## IN THE FEDERAL SHARIAT COURT

(Revisional Jurisdiction)

### **PRESENT**

# MR. JUSTICE RIZWAN ALI DODANI MR. JUSTICE SHEIKH AHMAD FAROOQ

## CRIMINAL APPEAL NO.31/P OF 2006 Linked with

Mst. Shash Begum d/o Mehr Ullah r/o Mohallah Baba Khel Pirpai, Tehsil and District Nowshera .... Appellant

#### Versus

- 1. Bashir Ullah s/o Subhan Ullah r/o Mohallah Baba Khel Pirpai, Tehsil and District Nowshera
- 2. The State

Respondents

### CRIMINAL APPEAL NO.32/P OF 2006

- 1. Mst. Khatima d/o Dilber
- 2. Malik Aman s/o Dilber
  Both residence of Tajabad near Office of Board of Intermediate and
  Secondary Education, Peshawar

**Appellants** 

#### Versus

- 1. Bashir Ullah s/o Subhan Ullah r/o Mohallah Baba Khel Pirpai, Tehsil and District Nowshera
- 2. The State

Respondents

## **CRIMINAL PSLA NO.2/P OF 2006**

Bashir Ullah s/o Subhan Ullah r/o Mohallah Baba Khel Pirpai, Tehsil and District Nowshera ... Petitioner

### Versus

- 1. Mst. Khatima d/o Dilber
- 2. Malik Aman s/o Dilber
  Both residence of Tajabad near Office of Board of Intermediate and Secondary Education, Peshawar

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Respondents

## CRIMINAL PSLA NO.3/P OF 2006

Bashir Ullah s/o Subhan Ullah r/o Mohallah Baba Khel Pirpai, Tehsil and District Nowshera ... Petitioner

#### Versus

1. Gulzar Ullah s/o Abdul Ghani r/o Darakshan Colony Circular Road Haideri Petrol Pump Yaka Toot, Peshawar City.

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- 2. Mst. Shash Begum d/o Mehr Ullah r/o Mohallah Baba Khel Pirpai, Tehsil and District Nowshera
- 3. Taskeen Ullah s/o Subhan Ullah r/o Mohallah Baba Khel Pirpai, Tehsil and District Nowshera
- 4. The State

Respondents

## **CRIMINAL REVISION NO.5/P OF 2006**

Bashir Ullah s/o Subhan Ullah r/o Mohallah Baba Khel Pirpai, Tehsil and District Nowshera ... Petitioner

#### Versus

- 1. Mst. Khatima d/o Dilber
- 2. Malik Aman s/o Dilber
  Both residence of Tajabad near Office of Board of Intermediate and Secondary Education, Peshawar
- 3. The State

Respondents

## **CRIMINAL REVISION NO.6/P OF 2006**

Bashir Ullah s/o Subhan Ullah r/o Mohallah Baba Khel Pirpai, Tehsil and District Nowshera .... Petitioner

#### Versus

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- 1. Mst. Shash Begum d/o Mehr Ullah r/o Mohallah Baba Khel Pirpai, Tehsil and District Nowshera
- 2. The State

Respondents

Counsel for appellants/

respondents

Mr. Gul Nazir Azam,

Advocate

Counsel for respondent/

Complainant

.... Mr. Ahmed Saleem,

Advocate

**Counsel for State** 

Mr. Aziz-ur-Rehman,

Advocate

Complaint case

No.9 and 10/2003,

dt.19.11.2003 and

22.12.2003

Date of judgment of

trial court

.. 28.10.2006

Date of Institutions ..... 23.11.2006

Date of hearing

23.01.2013

Date of decision

23.01.2013

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# **JUDGMENT**

SHEIKH AHMAD FAROOQ, Judge.- Mst.Shash Begum filed Cr.Appeal No.31-P-2006 and Mst.Khatima and Malik Aman filed appeal No.32-P-2006 against two separate judgments dated 28.10.2006 delivered by learned Additional Sessions Judge-III Nowshera whereby they have been convicted under section 500 PPC and sentenced as mentioned hereinunder:

Mst. Shash Begum To pay Rs.5000/- on two

counts or in default of payment of fine to further undergo two months S.I. on

each count.

Mst. Khatima Rs. 5000/- or two months S.I.

in default thereof.

Malik Aman Rs. 5000/- or two months S.I.

in default thereof.

Mst. Shash Begum, Mst. Khatima and Malik Aman will be referred to

hereinafter as the appellants.

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- 2. The appellants in both these appeals faced trial in complaints, bearing Nos. 9 and 10 of 2003, which were lodged by Bashir Ullah, who will be referred to hereinafter as the complainant/petitioner.
- 3. Bashirullah/complainant/petitioner also filed Cr. PSLA Nos. 2-P and 3-P of 2006 against the acquittal of Mst. Khatima and Malik Aman and Cr. PSLA No.3/P of 2006 against the acquittal of Gulzar Ullah, Mst. Shash Begum and Taskeen Ullah from charges of Qazaf (Enforcement of Hudood) Ordinance, 1979 read with section 499/501 PPC.Bashirullah/complainant/petitioner also preferred Cr.Revision No.5-P and 6-P of 2006 for enhancement of sentences awarded to Mst.Shash Begum, Mst. Khatima and Malik Aman. It is pertinent to mention here, that the aforementioned Cr.P.S.L.As and revisions are still at pre-admission stage.
- 4. Admittedly, the said appeals as well as P.S.L.As and relivisions have arisen out of two different complaints and two separate judgments of even dated i.e. 28.10.2006 but not only the parties are the same but also the

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allegations leveled in the complaints as well as the reasoning advanced and grounds taken in the impugned judgments by the learned trial court are identical. Hence, we intend to decide all these matters through this single

judgment.

5. The facts essential for the adjudication of the lis in hand are

that Bashirullah/complainant moved two separate complaints bearing No.9

and 10 of 2003 on 19.11.2003 and 22.12.2003 respectively before the

learned Sessions Judge Nowshera wherein, he alleged that Mst. Shash

Begum and Mst. Khatima, who are his former wives, have leveled

allegations of "zina" against him, which were also repeated in a plaint filed

before Family Court, Nowshera. He further alleged that Gulzar Ullah,

Taskeen Ullah and Malik Aman had instigated Mst. Shash Begum and Mst.

Khatima to make such allegation and thereafter, the said three persons also

repeated the same allegations, when they appeared in the witness box

before the Family Court Nowshera. The complainant contended that Mst.

Shash Begum and Mst. Khatima dispatched an application (Ex.PW.1/2),

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which was addressed to the Prime Minister of Pakistan and several other persons, wherein they reiterated the same allegations with the addition that a police officer (referring to the complainant) had kept a lady in his house without "nikah". Besides this, they also levelled various other allegations regarding the character and acquisition of property through illegal means by Bashirullah/complainant.

- 6. The learned Additional Sessions Judge-III Nowshera sent the complaints of Bashirullah to Senior Civil Judge Nowshera for conducting an inquiry and submission of report. The learned Senior Civil Judge Nowshera submitted the inquiry report dated 8.7.2004 wherein she observed that respondents have made allegations against Bashirullah to the effect that he has kept Mst.Robina Shaheen, who has not been divorced by her husband Karamatullah, as paramour.
- 7. After receipt of the inquiry report, the learned trial court charged Mst.Shash Begum, Gulzar Ullah and Taskeen Ullah under sections 3,5,7,11 and 12 of the Offence of Qazf (Enforcement of Hudood)

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Ordinance, 1979 read with sections 499,500,501 and 502 PPC. However, they did not plead guilty and claimed trial.

- 8. At the trial the following PWs were examined. The resume of the complainant's evidence is summed up as under:-
  - \* PW.1/ Amjad Ali Shah who was Senior Clerk of DIG Office,
    Peshawar, produced the record of the application submitted by
    Mst. Shash Begum to Chief Minister, NWFP. He also
    submitted the copy of statement of Mst. Shash Begum,
    findings of the DIG Inquiry and statement of complainant
    before DIG Enquiry.
  - \* PW.2 /Mir Baz/Incharge of the Complaint Cell CCPO,

    Peshawar produced the original record relevant to the case in
    hand.
  - \* PW.3/ Fazal Rabi/ Head Clerk, CPO Peshawar deposed that he had recorded the statement of Mst. Shash Begum in the presence of DIG Inquiry.
  - \* PW.4/Malik Aman/Junior Clerk, CPO Complaint Cell,
    Peshawar produced record of proceedings upon the complaint
    made by Mst. Shash Begum against Bashir Ullah to Chairman
    Human Rights Organization.
  - \* PW.5/ Zafar Ullah, wo was Superintendent of Police,
    Peshawar deposed that the complaint lodged by Mst.Shash

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Begum against complainant Bashir Ullah (Ex.PW.4/1) was marked to him by SSP Peshawar for inquiry and report and he recorded the statement of Bashir Ullah Khan. The witness accordingly verified his signatures on (Ex.PW.4/2) and verified that this statement was recorded by him.

- PW.6/ Ghulam Hussain, Asstt./Muharrir in the Court of Civil Judge, Nowshera produced the record of the case titled "Mst. Shash Begum Vs. Bashir Ullah" bearing case No.09/FC of 2001 pending before Judge Family Court, Nowshera. Statements of respondents Mst. Shash Begum, Gulzar Ullah and Taskeen Ullah recorded in the course of proceedings of the said case were placed on record as (Ex.PW.6/1, 6/2 and Ex.PW.6/3) respectively.
  - PW.6-A/ Shah Jehan deposed that accused/respondent Gulzar Ullah and Taskeen Ullah told him that complainant Bashir Ullah and his wife are of bad character and that Bashir Ullah has kept a lady as his wife without "Nikah". They further told that wife of Bashir Ullah is still in the Nikah of one Karamat Khan. The witness further deposed that the above named accused/respondents subsequently contacted him who were having two letters, one was hand written and the other was typed and it was told by them that they have written these applications.

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- \* PW.7 / Haji Azam deposed that the respondents in his presence and in the presence of some other persons discussed the character of complainant Bashir Ullah and stated that the complainant Bashir Ullah is of bad character and involved in offence of "zina" as he is keeping a woman, who was actually the wife of some other person.
- \* PW.8/ Bashir Ullah, who is the complainant of the case appeared in the witness box to verify the contents of his complaint. He reiterated and explained the substance of his complaint.
- 9. After recording the evidence produced by the complainant, the statements of the above respondents were recorded under section 342 Cr.P.C. All the respondents denied the allegations. However, they did not opt to make any statement on oath or produced evidence in defence.
- 10. As far as the proceedings of the complaint No.10 of 2003 are concerned, the complainant produced eight witnesses. All the witnesses who appeared in the said complaint except P.W.6-A (Shah Jehan) were the same person who had earlier appeared during the trial of complainant No.9 of 2003. Most of them are formal witnesses, who produced the record duly

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prepared during the inquiry proceedings. However, PW.7 /Haji Azam deposed about hearing of the allegations made about Bashir Ullah by the appellants/respondents.

- 11. On conclusion of trials, while the appellants were convicted and sentenced as mentioned above, Gulzar Ullah and Taskeen Ullah were acquitted. Feeling aggrieved, both the parties preferred appeals/PSLA/revisions as stated in paras 1 and 3 hereinabove.
- 12. We have heard the learned counsel for the parties at length and perused the record with their assistance.
- 13. Prior to further discussion and observations, it would be advantageous to reproduce here-in-under the applications (Ex.PW.1/1 and Ex.PW.1/2) submitted by Mst. Shash Begum and Mst. Khatima to Chief Minister, NWFP and IGP, Peshawar with copies to 17 other dignitaries:-

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السلام علیکم! جو وعدے آپ نے عوام سے کئے تھے مثلاً خاتمہ کرپشن ۔ خواتین کا تحفظ ۔ چادر اور چاردیواری کی حفاظت اور پولیس ریفامزوغیرہ ۔ ان وعدوں کا خاطر خواہ نتیجہ برآمد نہ ہوا جس سے عوام کی توقعات پورے نہیں ہو سکی ۔ باری تعالیٰ سے دعا ہےکہ وہ آپ کا اقبال بلند اور عمردراز ہو ۔ تاکہ آپ عوام کی توقعات پورا کر سکیں اور مظلومین کی فریاد اور اس کی دادرسی کرنے کی توفیق عطا فرمائیں ۔

- پہلے آتے ہی محکمہ پولیس صوبہ سرحد پشاور کے ایک عیاش اور بددیانت (DSP)کی طرف جس نے اپنی سگی چچاذاد بہن کے ساتہ سال ۱۹۸۲ء میں شادی کی اور شادی کے پہلی رات ازدواجی تعلقات ختم کر دیئے تقریباً ۸ اسال بعد اس کی زندگی تباہ اور اس (DSP)جس کا نام بشیراللہ ہے نام نہاد طلاق دی اس (DSP) نے نہ توشش بیگم زوجہ اثن کو کسی قسم کا نام نہاد طلاق نامہ بجھوایا اور نہ کسی قسم تحریری یازبانی اطلاع دی اسی طرح ایک مظلوم عورت کی زندگی کو کھلونا بنایا جو اسلام اور شریعت کے بالکل منافی ہے اب اس مظلوم عورت کے خاندان کے بارے تھوڑا سا آگاہ کر دو کہ (DSP) کی ایک بہن اس عورت (شش بیگم) کے بھائی شاہی ملک پر شادی شدہ ہے ۔ خاندانی وقار کومدنظر رکہ کران لوگوں نے شرافت کومدنظر رکھتے ہوئے اس کی بہن پر آنچ بھی آنے نہیں دی اور اپنے خاندان کی عزت اور وقار کو عزت سمجہ کراپنے گھر میں بسائے ہوئے ہیں ۔
- اس بشیرالله (DSP)نے ایک ماتحت گوہر پولیس کانسٹیبل کے ساتہ تھا نہ میں تعینات تھا اس کی بہن مسماۃ خاتمہ کے ساتہ شادی کرلی اور چار سال گزرنے کے بعد اس نے اسے بھی نام نہاد طلاق دی اس (DSP)نے مسماۃ خاتمہ کو بھی نہ نام نہاد طلاق نامہ بھیجا یا اورنہ اطلاع دی تھی حالانکہ مسماۃ خاتمہ نے بذریعہ (فضل الہی ایڈووکیٹ، پشاور ہائی کورٹ، پشاور ) بشیر الله کونوٹس بجھوایا تھا نہ نوٹس کا جواب دیا ۔ اور نام نہادطلاق نامہ بجھوایا ۔ جو نوٹس بدوران انکوائری پیش کیا جاویگا۔ اس واقعات میں آپ صاحبان کو کچہ ایسے حالات سے آگاہ کرتی ہوں جو ظلم اور کفر کی داستان ہے جب اس (DSP)نے یعنی بشیراللہ جب مسماۃ خاتمہ کا رشتہ بذریعہ نجب کل انسپکٹر مانگا جو کہ حال ہی میں انسپکٹر جنرل آف پولیس صوبہ سرحد نے نوکری سے برخاست کیا ہے تو گوہر کانسٹیبل نے بشیرا لله سے اپنی بہن کی گارنٹی میں نجب گل انسپکٹر کی بیٹی کا رشتہ مانگا نجب گل نے اپنی بیٹی مسماۃ بس بی بی کارشتہ گوہر کانسٹیبل کو دے دیا جب بشیرالله مسماۃ خاتمہ کو نام نہاد طلاق دے دی۔ کارشتہ گوہر کا نسٹیبل نے نجب گل انسپکٹر کی بیٹی سے منگنی توڑدی۔
- اب آتے ہیں اس زہریلی ناگن کی طرف جس نے تین مظلوم عورتوں کے گھر انے تبا کردیئے جناب اس زہریلی ناگن کا نام روبینہ شاہین ہے ۔اور ملک عیسی خان اور کزئی کی دختر اور کرامت الله ولد غریب الله سکنہ ابدرہ کی بیوی ہے جس کا تعلق بشیرالله کے ساته تقریباً بیس سال سے تھا جو اس کے پاس آیا جایا کرتی تھی بشیر الله نے اس کے خاوند کرامت الله ساکن ابدرہ کے ساته تعلق استوار کئے اور اس کو دوست بنا کر ان کے گھر آنا جانا شروع کر دیا اور اس کے ساته تعلقات بڑھانے اور تعلقات کوبہانا بنا کر کرامت الله خاوند روبینہ شاہین کو جاپان بجھوایا جب وہ جاپان چلا گیا تو یہاں پر ان دونوں نے اس کی غیر موجود گی میں روبینہ شاہین کے ساته نکاح ثانی کرلیا ۔ جس مولوی صاحب کا ہر جائز جس مولوی نے نکاح پڑھوایا اور یہ کا رنامہ انجام دیا اس مولوی صاحب کا ہر جائز ناجائز کام بشیر الله کرتا تھا اور اب بھی کر رہا ہے ۔ بشیر الله نے جس دن سے روبینہ شاہین کے ساته نکاح کیا تو اسی دن اس کے خاوند کرامت الله کی والدہ کو پتہ چلا تو شاہین کے ساته نکاح کیا تو اسی دن اس کے خاوند کرامت الله کی والدہ کو پتہ چلا تو وہ اس صدمے کو سہ نہ سکی اور نماز پڑھتے ہوئے اس دنیا سے رخصت ہو گئی

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بشیراللہ نے روبینہ شاہین اوراس کے ہمراہ تین بیٹیاں جو اس کے شوہر کرامت اللہ سے تھیں ۔ ان کو اپنے ہمراہ کوارٹر نمک منڈی میں لے آئیں ۔

- جناب بشیرالله نے بذریعہ کرپشن لاکھوں کی جائیدا د نقد بینک اکاؤنٹ روبینہ شاہین کے نام کر دیا یہاں تک کہ بعد ازمرگ پنشن بھی اس عورت کے نام لکه دی ہے اور غیر قانونی طور نمک منڈی تین سرکاری کوارٹر جو (SSP) پشاور کے نام پر تھے میونسپل کارپوریشن پشاور نے صرف دولاکه روپے میں ۹۹سال کیلئے لیزپر دے دیئے ۔ ان کوارٹر کو ایک ایک کر کے ایک عالی شان عمارت تعمیر کی ہے اس میں روبینہ شاہین کوبسایا ہے اس تعمیر پر کافی رقم خرچ کیا ہے جو ابھی اس حالت میں کروڑوں روپوں کی جائیداد ہے اس کی آمدنی حکومت پاکستان کونہیں مل رہی ہے ۔
- ۵۔ روبینہ شاہین تو زمانے کا فرشتہ ہے کیونکہ اس وقت اس کی بہن مسماۃ نگہت اورکزئی ممبر صوبائی اسمبلی صوبہ سرحد ہے اس کا والد سابقہ مسلم لیگ کا ممبر ہے اور بقول اس کے پاکستان ملک عیسلی خان اورکزئی نے بنایا جو روبینہ شاہین کا والدہے ۔
- چند دن ہوئے سیدگلزار حسین شاہ ایڈووکیٹ سیشن کورٹس پشاور نے گلزار اللہ چچا آم کو کہا کر امت اللہ کے ساتہ ٹیلیفون پر بات کریں اور ساتہ ہی ساتہ کر امت اللہ کے گھر او رموبائل کے نمبرات بھی دیئے سید گلزار حسین شاہ ایڈووکیٹ نے مزید بتالگیا ہے کہ بقول کرامت اللہ اس نے اپنی بیوی روبینہ شاہین کو طلاق نہیں دی جب چچا ام نے كرامت الله سے فون پر رابطے قائم كيں۔ تو كرامت الله نے اس سے كہا كم اس نے روبینہ شاہین کو طلاق نہیں دی ہے ۔ دوسرے دن جب عدالت ہائے سیشن کورٹ پشاور ميں بموجودگی (معزاللہ خان ايڈووكيٹ ) برادركرامت اللہ چچا آم گلزاراللہ كا آمنا سامنا ہوا ۔ نو کرامت اللہ وہی بات کی کہ اس نے روبینہ شاہین کوطلاق نہیں دی ہے اس وقت ملک آمان برادرمسماۃ خاتمہ بھی موجود تھا اسی سلسلے میں کرامت اللہ ولد غریب الله سکنہ ابدرہ کے انکوائری کی جاوے کہ اس نے اپنی بیوی کو طلاق دی ہے یا نہیں ۔ ہم دونوں بےگناہ مظلوم عورتیں کس کے پاس فریاد لے کر جائیں کیونکہ گزشتہ دو سال سے سول جج فیملی کورٹ نوشہرہ کے عدالت میں ہمارے مقدمات چل رہے ہیں کوئی پرسان حال نہیں ہیں ۔اور ہم دلیل خوار ہو رہے ہیں کیونکہ ایک طرف (DSP)ہے دوسری طرف اس کی سالی نگہت اور کزئی ممبر صوبائی اسمبلی ہے اور اس کا ایک بردرنسبتی (عمر علی خان شیرزئی ) ہے جو دفتر خارجہ اسلام آباد میں سیکرٹری ہے۔

(اپيل)

ان سب حالات کے ہم صدر اسلامی جمہوریہ پاکستان اور وزیراعظم پاکستان گورنر صوبہ سرحدوزیراعلی صوبہ سرحد اورتمام اعلیٰ افسران کو بذریعہ خطوط آگاہ کرتے ہیں کہ ان باتوں کی انکوائری کرنے کے بعد انصاف مانگتی ہیں کہ ایسے بے ایمان افسر کو اس وقت کے اعلیٰ حکام کیفر کردار تک پہنچائے ۔ اگرہماری اس درخواست پر عمل درآمد نہ ہوا تو ہم عین اس وقت جب قومی اسمبلی کا اجلاس ہو رہا ہوگا ۔ اسمبلی ہال کے سامنے دونوں دختران پاکستان خودسوزی کرینگے ۔ اس کی ذمہ داری ذیل حکام پر ہوگی ۔ شکریہ

(کاپی برائے ضروری کارروائی)

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مسماة شش بیگم دختر مهرالله سکنه کندی باباخیل سکنه پیرپیانی تحصیل ، ضلع نوشهره

(دستخط شش بیگم)

مسماة خاتمه دختر دلبار سکنه حال کندی باباخیل سکنه پیرپیائی تحصیل و ضلع نوشهره

(دستخط خاتمه)

- 14. It is apparent from the contents of the above application that the appellants/accused are closely related to the complainant/petitioner. The appellants/Mst. Shash Begum and Mst. Khatima, are former wives of Bashirulah, who had remained in his wedlock for a considerable period. Gulzarullah, who had died after the trial, was the real paternal uncle, whereas Taskeenullah is the real brother of the Bashirullah/complainant. Similarly, one of the convicted accused namely Amanullah is the real brother of Mst. Khatima, who is a former wife of the complainant.
- of the evidence seem to be that the complainant/petitioner was having some dispute regarding landed property with his brother and uncle. On the other hand, he also did not provide maintenance and neglected to fulfill his conjugal obligations of his Ex-wives. In the case of Mst. Shash Begum, he

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did not give her any attention for 18 long years and also did not at all maintain her. Naturally she was forced to reside with her parents. As far as Mst. Khatima is concerned, she also faced similar circumstances for several years. It is significant that the complainant himself had married another lady in the meanwhile. The purpose of application (Ex.PW.4/1) and the other suit admittedly filed by Mst. Shash Begum for recovery of dower and maintenance clearly establish the fact that both the ladies were demanding their rights as wives of the complainant and trying to knock at every door which could be helpful for redressal of their grievances and provide them justice. Prior to submitting, the disprinted applications, they had resorted to adopt a legal course by filing a suit before the Family Judge, Nowshera. Although, the judgment of the Family Court is not available on record and the actual findings could not be ascertained, but the statements made by Mst. Shash Begum and Mst. Khatima show that they only wanted to fight for their rights and had absolutely no intention to defame the complainant/petitioner in any manner. It appears that due to considerable

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time which was consumed in the prolonged litigation before the Family Court, they decided to approach the higher authorities also for this purpose. In this back drop, it appears that they never intended to harm the reputation of complainant or had any intention to make imputation of "zina" against him. We could not find any malafide, on their part, in the evidence.

16. In this connection, it would be appropriate to reproduce section 5 of the Ordinance ibid:

"Qazf liable to hadd. Whoever, being an adult, intentionally and without ambiguity commits qazf of zina liable to hadd against a particular person who is a muhsan and capable of performing sexual intercourse is, subject to the provisions of this Ordinance, said to commit qazf liable to hadd.

Explanation 1. In this section, "muhsan" means a sane and adult Muslim who either has had no sexual inter-course or has had such inter-course only with his or her lawfully wedded spouse.

Explanation 2.- If a person makes in respect of another person the imputation that such other person is an illegitimate child, or refuses to recognise such person to be a legitimate child, he shall be deemed to have committed *qazf* liable to hadd in respect of the mother of that person."

A bare perusal of the above section would reveal that it is an intentional

and specific imputation of commission of zina in un-ambiguous words

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against a "muhsan" that constitutes the offence of Qazf. Any other allegation or attributing the words like of bad character, dishonest, liar, thief, corrupt etc. do not at all fall under the mischief of the offence of "Qazf".

17. An in-depth scrutiny of the applications submitted by Mst. Shash Begum and Mst. Khatima would reveal that there is no specific allegation of commission of zina attributed to the complainants/petitioner. Therefore, the contents of application, though admitted by Mst. Shash Begum during the inquiry proceedings, do not amount to commission of Qazf. Stating simply that a police officer has kept a lady without "nikah", does not specifically mean commission of "zina" by that police officer. It will be appreciated that no inference can be drawn from these words which may specifically mean commission of "zina". It is also worth consideration that a lady, who has a rural background and does not appear to be properly educated, may have admitted the submission of the application as a matter of fact but cannot be presumed to be fully aware of

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the exact contents of the applications and their implications. Moreover, it is not proved on record that she had herself written the said application. Neither the scribe nor the Urdu Typist has appeared during the trial to confirm the verbatim recording of these applications, which though exhibited, are not duly proved through the requisite legal mode. This fact is further supported from the fact that at the time when the said application was submitted, she was already divorced by the complainant but despite that, an impression is created from the contents of the application that both the ladies were still in wedlock of the complainant/petitioner. This confirms that the ladies were not educated enough to explain their position as Ex. Wives of the complainant.

18. Verse No.4 of Sura Al-Nur of the Holy Quran is very clear on the subject and it reads as follows:-

"Those who accuse honourable women (of unchastity) but do not produce four witnesses, flog them with eighty lashes, and do not admit their testimony ever after. They are indeed transgressors."

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17. An in-depth scrutiny of the applications submitted by Mst. Shash Begum and Mst. Khatima would reveal that there is no specific allegation of commission of zina attributed to the complainants/petitioner. Therefore, the contents of application, though admitted by Mst. Shash Begum during the inquiry proceedings, do not amount to commission of Qazf. Stating simply that a police officer has kept a lady without "nikah", does not specifically mean commission of "zina" by that police officer. It will be appreciated that no inference can be drawn from these words which may specifically mean commission of "zina". It is also worth consideration that a lady, who has a rural background and does not appear to be properly educated, may have admitted the submission of the application as a matter of fact but cannot be presumed to be fully aware of Cr. Appeal No. 31/P-2006, Cr. Appeal No. 32/P-2006, Cr. PSLA No.2/P-2006;

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There is a consensus of jurists that this Verse pertains to accusing chaste women of adultery and this injunction also applies to chaste men if they are accused of adultery. This is termed as Qazf in the Shariah terminology.

19. We may also refer here to the opinions of reputed Muslim

Jurists, who have elaborated the meaning of Qazf in the following words:-

قذف کا معنی رمی ہے اور لفظ رمی کے معنی کسی شخص پر پتھر یا تیر وغیرہ کا پھینکنا ہے ۔ تاکہ دوسرے کو تکلیف یا ضرر پہنچے یہ لفظ الزام تراشی کے معنی میں استعارہ ہے ۔ کسی پر عیب تھوپنا ۔ بہر حال اس کیلئے موجب اذیت ومضرت ہے ۔ پس انسان کے منہ سے نکلی ہوئی بات ایسی ہی ہے جیسے ہاتہ سے چلایا ہوا تیر کسی بے گناہ پر بدکاری کا صریحاً الزام لگانا یا ایسی بات کہنا جس کا مطلب یہی ہو، قذف ہے ۔

آئمہ فقہاءرحمہم اللہ کا اس پر اتفاق ہے کہ اگر کوئی آزاد ، بالغ، عاقل ، مسلمان اور بالختیار شخص کسی آزاد ، عاقل ، بالغ ، مسلمان اور بے گناہ مرد پر جسے اس سے پہلے سزائے زنا نہیں ملی یا کسی آزاد ، بالغہ ، عاقلہ ،مسلمان او ر پاکدامن قابل مباشرت عورت پر جس کے ساته لعان نہیں ہوا ہے اور زنا کی پاداش میں حد نہیں ماری گئی تہمت لگائے اور تہمت صراحة ہو اور دارالحرب میں نہ ہو اور جسے تہمت لگائی گئی وہ خود حد قذف کا مطالبہ کرے تو اس شخص کو سودر ے لگائے جائیں گے بشرطیکہ وہ اپنے قول کے ثبوت میں چار معتبر گواہ نہ پیش کرسکے ۔(عبدالرحمن الجزیری ، کتاب الفقہ علی المذاہب الاربعہ ، صفحہ 395-396)

موسوعہ فقہیہ جلد ٣٣، صفحہ ٥، میں قذف كى تعریف اس طرح كى گئى ہے

عرفه الحنفيه والحنابله بانه الرمى بالزنا وزادالشافعيه فى" معرض التعيير "وعرفه المالكية بانه رمى مكلف حرأ مسلما بنفى نسب عن اب اور جد او بزنا .

حنفی اور حنبلی فقہاءکے نزدیک قذف کسی شخص کے اوپر زنا کا تہمت لگانا ہے۔ شافعی فقہاءنے اس پر یہ اضافہ کیا ہے کہ یہ تہمت عار کے موقع پرلگایا گیا ہو جبکہ مالکی فقہاءنے

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کہا ہے کہ کسی مکلف ، آزاد اور مسلمان شخص کا اس کے باپ یا دادا کی نسب سے نفی کرنا یا اس پر زنا کا الزام لگانا قذف کہلاتا ہے ۔

(حاشيہ ابن عابدين جلد 4 صفحہ 43 ، 44 . الشرح الصغير جلد 4 صفحہ 424 ، 425 ومغنى المحتاج جلد 4 صفحہ 215) موسوعہ فقہيہ جلد ٣٣ ، صفحہ 4 ، قذف ، قضاء۔

شروط القاذف ، اس بات پر تمام فقہاءکا اتفاق ہے کہ قاذف میں درج ذیل شروط ہونا ضروری ہے ۔

بلوغ ، عقل ، اختيار خواه وه مرد بو يا عورت ، آزاد بو يا غلام مسلمان بو يا غير مسلم-

ہدایہ میں قذف کی تعریف اس طرح کی گئی ہے "الر می بالزنا"یعنی زنی کا الزام لگانا ہدایہ کی شرح فتح القدیر میں لکھا ہے "وفی الشرع رمی بالزنا "یعنی شریعت میں قذف کا معنی کسی کے اوپر زنا کا الزام لگانا ہے ۔

( فتح القدير مع الكفايم ، جلد5، صفحم 89

20. The Mufti Azam of Pakistan Mufti Muhammad Shafi

commenting on Verse 4 of Sura 24 writes as under:-

مسئلہ ۔ یہ حد شرعی جو تہمت زنا پر ذکر کی گئی ہے صرف اسی تہمت کے ساته مخصوص ہے کسی دوسرے جرم کی تہمت کسی شخص پر لگائی جائے تو یہ شرعی اس پر جاری نہیں ہوگی ۔ ہاں تعزیر ی سزا حاکم کی صوابدید کے مطابق ہر جرم کی تہمت پر دی جا سکتی ہے ۔ الفاظ قرآن میں اگرچہ صراحة ً اس حد کا تہمت زنا کے ساته مخصوص ہونا ذکر نہیں مگر چار گواہوں کی شہادت کا ذکر اس خصوصیت کی دلیل ہے کیونکہ چار گواہ کی شرط صرف ثبوت زنا ہی کے لئے مخصوص ہے ۔ (جصاص وہدایہ )( مولانا مفتی محمد شفیع،بحوالہ معارف القرآن ، جلد ؟ ، صفحہ ۳۵۴، ۳۵۵)

MaulanaSyed Abul Ala Maudoodi has further elaborated the Offence of

<sup>&</sup>quot;Qazf" in the following manner:-

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آیت میں الفاظ " والنین یرمون "استعمال ہوئے ہیں جن کے معنی ہیں "وہ لوگ جو الزام لگائیں "۔ لیکن سیاق و سباق یہ بتاتا ہے کہ یہاںالزام سے مراد ہر قسم کا الزام نہیں ، بلکہ مخصوص طور پر زنا کاالزام ہے ۔ پہلے زنا کا حکم بیان ہوا ہے اور آگے لعان کا حکم آرہا ہے ، ان دونوں کے درمیان اس حکم کا آنا صاف اشارہ کر رہا ہے کہ یہاں "الزام "سے مرادکس نوعیت کاالزام ہے پھر الفاظ یَرمُون المُضَنّتِ (الزام لگائیں پاک دامن عورتوں پر ) سے بھی یہ اشارہ نکلتا ہے کہ مراد وہ الزام ہے جو پاک دامنی کے خلاف ہو ۔ اس پر مزید یہ کہ الزام لگائی والوں سے اپنے الزام کے ثبوت میں چارگواہ لانے کامطالبہ کیا گیا ہے جو پورے لگانے والوں سے اپنے الزام کے ثبوت میں چارگواہ لانے کامطالبہ کیا گیا ہے جو پورے علماءکااجماع ہے کہ اس آیت میں صرف الزام زنا حکم بیان ہواہے ، جس کے لیے علماءنے" علماءکااجماع ہے کہ اس آیت میں صرف الزام زنا حکم بیان ہواہے ، جس کے لیے علماءنے" شرابی ، یا سود خوار ، یا کافر کہہ دینا ) اس حکم کی زد میں نہ آئیں ۔ "قذف" کے سوا دوسری تہمت تراشیاں(مثلا کسی کو چور ، یا تہمتوں کی سزا قاضی خود تجویز کر سکتا ہے ، یا مملکت کی مجلس شوری حسب ضرورت ان کے لیے توہین اور ازالہ حیثیت عرفی کاکوئی عام قانون بنا سکتی ہے ۔

21. In this case, it is also very pertinent to mention that not only Mst.

Shash Begum and Mst. Khatima have not substantiated the allegation made

in para 3 of their applications, but also the complainant/petitioner has also

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not been able to bring on record his "Nikahnama" with Mst. Robina Shaheen or produced even a divorce deed or any other document executed by Karamat Ullah, who is former husband of Mst. Robina Shaheena. Therefore, it is still questionable whether the allegation made in the application was ever rebutted by any cogent piece of evidence by the complainant and whether it was actually false, baseless and unfounded.

- 22. Moreover the evidence required for imposition of Hadd punishment as envisaged under section 6 of the Ordinance ibid is not at all available on record. Neither any one of the respondents have made any confession of the commission of the offence before a court of competent jurisdiction nor the complainant/petitioner has been able to produce two witnesses, who fulfill the requirement of Tazkiyah-al-Shahood.
- 23. In view of the above, the necessary requirements of the section-6 of the Ordinance ibid are not available in circumstances of the case. We have perused the impugned judgment and find that the learned trial court had rightly appreciated the evidence produced by the complainant in order to prove the commission of offence of "Qazf" by the appellants as well as the acquitted accused. The impugned judgment to this

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extent is unexceptionable and does not call for any interference by this Court.

24. Now, we turn to the appeals against conviction. As mentioned above, the appellants have been convicted under section 500 PPC and sentenced accordingly. However, section 500 PPC read with Eight and Ninth exceptions of section 499 PPC, is not applicable in the instant case. Section 499 PPC and the said exception are being reproduced hereinunder for better appreciation:-

"Defamation.- Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Eight Exception.- Accusation preferred in good faith to authorized person.- It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.- Imputation made in good faith by person for protection of his or other's interests.- It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good."

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- 25. From the above provisions of law, it is abundantly clear that the most essential ingredient for constituting an offence of defamation is mens rea or intention.(Relince PLD 2001-Karachi-115). The following are the other necessary ingredients of defamation as defined under section 499 PPC:
  - (i) the making or publishing of an imputation concerning any person;
  - (ii) such imputation must have been made:-
    - (a) by words either spoken or intended to be read; or
    - (b) by signs; or
    - (c) by visible representations, and
  - (iii) such imputations must have been made with the intention of harming or knowing, or having reason to believe, that it will harm the reputation of the person concerning, whom it is made.
- 26. However, the accusation preferred in good faith against any person to any of those, who have lawful authority over that person or an imputation made in good faith by person for protection of his right or interest, as specifically mentioned in the above exceptions, do not fall within the definition of "Defamation" as envisaged under section 499 PPC. The appellants were ex-wives of the complainant/petitioner and by all

means, they were justified to adopt any legal course or approach any other

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person and authority to protect their interest and obtain their legitimate rights. It does not appear anywhere from their application that they had malicious intention to assail the character or reputation of the complainant/petitioner.

27. So far as the involvement of the appellant Malik Aman is concerned, the complainant could not prove the same by any cogent piece of evidence. Moreover, the depositions of PW.7 in one case and PW.6A in the other, finds no corroboration and are also at variance with each other. Admittedly, both the sides were engaged in litigation about inheritance. In this background, the evidence produced by the complainant is not sufficient to bring home guilt of the appellants/accused beyond reasonable shadow of doubt. Moreover, no effort has been made by the trial court to fulfill the requirement of Tazkiyatul Shuhood regarding the witnesses of the complainant, as envisaged under section 6 of the Ordinance ibid.

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28. For the foregoing reasons, we hold that the findings of the learned trial court about the commission of an offence by Mst.Shash Begum, Mst.Khatima and Malik Aman under section 500 PPC are not in accordance with law and cannot be maintained. Hence, the judgments of learned trial court dated 28.10.2006 to this extent are set aside. the Resultantly, Cr. Appeal No.31/P of 2006 filed by appellant/ Mst. Shash Begum and Cr. Appeal No. 32/P of 2006 filed by appellants/ Mst. Khatima and Malik Aman are allowed. However, Cr. PSLA Nos. 2/P of 2006 and 3/P of 2006 filed by complainant/petitioner Bashir Ullah are dismissed. Similarly, Cr. Revision No. 5/P of 2006 and Cr. Revision No. 6/P of 2006 filed by complainant/petitioner Bashir Ullah are also dismissed. Cr. Misc. Application No. 14/P of 2006 and Cr. Misc. Application No. 15/P of 2006 filed for suspension of sentence have become infructuous and same are accordingly disposed of.

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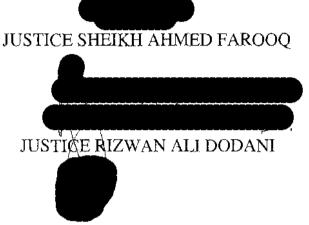
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29. These are the reasons of our short order dated 23.01.2013.



Islamabad the 23<sup>rd</sup> January 2013 *M.Akram/\** 

APPROVED FOR REPORTING

JUSTICE SHEIKH AHMAD FAROOQ