

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

JUSTICE DR. FIDA MUHAMMAD KHAN
JUSTICE SYED MUHAMMAD FAROOQ SHAH

Cr. PSLA No.1/P of 2006.

Mst. Razia Begum alias Razia wife of Fazle Subhan,
Resident of Lahor Gharbi, District Swabi.

.....Petitioner

Versus

- 1. Mst. Farzana D/o Fazal-e-Subhan,**
- 2. Saqif Khan son of Afsar Khan,**
- 3. Mst. Zarin Taja wife of Afsar Khan,**
All residents of Lahor Gharbi, District Swabi.
- 4. The State**

.....Respondents.

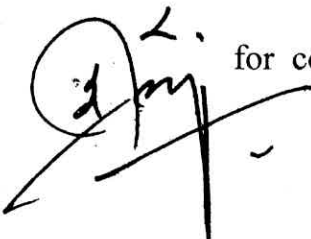
Counsel for the Petitioner	---	Mr. Qaisar Hussian Advocate.
Counsel for Respondents	---	Mr. Gul Daraz Khan, Advocate
Counsel for the State.	---	Mr. Wilayat Khan Assistant A.G, KPK
Private Complaint	---	Dated 15.10.2005.
Date of impugned Order.	---	24.04.2006.
Date of institution	---	29.06.2006.
Date of hearing	---	17.04.2018
Date of decision	---	17.04.2018

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SYED MUHAMMAD FAROOQ SHAH, J.— By invoking the Appellate Jurisdiction of this Court under section 417 (2) Cr.P.C, through the captioned appeal (PSLA), the petitioner has assailed the impugned order dated 24.4.2006, passed by the learned Judicial Magistrate-I, Lahor, District Swabi, under section 203 Cr.P.C, whereby the private complaint filed by Mst. Riaz Begum alias Razia was dismissed. The appeal is supported alongwith an application for grant of special leave to appeal against the impugned order of acquittal.

2. Succinct facts leading up to this appeal are that the petitioner Mst. Riaz Begum alias Razia filed a complaint under section 200 of Cr.P.C against her daughter Mst. Farzana, Saqib Khan and Mst. Zarin Taja under Section 454/380 PPC and under section 14 Islamic Law, alleged therein that her daughter Mst. Farzana respondent No.1 was induced by Saqib Khan and Mst. Zarina Taja, respondents No.2 and 3, respectively; as a result, respondent No.1 had entered into Nikah with respondent No.2 without her consent and after some times, all three respondents entered into her house and took away with them golden ornaments, clothes and Rs.50,000/- (Rupees Fifty Thousands).

3. A perusal of record transpire that the learned trial court recorded the statement of the complainant and thereafter sent the complaint to SHO Police Station Lahor, District Swabi for conducting inquiry, who after compliance, submitted his



report in favour of the respondents, as such the respondents filed an application for dismissal of the complaint. The learned trial Court after preliminary proceedings, dismissed the complaint vide impugned order recorded and announced on 24.4.2006.

5. Without dilating upon the merits of the case, we have given our deep thoughts to the legal aspects with regard to non-maintainability of the Petition in hand instituted under section 417(2) of the Code of Criminal Procedure. Suffice it to say that the order of dismissal of private complaint cannot be equated with an order of acquittal as neither the trial court applied the provisions of section 249-A or 265 (K) of Code of Criminal Code nor an acquittal was recorded after full dressed trial.

6. Mr. Qaisar Hussain, learned counsel, by asserting the grievance of the appellant, who is real mother of the respondent No.1 contended that the respondent No.1 has contracted the marriage without consent of her mother/ Appellant, therefore she has instituted the subject complaint under section 200 Cr.P.C. We have drawn the attention of the learned counsel to the Article 35 of the Constitution of the Islamic Republic of Pakistan 1973, which safeguard, guaranteed and protect the right of marriage as it is settled principle of law that muslim adult female being *sui juris* can exercise her right to marry without the consent of "Wali" as held in **1999 P.Cr.L.J 638 + PLD 1981 FSC 308; PLD 1977 Lahore 301 and 2006 MLD 298.**

7. At the very inception of hearing of instant appeal, the attention of the learned counsel for the parties was invited to section



203 of the Code of Criminal Procedure, wherein the trial Court could dismiss a complaint, if after considering the statement of complainant and the result of investigation or inquiry, if any, under Section 202 of the Code, there are no sufficient grounds for proceeding further. It needs to be iterated that after reading the provision of section 203, learned counsel for the parties agreed with legal proposition that dismissal of a complaint under the said provision of the Code cannot be equated with "acquittal" which terminology is not used in this section. In the case in hand, neither the accused were charged nor the complaint was registered or admitted against the proposed accused persons. This was a stage where the court has to assess whether *prima-facie* a case is made out to join the accused on the basis of the preliminary inquiry. In a case of acquittal, the trial court has to record reasons for acquitting the accused but under section 203 Cr.P.C the trial court has nothing to do with the accused persons because they were not joined to face the trial. In the case in hand, the trial court has determined on the given facts that there were insufficient grounds for proceeding against the proposed accused as contemplated by section 204 Cr.P.C. From perusal of record it appears that material before the Court under the inquiry or investigation, ordered under section 202 of the Code, on the basis of which the complaint was dismissed under section 203 Cr.P.C, cannot equated to the term of acquittal.

8. In the case of **Abdul Wahab Khan.. v.. Muhammad Nawaz and 7 others**, reported as **2000 SCMR 1904**, the Hon'ble Supreme Court of Pakistan held that complaint can be dismissed without having preliminary inquiry as no such embargo has been

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placed on the court concerned. In this regard reference was also made to *PLJ 1997 Cr.C 5 + 1996 P.Cr.L.J 1615*. It has further been held, in paragraph 5, *placitum 'B'* of the said judgment that, “ *The language as employed in section 203, Cr.P.C specially the words “if any” (inserted by Act II of 1926) cannot be stretched too far to hold that inquiry would be must. We have also dilated upon the said proposition with another angle, i.e. as to whether in each and every complaint the provisions as contained in section 202, Cr.P.C. must be followed? The answer would be negative as section 202 Cr.P.C. itself negates such assertion that each and every complaint irrespective of its merits must be inquired into until the Court concerned thinks it fit and proper. This is not the object of section 203, Cr.P.C. that in every case an inquiry must be held (PLD 1998 Lah. 539 + AIR 1920 Pat. 270). It is well-settled by now that the Court concerned must scrutinize the contents of complaint, nature of allegation made therein supporting material in support of accusation, the object intended to be achieved, the possibility of victimization and harassment if any to ensure itself that no innocent person against whom allegations are leveled should suffer the ordeal of protracted time consuming and cumbersome process of law. In this regard we are fortified by the dictum laid down in the following authorities:-*

**1988 PCr.L.J 864 (FSC) + PLD 1984 Lah. 323 + PLD 1964 Kar 316 + AIR 1963 SC 1430 + AIR 1927 Mad. 19 (FB) + AIR 1926 Sindh 188 (DB) + AIR 1963 SC 1430.*”

9. In the case of **Zafar and others v.. Umar Hayat and others**, reported as *2010 SCMR 1816*, the Hon'ble Supreme Court laid down the following dicta (*placitum-B*):

“*It is also settled principle of law that the provisions as contained in sections 202 to 204, Cr.P.C, if read together would show that a proper*

safeguard has been provided by the Legislature which showed its such intention by using the words "if any" and "sufficient grounds for any" in section 203, Cr.P.C and accordingly the frivolous and vexatious complaints must be buried at their inception where no prima facie case is made out. See Abdul Wahab Khan's case (2000 SCMR 1940)."

10. Insofar as the question with regard to maintainability of instant Petition instituted under section 417 (2) of the Code of Criminal Procedure is concerned, suffice it to say that section 417 Cr.P.C deals with appeal against acquittal of accused on merits or by exercising the powers under sections 249-A or 265 (K) Cr.P.C, by the trial court but it has nothing to do with order of dismissal of complaint under section 203 Cr.P.C. The applicability of certain provision of statute and jurisdictional questions could only be decided under section 435, 439, 439-A or 561-A, Cr.P.C before the proper forum, having jurisdiction, if so advised.

11. In view of whatever mentioned hereinabove, more particularly, the case law reproduced ante, we reached at the irresistible conclusion that the Appeal in hand is not tenable in law; resultantly, leave to appeal is declined. Accordingly, the instant PSLA alongwith Cr. Misc. Application No.5/P of 2013 is dismissed in limine.

JUSTICE SYED MUHAMMAD FAROOQ SHAH

JUSTICE DR. FIDA MUHAMMAD KHAN

Peshawar the
April 17, 2018
F.Taj/*

Approved for reporting.
17/4/2018