitioner divorced her on 14.04.2003 and contracted 2<sup>nd</sup> marriage with Mst. Huma Batool (her real niece)

daughter of Matloob Hussain (respondent No.3) on 25.02.2004. The first son Alif Tariq Choudhry with this wedlock was born on 18.11.2004, second son Shazil Tariq Choudhry was born on 25.12.2010 and the third son Allyan Tariq Choudhry was born on 25.12.2011. On 12.12.2012 the respondents filed a suit for damages against the petitioner wherein the statements of respondents were recorded wherein they made baseless and false allegations against the petitioner and Mst. Huma Batool. Therefore, on the basis of such evidence offence of Qazf was made out against them, but the learned trial Court ignored such evidence and dismissed his complaint. He lastly argued that as the learned trial Court has acted in an arbitrary manner and passed the order in haste, therefore, the impugned order dated 22.02.2016 may be set aside and case be remanded for trial in accordance with law. In support of his contentions he relied upon following case law:-

- Mst. Nuzhat Jabin Versus Jamil Hussain Shah and 2 others  
PLD 1996 FSC 15.
- Abdul Rashid Versus Mst. Safia Bibi  
PLD 1986 FSC 10
- Haji Bakhtawar Said Muhammad Versus Mst. Dur-e-Shahwar Begum and others  
2010 SCMR 681
- Muhammad Humayun Versus The State  
PLD 1997 FSC 5

5. On the other hand, it is contended by the learned counsel for the respondents that the present revision petition is not maintainable on the ground that initially the private complaint under section 7 of the Offence of Qazf (Enforcement of Hadd) Ordinance VIII of 1979 was filed against seven private respondents, whereas in the present revision only five respondents have been impleaded. He further contended that petitioner has mainly relied upon the evidence recorded in a suit for damages filed by Mst. Farhat Sultana and Matloob Hussain in the Court of District & Sessions Judge, Chakwal

and when this evidence is scrutinized, though Matloob Hussain has alleged illicit relations between the petitioner and his daughter Mst. Huma Batool, but in cross-examination he denied such suggestion made to him by the counsel for the petitioner, therefore, no case of Qazf was made out against Matloob Hussain.

6. He next contended that the respondent No.2 also got recorded her evidence in that case wherein she deposed against the present petitioner about having illicit relations with Mst. Huma Batool, due to which she got pregnant and delivered one child and when respondent No.2 protested, the petitioner divorced her on 30.07.2011, and later on fabricated a back dated divorce deed to justify his acts. Per learned counsel this statement of Mst. Farhat Sultana was made basis for constituting Offence of Qazf against her but surprisingly her evidence in this regard was not challenged at all in the cross-examination, nor disproved or rebutted in any other manner.

7. He also referred the statements of respondent Nos.4 to 6 and stated that they adduced evidence only to the extent of secret nikkah between petitioner and Mst. Huma Batool but had not alleged anything in respect of Zina, therefore, no case of Qazf was made out against them as well. He further contended that the petitioner had divorced his wife on 30.07.2011, whereafter notice for Talaq through Union Council was issued on 09.09.2011 and finally the divorce was affected from 21.06.2012. However, an enquiry against the alleged fabricated divorce deed dated 14.04.2003 is still pending. The parties since 2012 are litigating against each other and several criminal and civil cases have been filed by them. The present case is also offshoot of such litigation. He also referred to various documents and stated that the petitioner deliberately did not produce the complete record before the Court and suppressed the real facts. Even Mst. Huma Batool whose identity card was issued in the year, 2007 has been shown as daughter of Matloob Hussain. As the divorce was given in

the year 2011, therefore, Mst. Farhat Sultana was having CNIC and her passport showing the petitioner as her husband. He also referred different applications available on record addressed to different authorities by the present petitioner wherein he had taken different stands in respect of handing over the child Akif Tariq Choudhry, which reflect that the petitioner's story is false and fabricated. Moreover, during a subsisting marriage, in presence of first wife her niece cannot be the second wife under Islamic laws, being in prohibited degree with the petitioner. Therefore the learned trial Court has rightly dismissed the complaint filed by the petitioner and the present revision is also liable to be dismissed.

8. The learned State counsel supported the judgment passed by the learned trial Court and submitted that this Court has no jurisdiction, so far as the disputes regarding divorce and custody of child are concerned. Even otherwise as there is no illegality in the impugned order dated 22.02.2016, therefore, the present revision is liable to be dismissed.

9. We have considered the arguments advanced before us and have perused the record minutely. Present revision petition is filed against the order dated 22.02.2016 whereby the learned trial Court has dismissed the private complaint filed by the petitioner under section 7 of Qazf Ordinance. The perusal of above complaint reveals that the complainant has not merely alleged about the Offence of Qazf but also levelled other allegations against the respondents about fraud and forgeries. As this Court has jurisdiction only about Hudood Laws, therefore, we will confine ourselves only to the extent of allegations about the offence of Qazf. For this the petitioner has made basis the statements of respondents recorded before the Courts in a suit for damages proceeded before the learned District Judge Chakwal and the other statements against the petitioner recorded in a private complaint under section 6 of Muslim Family Laws.

10. First of all when the statement of respondent No.2 Farhat Sultana is examined it reveals that during her statement recorded in a suit for damages she has alleged against the petitioner for having illicit relations with Mst. Huma Batool and birth of illegitimate child from her. She further specifically deposed about pronouncement of her divorce by the petitioner on 30.07.2011 and preparation of back dated divorce deed and nikahnama with Mst. Huma Batool. Surprisingly the above statement of the respondent No.2 was not challenged at all during her cross-examination. Article 132 and 133 of Qanun-e-Shahadat Order, 1984 provide mode of examination of parties. Ample Law is available on the point that when a material fact is deposed in the examination-in-chief and it is not subjected to the cross-examination, despite opportunity given, same shall be deemed to have been admitted and accepted by the party failing to cross-examine such witness on that material point. Cross-examination is not a formality, but is valuable right conferred by law to discover the truth. Thus the evidence of Mst. Farhat Sultana recorded during a suit for damages, when not challenged on material points in her cross-examination, shall be deemed to have been accepted by the petitioner. Therefore, legally under such circumstances now her statement cannot be made basis for offence of Qazf.

11. An other important aspect of the case which falsifies the assertion of the petitioner is that if the petitioner had divorced the respondent No.2 in the year 2003, then why notice from the Union Council for this purpose was got issued on 09.09.2011 and divorce certificate was issued on 21.06.2012 i.e. after nine years.

12. Moreover, the facts narrated in the direct complaint also seems to be very unnatural that when petitioner divorced his wife (respondent No.2) her brother Matloob Hussain (respondent No.3) offered his daughter to the petitioner for marriage but on the day of such ceremony he was not present to attend marriage of his daughter and thereafter in different Courts he deposed against his daughter and

## **Criminal Revision Petition No.1/I of 2016**

7

petitioner having illicit relations. All the above facts are contrary to the norms and social setup in our society. The trial Court has therefore rightly observed that a father can never label his daughter for such allegations unless she is found to be so.

13. So far as the evidence of Matloob Hussain is concerned, he is the brother of Mst. Farhat Sultana and father of Mst. Huma Batool (second wife of petitioner), though in his examination-in-chief, earlier he deposed about illicit relations between his daughter and petitioner but in cross-examination denied to such suggestion. In above circumstances against him also no case of Qazf is made out.

14. The perusal of evidence of remaining respondents recorded in other cases reveal that they have deposed about secret nikah between the petitioner and Mst. Huma Batool. Therefore it cannot be said that their evidence comes with in the definition of offence of Qazf. It is a matter of record that both the parties are closely related but are on inimical terms and have filed multiple civil and criminal cases against each other. And the present revision petition also seems to be incontinuation of old rivalry.

15. The case law cited by the learned counsel for petitioner is also distinguishable and therefore of no help to the case of petitioner.

16. In the above backdrop we are of the view that order of trial Court is based upon sound reasoning and does not require any interference.

**JUSTICE MRS. ASHRAF JAHAN**

**JUSTICE DR. FIDA MUHAMMAD KHAN**

At Islamabad,  
on 07.02.2017  
*Hummayun/-*