

IN THE FEDERAL SHARIAT COURT
(Appellate / Revisional Jurisdiction)

PRESENT:

MR. JUSTICE SYED AFZAL HAIDER

Criminal Revision No.126/L of 2006

Mst. Robina Rashid, daughter of Abdul Rashid, resident of House No.30, Qari Road, near Firdaus Cinema, Rajgarh, Lahore.

.....Petitioner

VERSUS

1. Farrukh Amin, son of Ch. Muhammad Amin, Caste Arain, resident of House No.46, Qureshi Street No.3, Taizab Ahafa Road, Lahore.
2. The State.

.....Respondents

Counsel for the petitioner	---	Sh. Hamad Danish, Advocate
Counsel for the respondent	---	Mr. Muhammad Rasheed Chaudhary, Advocate
Counsel for the State	---	Qazi Zafar Iqbal, Additional Prosecutor General
F.I.R. No. Date & Police Station	---	Private Complaint dated 19.10.2006
Date of Order of trial Court	---	13.11.2006
Date of institution	---	27.11.2006
Date of hearing	---	19.03.2009
Date of decision	---	21.03.2009

JUDGMENT:

JUSTICE SYED AFZAL HAIDER, J:- This revision petition is directed against the order dated 13.11.2006 passed by the learned Additional Sessions Judge, Lahore whereby the complaint filed by Mst. Robina Rashid petitioner was dismissed.

2. The brief facts leading up to this revision petition are that the petitioner filed a private complaint against respondent her former husband Farrukh Amin alleging that he filed an application under Section 25 of Guardian and Ward Act before the learned Guardian Judge-II, Lahore and in Paragraphs No.6 and 7 of that application he leveled false allegations of bad character. He also made serious allegations against the petitioner in the Talaqnama that she likes to meet strangers which had humiliated the petitioner and her parents in the society. Thereafter the respondent on 21.06.2006 in the presence of witnesses defamed the petitioner also at his shop by stating that the petitioner was of bad character. She further stated that the

respondent committed the offence of Qazf by leveling false, fabricated and baseless allegations against the petitioner.

3. As a consequence of filing of private complaint, statement of the petitioner was recorded under section 200 of the Code of Criminal Procedure and preliminary evidence of Tauqeer Ahmad and Zamanat Khan produced by the complainant was also recorded by the trial Court on 03.11.2006.

4. The learned trial Court after the preliminary proceedings dismissed the private complaint of petitioner on 13.11.2006. This order has been assailed in Criminal Revision No.126/L/2006.

5. I have gone through the file and perused the preliminary evidence produced by the petitioner before the trial Court and also seen the relevant portions of the impugned order. I have also considered the arguments of the learned Counsel of the parties. A perusal of the record shows that complainant had categorically stated that her husband had alleged that a) the

petitioner likes to meet strangers; b) She is 'Badchallan' (having evil habits); and that she is c) 'Badkirdar' (of immoral character).

These words are certainly not uttered in good taste. In ordinary parlance when a husband employs such a terminology it certainly has a sinister significance. Such words not only constitute evil imputation but are calculated to hurt the feelings of the wife and to harm the reputation of a married woman. The complainant supported the contents of her complaint by cursory evidence.

Production of unattested copies at the time of preliminary evidence did not disentitle her to produce attested copies at the trial. The complaint as well as the cursory evidence placed by her on the record had to be considered to determine whether a prima-facie case was made out. No deeper appreciation was required at the initial stage. All the other points referred to by the learned trial Court merited being considered only after the evidence of the complainant had been recorded. It is not one of those cases which did not disclose the commission of an offence.

The fact that the complainant and witnesses are closely related to each other is no bar to the admission of evidence.

6. Learned Counsel for the respondent raised an objection about the maintainability of the revision petition. His objection is that under Section 417(2) of the Code of Criminal Procedure only an appeal is competent against order of acquittal and that too after the Court grants leave to appeal in a case instituted upon a private Complaint. It was, therefore, urged that the Revision merits dismissal on this score alone. The learned Counsel relied upon the case of Muhammad Munawar Versus Kausar Parveen and another 2003 P.Cr.L.J 1816, a Division Bench judgment of the Federal Shariat Court wherein it was held that the remedy available to complainant to challenge acquittal of accused in a case initiated on a private complaint was not by way of Revision before the Federal Shariat Court under Article 203-DD of the Constitution but the remedy was provided by Section 417(2) of the Code of Criminal Procedure by way of Appeal

before the High Court and that too if special leave to appeal was granted for that purpose. It was however brought to the notice of the learned Counsel for the respondent that the proposition of law urged by him is certainly correct but it is applicable only when the accused has secured an acquittal after a trial. In the instant case the complaint had been dismissed when the accused were not before the Court. An order of dismissal of complaint cannot be equated with an order of acquittal. There was no application under section 249-A and 265-K of the Code of Criminal Procedure nor was an acquitted ordered after a full fledged trial. The precedent relied upon, therefore, did not support the respondents.

7. The attention of learned Counsel was also invited to Section 203 of the Code of Criminal Procedure wherein the Court could dismiss a complaint if after considering the statement of the complainant and the result of investigation or enquiry, if any under Section 202 of the Code, there are no sufficient

grounds for proceeding further. The dismissal of a complaint under Section 203 of the Code of Criminal Procedure cannot be equated with the acquittal recorded after the trial has been held. The word acquittal is not used in this section for the simple reason that the accused is not before the Court. This is a stage where the Court has to assess whether prima facie a case is made out to summon the accused on the basis of cursory evidence. The word acquittal is specifically used by the Code in Sections 249-A and 265-K. In a case of acquittal the trial Court has to record reasons for acquitting the accused but under Section 203 the trial Court has nothing to do with the accused person because he is not before him. He has only to determine whether on the given facts there is sufficient ground for proceeding and whether the case appears to be one in which a summon should issue at the first instance as contemplated by Section 204. The only material before the Court under Section 203 is the statement on oath of the complainant and the result of the inquiry or investigation if

ordered under Section 202 of the Code. In this view of the matter the objection of the learned Counsel for the respondent is not maintainable.

8. The impugned order dated 13.11.2006 passed by the learned Additional Sessions Judge, Lahore is hereby set aside. The case is remitted with the direction that an appropriate order based upon the consideration of contents of her complaint and cursory evidence of the complainant is passed with the sole object of determining whether a prima-facie case is made out or not. In this view of the matter, the revision petition is accepted.

Smaida

Justice Syed Afzal Haider

Dated Lahore the,

21st March 2009

M. Imran Bhatti/*

Fit for reporting

Smaida

Justice Syed Afzal Haider