

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE AGHA RAFIQ AHMED KHAN, Chief Justice
MR. JUSTICE DR. FIDA MUHAMMAD KHAN

CRIMINAL APPEAL NO.12/I OF 2011

Muhammad Ashiq son of Nazar Muhammad,
R/o Mauza Bhutegi, Tehsil and District, Lodhran.

Appellant

Versus

1. Haji Abdul Razzaq son of Haji Ahmad Din,
2. Mst. Kalsoom Mai wife of Haji Abdul Razzaq,
3. Muhammad Sadiq son of Haji Ahmad Din,
4. Muhammad Qasim son of Haji Abdul Razzaq,
All residents of Chah Dewan-Wala, Mauza Bhutegi, Tehsil and District,
Lodhran.
5. The State.

..... Respondents

Counsel for appellant

.....

Mian Ashfaq Ahmed Sial,
Advocate

Counsel for State

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Nemo.

FIR, Date and
Police Station

.....

Nil.
Complaint case

Date of Order of
trial court

.....

21.01.2009

Date of Institution

.....

02.02.2009

Date of hearing

.....

04.03.2013

Date of decision

.....

05.03.2013

JUDGMENT

AGHA RAFIQ AHMED KHAN, Chief Justice.-

Appellant Muhammad Ashiq has preferred this appeal against the order dated 21.01.2009 passed by the learned Additional Sessions Judge, Lodhran, whereby his complaint has been dismissed in limine. The said complaint was filed by him against the respondents under section 7 of the Offence of Qazf (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as the said Ordinance).

2. Briefly stated Mst. Kalsoom Mai, respondent, on the instance of Haji Abdul Razzaq respondent, allegedly, filed a petition under sections 22-A and B, Cr.P.C. for registration of a criminal case with the allegation that the appellant Muhammad Ashiq, Atta Muhammad and Muhammad Yousaf took her in the sunflower crop and committed zina-bil-jabr with her. However, afterwards, during inquiry of the said petition, her allegations in the said complaint were found false by the local police. Subsequently, the same was dismissed as withdrawn on 11.05.2007. The appellant feeling aggrieved submitted petition under

section 7 of the said Ordinance before Illaqa Magistrate and requested that the respondents/accused be summoned to face trial and be dealt with in accordance with law. It was sent to the learned Additional Sessions Judge, Lodhran who called for record of the case and while perusing the record and examining the evidence, he, interalia, observed that Mst. Kalsoom Mai respondent had filed that petition under sections 22-A and B of Cr.P.C. on 26.04.2007 for seeking direction for registration of case against the present appellant and others. However, as indicated by the Order Sheet dated 05.05.2007 the Court was informed by clerk of counsel of petitioner that compromise had been effected but, since the petitioner had not appeared, the petition was adjourned on his request for 11.05.2007. The petitioner/respondent Mst. Kalsoom Mai was also summoned for the said date. However, on 11.05.2007 Malik Muhammad Javed Kalyar, Advocate withdrew the petition. The subsequent Order Sheet of that Court further indicates that the petitioner/respondent Mst. Kalsoom Mai did not appear on any date in the said complaint, allegedly

filed by her and a report submitted by the police in this respect also indicated that the matter had been patched up between the parties.

3. Perusal of the impugned order reveals that the appellant/complainant of this case filed the instant complaint after about 21 months after the withdrawal of that petition and according to the learned Additional Sessions Judge, this inordinate delay in filing this complaint indicated some foul play on the part of the appellant/complainant. The learned trial court vide the impugned order further found that the requirements of section 3 of the said Ordinance were not fulfilled and, therefore, finding no substance in the case of instant complaint, dismissed the same in limine. Hence this appeal.

4. We may also mention that the appellant, alongwith other co-accused, in the case FIR.No.293/2008 dated 23.08.2008, faced trial before Additional Sessions Judge, Lodhran and, vide judgment dated 17.03.2012, was acquitted.

5. We have heard learned counsel for the appellant and anxiously perused the record with his assistance. The learned counsel

while placing reliance on *Altaf Hussain Vs. The State and 03 others*, reported as 2005 P.Cr.L.J.758, submitted that a complaint had been filed under sections 22-A and B, Cr.P.C. by the respondent, Mst. Kalsoom Mai wife of Haji Abdul Razzaq but that was found false by the police. He submitted that though the respondent/complainant Mst. Kalsoom Mai did not appear before the Court in that case, her counsel had appeared and the complaint filed by her contained her photograph as well. He further submitted that the impugned order suffers from misreading and non reading of the evidence and since a case under section 3 of the said Ordinance was fully made out in the light of evidence on record, the case be remanded for retrial.

6. One of the respondents namely Haji Abdul Razzaq is also present. He stated that his counsel was not coming to the Court but he was not in a position to engage another counsel. He himself argued the case.

7. We have perused the impugned order as well as the judgment passed in FIR case on 17.03.2012. It may be pertinent to

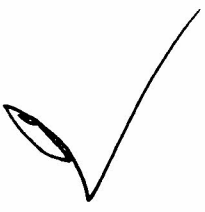
mention that as envisaged by sub sections (b) and (c) to section 3 of the said Ordinance, it is not Qazf to prefer in good faith an accusation of zina against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation. The relevant portion is reproduced herein-under:-

“Section 3. Qazf. Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes an imputation of zina concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation, or hurt the feelings, of such person, is said, except in the cases hereinafter excepted, to commit qazf.

.....

Second Exception (Accusation preferred in good faith to authorized person). Save in the cases hereinafter mentioned, it is not Qazf to prefer in good faith an accusation of zina against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

- (a)
- (b) According to the finding of the Court, a Witness has given false evidence of the commission of zina or zina-bil-jabr.
- (c) According to the finding of the Court, complainant has made a false accusation of zina-bil-jabr”.



8. In the case before us, admittedly, the petitioner Mst.

Kalsoom Mai had not appeared before the Court and had not made any


statement. Though the complaint allegedly filed by her was found false

by the police, the court did not give its positive finding about her to be a liar nor mentioned anywhere that the said complaint was false. Similar is the position of other respondents about whom no positive findings of the Court are available on record. Para 21 of the judgment passed in FIR case has categorically referred to the statement of the respondent Mst. Kalsoom Mai wherein she had interalia admitted that she had not stated in her statement under section 161 Cr.P.C. that accused had committed intercourse with her. That admission has not been contradicted/confronted by the appellant. We may also add that mere complaint bearing photograph of someone is not legally sufficient to prove its authenticity. The whole record further shows and refers to various disputes in-between the parties. The appellant and his co-accused have been acquitted due to discrepancies and doubts in the case of prosecution in FIR case and no finding of the Court in respect of the said respondent or any other witness/respondent is available to show that any one of them has given a false statement.

9. We have further perused the impugned order as well. It refers to some patch up between the parties and to the fact that the complaint allegedly filed by respondent/complainant Mst. Kalsoom Mai was dismissed as withdrawn. The said complainant/respondent never appeared before the Court and so did not make any statement nor made any allegations against anyone, including the appellant. The judgment relied upon by learned counsel for the appellant is distinguishable in facts and circumstances and has no relevance to the instant case wherein no statement of the respondent Mst. Kalsoom Mai was ever recorded. She did not even appear before the Court.

10. In this view of the matter, we find that the impugned order is well reasoned and is neither perverse, arbitrary nor frivolous and, therefore, calls for no interference. The appeal having been found misconceived is, therefore, dismissed accordingly.

Approved for reporting


JUSTICE AGHA RAFIQ AHMED KHAN
Chief Justice


JUSTICE DR. FIDA MUHAMMAD KHAN