

IN THE FEDERAL SHARIAT COURT
(Appellate / Revisional Jurisdiction)

PRESENT:

MR. JUSTICE SYED AFZAL HAIDER

Criminal Revision No.19/L of 2006

Mst. Asiya Bibi daughter of Allah Yar, Caste
Muhammad Khel, resident of Nari Muhammad
Khelanwali, Tehsil & District Mianwali.

.....Petitioner

VERSUS

1. Alam Khan son of Alam Sher
2. Hayat Khan son of Alam Khan
3. Muhammad Khan son of Alam Khan
4. Allah Yar son of Fateh Sher

All Muhammad Khel by caste, resident of Nari Muhammad
Khelanwali, Tehsil & District Mianwali.

5. The State etc.

.....Respondents

Counsel for the petitioner --- Mr. Bashir Abbas Khan,
Advocate

Counsel for the respondents --- Mr. Ahmad Awais Khurram,
Advocate

Counsel for the State --- Mr. Arif Karim,
D.P.G.

F.I.R. No. Date & --- Private Complaint
Police Station dated 29.10.2005

Date of Order of trial Court --- 13.02.2006

Date of institution --- 09.03.2006

Date of hearing --- 19.11.2008

Date of decision --- 19.11.2008

JUDGMENT:

JUSTICE SYED AFZAL HAIDER, J:- Petitioner

through this revision seeks to challenge the order dated 13.02.2006 whereby the learned trial Court dismissed the complaint after perusing a report dated 02.01.2006 submitted by the Judicial Magistrate. The learned Counsel contends that the solitary ground raised by the learned trial Court in dismissing the complaint is given in Para 3 to the effect "no case can be got registered against a father for abduction of any of his children, and, therefore, provisions of section 365 PPC cannot be said to be attracted".

2. The complaint shows that four accused other than her father were alleged to have caught hold of the complainant in order to take her alongwith them and in this process when she raised hue and cry, she received injury and her uncle Muhammad Bakhsh was also beaten up as he had come to rescue her. Her maternal grand father and other close relations

also came forward and rescued her from the clutches of the abductors. The motive behind the offence is that the accused wanted to force her to marry some one against her consent. It has been clearly stated in the complaint that it is at the instigation of the father that four accused came to abduct her. It has been stated that she is not living in the house of her father but she is living in the house of her maternal uncle and maternal grand father because her father had divorced her mother after her birth and since then she is living in the house of her maternal grand father. It is also stated that the suit of the complainant against her father for maintenance has also been decreed and execution of the decree is in process.

3. The impugned order shows that the learned trial Court has not considered these aspects. There is no cavil with the proposition that no case of abduction can be registered against a father provided the children are living with him and are in his protective custody but if a child is abandoned by the father the

latter loses the right of custody. Then, if after a lapse of few years when the abandoned child comes of age, a right does not abruptly crop up in favour of the father to marry his daughter. It is, therefore, clear that no right accrues to the father to forcibly remove his abandoned daughter from the lawful and protective custody of her maternal uncle and maternal grand father who have maintained her throughout the period of infancy, childhood and the youth. The father cannot compel her to marry against her will. The complainant is sui-juris. Moreover the father has no right to take the law in his own hand and seek assistance of hired persons to forcefully remove his daughter for the purpose of forcing her to enter into marriage against her will.

4. There is also a history of litigation between the daughter and the father which shows that the father did neither maintain his daughter (complainant) for considerable period nor extended paternal affection during this period. The daughter is

of course angry but that does not mean that her complaint should not be heard.

5. All these points had to be assessed. The complainant cannot be deprived of right of proving her case through private complaint. In this view of the matter, the order dated 13.02.2006, wherein the points mentioned above do not form part of deliberation of the learned trial Court, is hereby set aside. Learned trial Court is directed to issue process and proceed with the trial. The trial must be concluded within a period of six months and a report be sent to the Registrar of this Court accordingly.

Smaida

Justice Syed Afzal Haider

Dated Lahore the,
19th November, 2008
M. Imran Bhatti/*

Fit for reporting

Smaida