

IN THE FEDERAL SHARIAT COURT
(REVISIONAL JURISDICTION)

PRESENT

HON'BLE MR.JUSTICE SALAHUDDIN MIRZA

CRIMINAL REVISION NO.8/I of 2004

Mst.Dur-e-Shahwar Begum **Petitioner**
d/oAli Gohar,Caste Chishti,
r/o Jamoo Bodla(Goharabad)
P.S.Kaboola,Tebdil and District
Pakpattan

Versus

1. Haji Bakhtawar Said
Muhammad s/o Diwan Said
Muhammad Caste Chishti
r/o Pakpattan Sharif District
Pakpattan

2. The State **Respondents**

Counsel for the respondent **Mr.Muhammad Shoaib**
Abbasi,Advocate

Counsel for the State **Mr.Asjad Javed Goral**
and Syed Ali
Imran,DPG's

Private Complainant **No.51/2003,09-05-1984**

Date of Order of the **06-12-2003**
Trial Court

Date of Institution **21-01-2004**

Date of hearing **07-12-2007**

Date of decision **25.1.2008**

SALAHUDDIN MIRZA, J.- By way of introduction it may be

stated in brief that petitioner Mst. Durr-e-Shahwar and respondent Haji Bakhtiar Said Mahammad were married on 23.7.1972, the respondent being the younger brother of Diwan Ghulam Qutbuddin (since deceased, former 'sajjada nashin' of the Dargah of Hazrat Baba Farid Shakar Gunj, Pakpattan, but unfortunately the marriage did not last long and the respondent orally divorced petitioner on 24.4.1983 and the next day (on 25.4.1983) a written divorce deed was executed by the respondent which became effective on 3.8.1983. Since then the parties are under litigation from the level of Civil Judge to the Supreme Court.

2. The facts leading to the filing of this revision petition are that petitioner filed a suit on 17.7.1983 against the respondent for recovery of dower articles (or money in lieu thereof) in the Court of Civil Judge Pakpattan. She also filed another suit on the same date in the same Court for recovery of maintenance for herself and her three children. The respondent filed written statements in both the suits on 16.1.1984. In both these written statements the respondent stated that the petitioner

was not of good character and all her three children were not from him but the result of adultery. Presumably the suits are pending without any progress having been made in them for the last twenty-three (23) years.

3. On **9.5.1984** the petitioner filed a complaint in the Court of Additional Sessions Judge Pakpattan under section 7 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979, (hereinafter referred to as "the Qazf Ordinance"), in which she stated (per para-5) that after receiving the divorce deed she alongwith a number of notables, whose names she has given in the complaint and which include the name of Pir Muhammad Sakhi Chishti, went to Pakpattan to meet the respondent for effecting a settlement but the respondent spurned these reconciliatory gestures of the petitioner and accused her of adultery before the assembled notables and refused to acknowledge the paternity of the three children of the petitioner and alleged that they were the illegitimate children of the petitioner.

4. During the course of inquiry under section 202 Cr.P.C., learned Additional Sessions Judge examined four witnesses, including

respondent's brother Diwan Ghulam Qutbuddin and Sakhi Muhammad Shah Chishti and both of them stated that they had gone to the house of respondent alongwith the petitioner and other notables of the area but the respondent rejected the reconciliatory gestures of the petitioner and the notables and in front of all of them accused the petitioner of being of immoral character and habituated to adultery and denied the paternity of her three children. Learned trial Judge however refused to frame charge under section 7 of the Qazf Ordinance vide impugned Order of 6.12.2003 and held that the inquiry under section 202 Cr.P.C. revealed that the respondent had leveled charge of adultery and of bad character against the petitioner during the subsistence of marriage between them, not after the divorce, and therefore this dispute being between husband and wife, would not attract the provisions of section 7 of the Qazf Ordinance but of section 14 of the Qazf Ordinance and the petitioner impugns this order through this revision petition.

5. The bulky record has been gone through and the son of the petitioner, learned counsel for the respondent and learned State counsel

have been heard. Mr. Ali Ahmad, son of the petitioner, had been given special permission at his request to address the Court on behalf of his mother.

6. The relevant documents for the purpose of determining the validity or otherwise of the impugned order are, firstly, the deposition of witnesses examined by learned Additional Sessions Judge during the preliminary inquiry and the plaints in the two family suits filed by petitioner Durr-e-Shahwar Begum against the respondent for return of dowry and for maintenance and the written statements filed by the respondent (both dated 16.1.1984) in the two suits, as well as 'an amended written statement dated 6.1.1985' in the dowry suit. We have minutely examined these documents.

7. According to the petitioner, the respondent had first committed the offence of Qazf before the respectables of the parties when they had gone to the respondent to effect reconciliation after the receipt of divorce deed by the petitioner and the respondent is alleged to have again committed the same offence when he filed the three written statements in

the two family suits in which he denied the paternity of the three children of the petitioner alleging that they were not from him but from someone else with whom the petitioner had illicit relations.

8. Appearing as **PW 1** in the preliminary inquiry, the petitioner said that the respondent had turned her out of the house some five years prior to giving the divorce and she was living separately after receiving the divorce deed (dated 25.4.1983) from the respondent, she went to him with the respectables of her family for effecting some reconciliation but the respondent refused to hear them and stated before them that she was a woman of bad character and her three children were the result of adultery. She also gave the names of five respectables of her family who had gone with her to the house of the respondent. (Haji Bakhtiar Said Muhammad). (PW 2) Diwan Ghulam Qutbuddin, Sajjada Nashin of dargha of Baba Farid Shakar Gunj, is the real elder brother of the respondent. He deposed that the respondent was his younger brother and lived in the adjoining house and he knew very well that the petitioner had lived with the respondent for about 7 or 8 years after marriage and

her three children were from the respondent. He further stated that the petitioner once came to her alongwith the respecables of the 'bradari' and complained that the respondent had divorced her and had also accused her of adultery and denied the paternity of her children whereupon he (Diwan Ghulam Qutbuddin) sent for the respondent (his younger brother) and tried to persuade him to affect reconciliation but the respondent refused to patch up the dispute and even in his presence leveled false charge of adultery on the petitioner and declared that her children were not from his 'nutfa' and were illegitimate. **PW 3** is the daughter of the petitioner who was 10 (ten) year old in July 1984 when she was examined. Her evidence is of very little value for our purposes.

PW 4 Sakhi Muhammad Shah is the 'khaloo' of the petitioner and he said that he had acted as 'gawah nikah' at the time of the marriage of the parties which took place 12 years prior to his examination in Court (he was examined on 22.7.1984), that three children ----- Ayesha Bakhtiar, Mehrunnisa Bakhtiar and Ali Ahmad ----- were born out of the wedlock, that 'five years ago' the respondent had turned out the


petitioner and her children out of the house and about '15 months ago' he had divorced her, that on learning of the divorce a panchayat, consisting of the respectables of the 'bradri' was constituted, including him, and they alongwith the petitioner went to the respondent (he gave the names of the persons who went to the respondent) but the respondent accused the petitioner before the 'panchayat' of immoral character and disowned the paternity of her three children and said they were her illegitimate children whereupon all of them straightaway went to respondent's elder brother, Diwan Ghulam Qutbuddin, who sent for the respondent who came to his house whereupon Diwan sahib asked the respondent to behave properly and be reasonable but even before him the respondent repeated the charge of immorality against the petitioner and again disowned the paternity of her children.

9. Learned Additional Sessions Judge observes in the impugned order that the evidence on record revealed that the allegations of immorality, even though made after the marriage between the parties stood dissolved due to divorce, were nevertheless in respect of the period

when the marriage between them subsisted and therefore section 7 of the Qazf Ordinance was not applicable and hence he did not frame charge against the respondent under section 7 of the Qazf Ordinance but decided to proceed against him under section 14 of the Qazf Ordinance.

10. In our view, learned Additional Sessions Judge seriously erred in law in holding that the preliminary evidence made out a case of section 14 of the Qazf Ordinance. Learned Additional Sessions Judge failed to note that section 14(1) commences by the words '*When a husband accuses before a court his wife*'. Here, there are no husband and wife. Such relationship had admittedly come to an end on 25.4.1983 when the respondent divorced the petitioner and executed divorce deed (the respondent concedes in his written statements before the Family Court that he had divorced the petitioner and had executed divorce deed on 25.4.1983). There is, therefore, no question of section 14 of the Qazf Ordinance being attracted to the facts disclosed by the evidence adduced by the petitioner during preliminary inquiry under section 202 Cr.P.C. The petitioner and respondent were just a woman and man ----- and not

husband and wife ----- when the respondent in his written statements (three of them) and also before his elder brother and, allegedly, also before a punchayat in his own house made imputation of zina concerning the petitioner and explicitly alleged that all of her three children were illegitimate children and therefore the action of the respondent clearly attracted the provisions of section 6 and 7 of the Qazf Ordinance. The impugned order dated 06.12.2003 is therefore untenable.

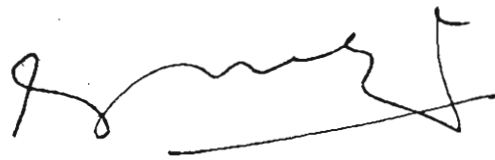


11. For the reasons given in the preceding paragraph, the revision petition is accepted, the impugned order is set aside and the case is remanded to learned Additional Sessions Judge with the direction to frame the charge under sections 6 and 7 of the Qazf Ordinance and proceed with the case in accordance with law.

12. It is a matter of serious concern that the criminal complaint filed by the petitioner in 1984 and family suits about maintenance and recovery of dowry amount, filed in 1983, are still pending ----- the criminal complaint at the stage of framing the charge and the family suits at the stage of framing the issues ----- after a lapse of nearly a

quarter century. Learned Additional Sessions Judge who is trying the complaint and learned Judge of the Family Court who is trying the family suits are advised to dispose of these quarter-century old cases pending before them as early as possible by giving short adjournments of not more than a week, avoiding adjournments on frivolous and flimsy grounds and by remaining on guard against delaying tactics, if any, employed by one party or the other.

13. This pathetic delay in the disposal of these three cases needs to be brought to the notice of the Honourable Lahore High Court. A copy of this judgement may therefore be sent to the Registrar of Lahore High Court as well as to the District & Sessions Judge Pakpattan to apprise them of such colossal delay in the progress of these cases.



JUSTICE SALAHUDDIN MIRZA

Announced at Islamabad
On 25.1.2008
ABDUL RAHMAN/**

Approved per
reporting
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