

IN THE FEDERAL SHARIAT COURT OF PAKISTAN  
(Appellate/Revisional Jurisdiction)

**JUSTICE SYED MUHAMMAD FAROOQ SHAH**  
**JUSTICE SHAUKAT ALI RAKHSHANI**

**Cr. P.S.L.A No.01/I of 2018**

1. Syed Sajjad Haider Naqvi son of Syed Muhammad Shah.
2. Ghazala Fatima wife of Syed Sajjad Haider Naqvi both residents of opposite Qureshi Petrol Pump Abbottabad, Tehsil and District Abbottabad.

----- Petitioners.

*Versus*

1. Mst. Sadia Bibi daughter of Zareen Shah.
2. Zareen Shah son of Rehan Shah both residents of Mohallah Channai, Tehsil and District Mansehra.
3. The State

-----Respondents.

Counsel for the Petitioners	---	M/s Qazi Shams-ud-Din & Saeed Ahmad Awan, Advocates
Counsel for the Respondents	--	Mr. Saeed Ahmed Shah, Advocate
Counsel for the State	---	Mr. Walayat Khan, Assistant Advocate General, KPK
Complaint No, date & District	---	05/03 of 2014, 17.01.2014 before Sessions Judge, Mansehra
Date of impugned judgment	---	21.03.2018.
Date of institution	---	05.05.2018.
Date of hearing	---	15.11.2018.
Date of decision	---	15.11.2018.

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**JUDGMENT**

**SYED MUHAMMAD FAROOQ SHAH, J.** Extraordinary jurisdiction of this Court has been invoked under section 417 (2-A) of the Criminal Procedure Code by seeking special leave to appeal after dismissal of complaint case, instituted under section 7 of the Offence of *Qazf*

(Enforcement of Hadd) Ordinance-VIII 1979 (Hereinafter called Ordinance). Through impugned judgment recorded and pronounced on 21.03.2018 by the learned Additional Sessions Judge-I, *Mansehra*, the accused/ Respondents were acquitted.

2. Averments made in the precise complaint (page 28 of paper book) instituted on 10.01.2014, under section 7 of *Qazf* Ordinance by the Petitioners Syed Sajjad Haider Naqvi and his wife Mst. Ghazala Fatima against the Respondents Mst. Sadia Bibi and her father Zareen Shah are that the Respondents leveled allegations of *Zina* against wedded couple/Petitioners during evidence, which caused mental torture / stress and agony to the Petitioners. It is stated in paragraph 3 of the said complaint that copies of statements of Respondents shall be annexed after availability. A perusal of record transpires that on 02.02.2015 i.e. after more than one year of filing of complaint, the statements of both the Petitioners and their witnesses were recorded which bears the signatures of the Petitioners as well as their witnesses. In her statement, recorded during preliminary enquiry of complaint, the Petitioner Mst. Ghazala Fatima did not held liable the Respondents to the allegations of “*imputation of Zina*” and stated that the Respondent Zareen Shah had got prepared a forged *TALAQNAMA*; however, Petitioner Syed Sajjad Haider Naqvi by producing certain documents stated that on the basis of fabricated *TALAQNAMA*, the Respondent No.2 had started leveling allegations and intimating to inhabitants of the locality and others that after divorce both petitioners were living together which amounts to *Zina*. Most crucial aspect of the case in hand is that the copy of the said *TALAQNAMA* executed by the Petitioner No.1; beside other documents

exhibited during proceedings of Civil Court have not been placed on record of this appeal. On the contrary, the learned counsel representing the Respondents stated at bar that as per record available with him, the complaint filed under section 7 of the *Qazf* Ordinance was entertained on 17.01.2014 by the learned Sessions Judge, Mansehra, and on the same date, it was entrusted to the learned Additional Sessions Judge-IV- Mansehra for disposal, when the transferee Court without recording the statement of complainant, directly issued notices to the Respondents for preliminary arguments on maintainability. On 05.06.2014, arguments on maintainability of complaint were heard and the complaint was admitted by the trial court for hearing. Subsequently, the applications filed by the Respondents for dismissal of complaint were dismissed and statements of complainants and their witnesses were recorded during preliminary enquiry after more than one year of filing of the complaint. Ld: counsel stated that keeping the private complaint pending for indefinite period, unreasonably is shocking, tantamount to miscarriage of justice.

3. Arguments heard. Record perused.

4. A perusal of record transpires that proceedings of the complaint case were commenced on framing of charge on 16.06.2016 against the Respondents. For the sake of convenience, contents of the Charge are reproduced as under:-

*“That on 19.12.2012 while appearing as a witness before the Court of Judge Family Court-I, Mansehra in family case titled “Mst. Saadia Bibi vs Sajjad Haider Naqvi”, you leveled /made/published an imputation of Zina concerning complainants Sajjad Haider Naqvi and Mst. Ghazala Fatima intending to “harm knowingly and having reason to believe that such imputation will harm the reputation and hurt their feelings in presence of the*

*witnesses and you leveled the same imputation in the public after giving statement in the Court and thus you thereby committed an offence punishable U/S 7 of Offence of Qazf (Enforcement of Hadd) Ordinance, 1979, which is within the cognizance of this Court.”*

5. Keeping in mind the sensitivity and gravity of imposition and applicability of *Hadd* under *Qazf* Ordinance, to assume as a possible or legitimate operation with preliminary construction of allegations, we have thoroughly scanned the evidence, adduced by both the parties in the instant direct complaint case, culminated on acquittal of accused.

6. PW-1 Complainant /Petitioner Syed Sajjad Haider Naqvi stated in evidence that Petitioner No.2 Mst. Ghazala Fatima is his legally wedded wife and they are passing their matrimonial affairs happily and he did not divorce his wife Mst. Ghazala Fatima, whereas he divorced the accused/respondent Mst. Sadia Bibi, his ex-wife, due to which her father accused/respondent Zareen Shah prepared a fake divorce deed in his own handwriting, alleging that he (Petitioner No. 1) had divorced his wife, petitioner Mst. Ghazala Fatima. Further stated in cross-examination that Mst. Saiqa was his first wife and divorce took place between them with mutual consent in the year 2007 and thereafter he married with Petitioner Mst. Ghazala Fatima on 08.10.2009. Mst. Sadia Bibi was his third wife, who was married with him during subsistence of marriage of Petitioner Mst. Ghazala Fatima. He has admitted that no written permission from his wife Mst. Ghazala Fatima to contract the third marriage with Mst. Sadia Bibi was obtained, but it was a verbal permission. In his cross-examination, he has made the following admission:-

- i. **“It is correct that in the complaint filed by Mst. Sadia Bibi, she has not alleged the allegations of Zina against me and my wife. It is correct that in Para 2 of the complaint Mst. Sadia Bibi only alleged that I divorced my earlier two wives”. Further stated that “her father, the Respondent Zareen Shah leveled allegations of Zina in his statement dated 12.01.2013, recorded in court, in the following words:-**

"اپنی پہلی بیوی مسماة غزالہ مذکور کے ساتھ آباد ہے ، جو کہ غیر شرعی اور زنا کے مترادف ہے"

**He has further admitted in cross-examination that:-**

- ii. **It is correct that Mst. Sadia Bibi did not level the allegations of Zina specifically against Mst. Ghazala Fatima in her examination-in-Chief. It is correct that in reply to my question Mst. Sadia Bibi replied as under: -**

"یہ درست ہے کہ مدعا علیہ کے ساتھ اس کی دوسری بیوی بھی رہائش پذیر ہے ، از خود کہا کہ مجھ سے پہلے والی کو مدعا علیہ نے مجھے سے شادی سے قبل طلاق دے دی تھی ، اور اب اس کے ساتھ تعلقات غیر شرعی ہیں" ،

- iii. **Self stated that in reply to next question she stated as under:-**

"یہ درست ہے کہ میرے ساتھ شادی سے قبل ہمارے مطالبہ پر مدعا علیہ نے اپنی بیوی کو طلاق نہیں دی،"

- iv. **It is correct that in reply to another question Mst. Sadia Bibi replied as under:’**

یہ درست ہے کہ میری ایما پر میرے والد صاحب نے مدعا علیہ کے خلاف درخواست دی تھی چونکہ مدعا علیہ نے اپنی مطلقہ بیوی کو اپنے ساتھ غیر شرعی طور پر رکھا ہوا ہے ، لہذا اس کے خلاف قانونی و شرعی کارروائی کی جائے ،

- v. **It is correct that I have not submitted any application before the Family Court for taking legal action against Mst. Sadia and Zareen Shah regarding leveling of above said allegation. It is also correct that on above allegations no issue was framed by the family Court. It is correct that my statement was recorded before the Family Court on 13.04.2013 as DW-7. It is correct that I have not denied/rejected/rebutted the allegation of zina leveled against me and my wife by Mst. Sadia and Zareen Shah in my Court statement as DW-7. It is correct that one Noor Hussain Shah, the real brother of Zareen Shah on 19.12.2012 recorded his statement as PW-2. It is correct that he said witness in his statement correctly recorded That:**

مدعا علیہ نے قبل ازیں دو شادیاں کیں تھیں ، دونوں کو طلاق دے دی تھی، مدعا علیہ فطرتہ اچھا انسان نہیں ہے ، اس نے مدعیہ سعیدہ کے ساتھ اپنی فطرت کے مطابق ظالمانہ سلوک کیا ، اور اس کی زندگی برباد کی ،،

- vi. **I cannot recall whether I have rebutted the said statement of PW Noor Hussain Shah or not. It is correct that the family suit filed by Mst. Sdia was partially decreed in her favour against me. It is correct that the appeal against the said judgment was filed, which was dismissed. It is correct that the writ against the judgment of appellate Court is subjudice before the august High Court. I do not remember that whether I filed this complaint after disposal of the appeal. It is**

correct that I filed the instant complaint on 10.01.2014. It is correct that in Para 2 of complaint I made basis the family suit that during proceedings of the family suit, the accused leveled the allegations of Zina. It is correct that I moved an application on 07.01.2014 before DPO Abbottabad against Syed Manzoor shah my maternal uncle for taking legal action against him as he made the allegation of Zina against me and my wife Mst. Ghazla Bibi. It is correct that in the said statements recorded on oath the alleged allegation against Manzoor Shah not against Zareen Shah. It is correct that I have not taken any action against Manzoor Shah for making allegation against me and my wife Mst. Ghazala.. It is correct that I placed on file the Photostat copies of the documents of proceedings conducted before the Reconciliation Council on file of this Court; the same is consisting upon 07 pages. According to me the Talaqnamma dated 06.11.2011 is fake and fabricated. It is correct that I got knowledge about the alleged talaqnama before the family Court. It is correct that except present complaint I have not challenged the talaqnama in any forum that it is fake and fictitious. It is correct that in the instant complaint I have not challenged my signature on the alleged talaqnama dated 06.11.2011. It is correct that village Nambli Maira is situated at 15/20 KM from my house situated at Supply at Abbottabad; self stated that the said Siddique is also residing in Abbottabad. It is correct that the alleged talaqnama was not prepared in my presence. It is correct that in my statement dated 02.02.2015 recorded before ASJ-IV, Mansehra I have not specifically villages and places where the accused circulated the fake and fabricated talaqnama. It is correct that I have not specifically stated in my statement dated 02.02.2015 that accused circulated the talaqnama at Abbottabad, Gilyat, relatives and friends and also not alleged that I have divorced Ghazala and openly committing Zina with her. It is correct that during the inquiry of instant complaint I have not produced the Chairman as well as the member of the Reconciliation Council to support of the proceedings.

7. Statement of PW-2 Mst. Ghazala Fatima (Petitioner-2) is also having much significance, in which she admitted that her husband (Petitioner No.1) contracted marriage with Mst. Sadia Bibi (Respondent No.1) and after her divorce, accused Zareen shah father of Mst. Sadia Bibi just to take revenge, got prepared a false and fabricated *TALAQNAMA* and circulated within the family. Accused Zareen Shah also filed an application under section 22 Cr.P.C leveling the allegation of *Zina* against her and her husband, which was dismissed. Relevant portion of her cross-examination are reproduced herein below:-

- i. The only grievance between us is the allegation leveled by the accused during the proceedings of family suit. It is correct that I myself was not party or witness in the said family suit.
- ii. In the court statement Zareen Shah and Sadia leveled the allegation that Sajjad Haider Naqvi despite announcing divorce to me was keeping me as wife.
- iii. After receiving the information I did not file any application before the family court regarding the said false allegation. I do not know whether my husband Sajjad Haider Naqvi submitted any such application. Mst. Sadia filed the family suit against Syed Sajjad Haider Naqvi in respect of our alleged living as wife and husband despite pronouncement of divorce. I do not know the fate of said family suit.
- iv. It is correct that bone of contention between the parties was the fake divorce deed prepared by Zareen Shah. I do not know whether there is any witness of the preparation of said fake divorce deed by Zareen Shah.
- v. The allegedly fake divorce deed by Zareen Shah was not challenged in the instant complain.
- vi. It is correct that I did not participate in the marriage ceremony.
- vii. It is correct that on 10.11.2011 her nikah was solemnized with Sajjad Haider Naqvi. The date on allegedly forged divorce deed was mentioned as 06.11.2011, it is correct that the bride arrived to the house of Sajjad Haider on 10.11.2011.
- viii. In my previous statement in the court I have not mentioned the name of any person or the village about spreading of fake divorce deed.
- ix. It is correct that Mst. Sadia Bibi was 3<sup>rd</sup> wife of my husband.

8. PW-3 has also stated about preparation of divorce deed by the Respondent/accused Zareen Shah. However, he admitted in cross-examination that:-

- i. It is correctly mentioned in the 5<sup>th</sup> line of my previous statement dated 02.02.2015 that Sajjad Shah had divorced his wife Mst. Ghazala and he was involved in commissions of Zina with her.
- ii. It is correct that Zareen Shah did not prepare the alleged fake deed in my presence.
- iii. It is correct that in family suit filed by Mst. Sadia against Sajjad Shah I was not party as well as witness.
- iv. It is correct that I do not know what was the decision of that family suit.
- v. It is correct that I am not witness of marriage of Mst. Sadia as well as Mst. Ghazala Bibi with Sajjad Shah. I do not know about the fate of the family suit and its appeals.
- vi. I have not deposed that Zareen Shah moved an application against Sajjad Shah in the Court of learned Sessions Judge, Abbottabad. Similarly the factum of sending of notice to Federal Shariat Court by counsel for Zareen Shah was not stated in my previous statement. Similarly the factum of filing of application by Sajjad Shah to DPO.

vii. It is correct that Manzoor Shah is real maternal uncle of Sajjad Shah. I have not seen the application moved by Sajjad Shah to DPO, Abbottabad. It is correct that the said application was filed against Manzoor Shah only.

9. PW-4 Iftekhhar Haider Naqvi real brother of complainant/Petitioner No.1 stated that the brother of accused Zareen Shah namely Manzoor Shah also took part in spreading of fake and fabricated divorce deed executed by Syed Sajjad Haider Naqvi against the Petitioner-2 Mst. Ghazala Fatima and stated that after divorce deed passing matrimonial life amounts to Zina. However, in cross examination he admitted that:-

- i. It is correct that complainant is my real elder brother. It is correct that in Family Suit titled Mst. Sadia Bibi vs. Sajjad Haider Naqvi, I appeared as a witness on behalf of defendant (Sajjad Haider Naqvi). In that statement I have not narrated the above story stated in my examination-in-chief in my statement recorded before the Family Court.
- ii. At this moment, the witness was shown the statement dated 13.04.2013, wherein he admitted that it was mentioned that he had no concern with the matters of Sajjad Haider Naqvi.
- iii. It is correct that I am not witness to that divorce deed.
- iv. It is correct that the said divorce deed was never stated by me as fake in my court statement.
- v. It is correct that the said family suit was decreed in favour of Mst. Sadia Bibi and appeal was also dismissed and Revision in the High Court is pending.
- vi. It is correct that I was not party in the case instituted in the Court of Sessions Judge, Abbottabad filed by Zareen Shah against Sajjad Haider Naqvi.
- vii. It is correct that my statement was not recorded in the court, where the instant complaint was filed. Manzoor Shah was my maternal uncle. He died two years ago.
- viii. It is correct that except me there is no other witness has come to the court today for recording statement.
- ix. It is correct that no witness has come today in the court to depose about spreading of divorce deed in the area. I was not present in the nikah ceremony of my brother Sajjad Haider Naqvi and Mst. Sadia Bibi.
- x. I do not know that whether six month prior to marriage of Sajjad Haider Naqvi with Mst. Sadia, he ousted Mst. Ghazala Bibi from his house.
- xi. It is correct that the marriage of my brother with Mst. Sadia was his third marriage.



- xii. It is correct that my brother divorced his first wife Mst. Saiqa. Before coming to this court for recording statement, my brother informed me that Zareen Shah prepared a fake divorce deed and spread in the public and leveled the allegations of imputation of Zina against him and his wife.
- xiii. It is not in my knowledge that decision was that the Petitioner was directed to approach the civil court to prove the divorce deed.

10. Both Respondents in their detailed statements under section 342 Cr.P.C vehemently denied the allegations that their statements recorded before the Courts tantamount to *Qazf*. Respondents explained in detail the events of litigations. The Respondent No.1 explained that since she had been divorced by the Petitioner No.1 and the suit for recovery of dower /dowry articles and maintenance had been decreed: the appeal against the said decree prepared by the Petitioner No.1 has also been dismissed and thereafter the Petitioner No.1 approached the High Court by filing revision application, therefore with a view to pressurize the Respondents to refrain them from pursuing the proceedings, the complaint under section 7 of *Qazf* Ordinance has been filed against them. The Respondent No.1 i.e. daughter of Respondent No.2, by initiating a detail defense plea in reply to question No.17, recorded under section 342 Cr.P.C, described the relevant facts:

Q.17. *What is your statement and why are you charged?*

Ans. I am innocent and falsely charged. Complainant No.1 is habit of contracting marriages and thereafter divorced them. Prior to my marriage he contracted two marriages; firstly he contracted marriage with one Saiqa Bibi and later on divorced her. Thereafter he contracted marriage with Mst. Ghazala complainant No.2 and also divorced her. Moreover, complainant No. 1 after the aforementioned divorce to his wives, as he contacted my parents and demanded my hands as he is real nephew of my mother, (my father and mother) refused to give my hands to complainant No.1, however, complainant No.1 and his mother requested my parents, that complainant No.1 has divorced his wife Mst. Ghazala and that now she is living at Karachi with her parents. That in support of their contention they showed divorce deed to my parents which was duly signed by complainant No.1 as well as by the witnesses. Therefore, my parents gave my hands to complainant No.1. The complainant No.1 contracted the

marriage with me by committing fraud as I was of the age of only 20 years, whereas complainant No.1 was of the age of more than 45 years. The complainant No.1 was confirmed this factum in Column No.21 to 24 Bay of said Nikahnama that he has no wife prior to said Nikah. Moreover, the signature on the alleged Nikahnama as well as the signatures on the other documents produced by complainant No.1 available on the record are similar and are of the complainant No.1. Complainant No.1 has failed to prove through handwriting expert that the signature on the alleged divorce deed is not his signature. Likewise, complainants have also failed to prove through handwriting expert that the alleged divorce deed was prepared by Zareen Shah, my father. Manzoor Shah was the real paternal uncle of complainant No.1 and was real uncle of complainant No.2, he was fully aware about the divorce between complainant No.1 and complainant No.2 that they are no more husband and wife. He was annoyed about living of both the complainants as husband and wife, therefore he got Fatwas from Ullma's of Hazara Division, which are available on the record and on this complainant No.1 moved an application to DPO, Abbottabad against Manzoor Shah. The complainants' malafidly filed the instant complaint against me and my father to compel us not to execute the decrees passed by the Family Court in favour of us and against the complainant No.1. The instant complaints were not filed by the complainant nor were the requisite legal formalities fulfilled before initiating the proceedings. The instant complaint is not maintainable and is therefore the same is liable to dismissal.

10. After re-appraisal of evidence, reproduced hereinabove, opportunity of patient hearings at length has been afforded to the learned counsel, representing both parties and with their able assistance, we have also carefully scanned the record to ascertain as to whether the acquittal judgment is result of mis-appreciation of evidence, leading towards illegalities, infirmities, based on surmises, conjectures, shocking, artificial, warrant interference of this Court.

11. M/s Qazi Shams-ud-Din & Saeed Ahmad Awan, Advocates, representing the Petitioners argued that due to bitter acrimonious familial relations in between both parties, closely related inter-se, hatred developed when the Petitioner No.1 divorced the Respondent No.1, real daughter of Respondent No.2. After dissolution of marriage with Petitioner No.1, Mst. Sadia Bibi filed a suit bearing

No. 55/FC on 19.04.2012 before the competent Court for recovery of dower/dowry articles and maintenance wherein the Respondents leveled the allegations of 'imputation of Zina' against both Petitioners. An application under section 22-A Cr.P.C for registration of FIR has also been filed by the Respondent No.1 on similar allegation which was dismissed vide order dated 02.01.2013. A complaint under section 7 of The Offence of Zina (Enforcement of Hudood) Ordinance, 1979, filed by the Respondent No.2 was also dismissed on 16.03.2016. Thereafter, the Petitioners have instituted the subject Complaint under section 7 of The Offence of *Qazf* (EOH) Ordinance, 1979 and on dismissal of the complaint and acquittal of the Respondents, instant petition for special leave to appeal has been directed on facts and grounds averred therein. Learned counsel stated that while appreciating the evidence, the learned trial Court has seriously erred to pronounce the acquittal judgment, which is result of non-reading of evidence and non-appreciation of existing law including Islamic Jurisprudence. As per learned counsel, the trial Court has wrongly observed in the impugned judgment that "*Wording of the depositions reveals that the imputation of Zina was not made in clear and unambiguous words*".

It is next argued by the learned counsel that the trial Court has illegally weighed to the statements of accused recorded under section 342 Cr.P.C, therefore, the impugned judgment is result of mis-appreciation and non-reading of evidence, leading towards illegalities/infirmities and against the settled principle as ordained by *Al-Quran* and *Sunnah* .To support his contention, learned counsel placed his reliance on PLD 1997 FSC 5, 2015 PCrLJ FSC 305 and PLD 2005 Karachi 344.

To sum up his arguments, learned counsel argued that in Hudood cases, benefit of doubt cannot be stretched in favour of the accused.

12. Conversely, Mr. Saeed Ahmad Shah, representing the Respondent No.2 at the very outset contended that the complaint filed under section 7 of The *Qazf* Ordinance on 10.01.2014, entertained after more than one year was a counterblast of family proceedings filed by the Respondent No.1 Mst. Sadia Bibi being ex-wife of Petitioner No.1 and after decree of said suit, the appeal filed by the Petitioner No.1 was also dismissed and now the proceedings are *subjudice* before the Hon'ble High Court. More-so, the statement of the Respondents recorded in a family suit are protected under *Exception* of section 3 of The Offence of *Qazf* (EOH) Ordinance, 1979. According to learned counsel, divorce deed (TALAQNAMA) effected in between the Petitioners is available on file, which has not been questioned or challenged before any forum, neither it has been rectified nor any proceeding of preparation fake divorce deed, as alleged has been instituted. And from its cursory examination, it bears signature of Petitioner No.1. Accordingly, the Petitioners are not legally wedded couple and matrimonial tie in between the Petitioners after divorce is against the *Shariah*. As per learned counsel, the depositions recorded in *Qazf* proceedings are suffice to prove the *bonafide* act on the part of both the Respondents which does not amount to their *malafide* intention; further reiterated that depositions before the lawful authority in good faith are protected under exception of Section 3 of the Ordinance. More particularly, the divorce deed signed by the Petitioner No.1 had not been challenged before any competent Court of

law or any penal proceedings of preparation of said *TALAQNAMA* has ever been initiated after its' execution on dated 06.11.2011.

13. On the other hand, Mr. Walayat Khan, learned Assistant Advocate General has fully supported the impugned judgment and stated that the complaint under section 7 of The Offence of *Qazf* (EOH) Ordinance, 1979 does not attract the allegations of *imputation of Zina* in absence of any direct evidence. As per learned state counsel, if it all, the quoted words uttered by the Respondent No.2 that after divorce deed the relations in between Petitioners amounts to *Zina* are not attracting the offence punishable under section 7 of the Ordinance. Learned State Counsel contended that no direct/indirect allegations of commission of *Zina* were leveled by the Petitioner No.2, in her statement recorded during preliminary enquiry and subsequently during evidence admitted certain material facts. She became one of the complainant has not made statement in court to harm the Respondents and their reputation rather she narrated the facts on the direction of the court, duly signed by the co-Petitioner. In the circumstances, learned State Counsel argued that learned trial court has rightly dismissed the complaint and acquitted the accused. According to ld. State Counsel, special leave to appeal may be declined as the appeal directed against acquittal judgment is also having no merits consideration.

14. We are cognizant of the fact that in their statements recorded during Court proceedings, the Respondents had alleged that Petitioners are continuing marital tie after execution of divorce deed. The said statements, reproduced hereinabove are based on good faith, as undeniably after divorce deed spouses cannot fulfill their

matrimonial affairs as a husband and wife. Keeping in view, the touchstone of section 3 of the ordinance there must be specific allegations of “*Imputation of Zina*”; there cannot be two opinions that the Petitioners have failed to prove the requisite ingredients of the offence. If at all, the words used *bonafidely* and in good faith postulates in second exception of section 3 of the Ordinance can be used in defense therefore, the above quoted words during court proceeding cannot be used motivated with malafide.

15. From perusal of evidence of the parties, more particularly the statement of Petitioner Mst. Ghazala Fatima recorded during preliminary inquiry of the complaint case reflects that she absolved the Respondents of leveling allegations of adultery or *Zina* by the Petitioners, therefore by no stretch of imagination, the statement made by the Respondents during court proceedings, reproduced as *supra* that relations in between spouses/Petitioners after execution of divorce deed by the Petitioner No.1 are against the principle of ‘*shariah*’, can constitute the Offence of *Qazf*. In such view of the matter, learned counsel for the Respondents argued that *Prima facie*, the complaint filed by the Petitioners was motivated only to malign and intimidated the Respondents so as to dissuade them from seeking/enforcing remedies *subjudice* before the Court.

16. *Insofar* as worthy submissions of Qazi Shams-ud-Din petitioner’s counsel that under Islamic *Shariah*, a Qazi or a Judge cannot extend benefit of doubt to the accused in Hudood case, therefore, the impugned judgment is not sustainable in law; suffice it to say that doubts prevent Hudood in Islam. A general principle of the ‘*Shariah Muhammadi*’ is that “*Hudood* are suspended by doubts”. This

theory is based on the tradition of the Holy Prophet (ﷺ), reproduced as under:

*“Sayyadah ‘Ayshah (R.A) reported that Allah’s Messenger (Peace be upon him) said “Avert as far as possible, infliction of prescribed punishment on Muslims. And if there is any way out then let them go, for it is better for an Imam to err while forgiving than to err while giving a punishment. (Muhammad ibn ‘Isa al Tirmidhi: Sunan Al Tirmidhi Vol.2 Page 438-439). In another Tradition the Holy Prophet said: ادرؤا الحدود بالشبهات . In case of doubts set aside Hadd punishment. (Nihayat al Muhtaj, Vol.7 p. 404)”*

The case law/citations relied upon by Mr. Qazi Shamsuddin, representing the Petitioners, as mentioned supra, are not attracting in the peculiar facts and circumstances of the case.

17. There is no cavil to the proposition that accused could take specific stance during cross examination which was merely in terms of suggestions. Beside the defense version raised by the Respondents, it is not necessary that if the defense has taken a specific stance in their statements under section 342 Cr.P.C, even then it is duty of the prosecution to prove the entire case at their own strength. Even inconsistent pleas taken by the accused, would not give any benefit to the prosecution as it is settled duty of the prosecution to prove the guilt of the accused beyond any shadow of reasonable doubt and once entertained reasonable doubt in the prosecution case, its’ benefit must be extended to the accused not as a grace but as a right. The testimonies of all examined prosecution witnesses are full of contradictions with each other on material points.

18. It is not out of context to mention that the scope of appeal against acquittal of accused is considerably limited. The impugned

**judgment passed by the trial Court is based on correct appreciation of evidence, would not warrant interference in appeal as the accused earns double presumption of innocence with the acquittal. Viewed from whichever angle, the judgment impugned herein is speaking one. More particularly, elaborate judgment rendered by the learned trial Court after thrashing grain from chaff, correctly reached at the conclusion that the prosecution has failed to bring home the charge against the Respondents beyond reasonable doubts. Suffice it to say that the judgment impugned does not call for interference; resulting in dismissal of Petition for special leave to appeal in *limine*. These are reasons of short order of even date announced in the Court.**

**JUSTICE SHAUKAT ALI RAKHSHANI**

**JUSTICE SYED MUHAMMAD FAROOQ SHAH**

**Islamabad the  
November 15<sup>th</sup> 2018  
M.Ajmal/\*\*.**