

IN THE FEDERAL SHARIAT COURT

(Appellate / Revisional Jurisdiction)

PRESENT

MR.JUSTICE SYED AFZAL HAIDER

CRIMINAL REVISION NO.11/L/2006

3. Abdul Majeed alias Makhan

4. Abdul Hameed

sons of Ghulam Qadir caste Joya, resident of Mohallah Zafar
Abad, Kehror Pacca City, District Lodhran.

... Appellants

Versus

1. The State

2. Jind Wadda son of Allah Ditta, caste Joya, Resident of Union
Council Zafar Abad, Tehsil Kehror Pacca, District Lodhran.

... Respondents

Counsel for the petitioners	...	Ch.Nazir Ahmad Kamboh, Advocate.
Counsel for respondent	...	Mr. Ghulam Abbas Baloch, Advocate
Counsel for the State	...	Syed Amanat Ali Bukhari, DPG
F.I.R No. Date & Police Station	...	161/04, dated 1.6.2004, City Kehror Pacca (Lodhran)
Date of order of trial Court	...	24.12.2005
Date of institution	...	20.02.2006
Last date of hearing	...	18.11.2008
Date of decision	...	18.11.2008

JUDGMENT

SYED AFZAL HAIDER, J. -

This criminal revision is directed against the order dated 24.12.2005 passed by learned Additional Sessions Judge, Kehror Pacca (Lodhran) whereby the application filed by the petitioners under section 265-K of the Code of Criminal Procedure has been dismissed. This case has emanated from F.I.R No.161/2004 dated 01.06.2004 regarding an incident alleged to have taken place on 14.05.2004. According to the first information report lodged on the application of one Jind Wadda son of Allah Ditta his niece Mst.Sobia alias Shamshad daughter of Abdullah was enticed away by petitioner Abdul Majeed. It is further mentioned that on 14.05.2004 at 9.00 a.m, one Muhammad Iqbal son of Muhammad Sharif saw Abdul Majeed petitioner and Mst.Sobia on a Motor Cycle. After completion of investigation, a report under section 173 of the Code of Criminal Procedure was sent by Station House Officer, Police Station City

Kehror Pacca on 07.12.2004 against Abdul Majeed and Abdul Hameed petitioners as well as Mst.Sobia to face trial under section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979.

2. Co-accused Mst.Sobia is reported to have left her house and appeared before Magistrate Section 30, Layya on 17.05.2004 where she stated that she had attained majority and was fully aware of her gain or loss. She further stated that ten days ago, her father in exchange for some money contracted her Nikah with one Muhammad Bilal. On her protest against this forced marriage she was beaten but no Rukhsti had taken place. She also stated that in order to save herself she had left her house as her life was in danger and she prayed that she wanted be admitted in Dar-ul-Amaan. She also stated that neither had she eloped with any body nor had she been abducted by any one. She further stated that no body had committed

Zina with her. She also stated that she wanted to file a suit for dissolution of marriage.

3. On 18.05.2004, she filed a suit for dissolution of marriage which was decreed on 28.10.2004 in her favour and against said Muhammad Bilal. From perusal of the record, it appears that the decree was not challenged before any Court of law. She is then reported to have married with one Abdul Rauf son of Allah Ditta on 2.11.2004. In this view of the matter, she filed an application under section 265-K Code of Criminal Procedure before the learned Additional Sessions Judge, Kehror Pacca which was rejected. Then she filed Cr.Revision bearing No.84-L of 2005 before the Federal Shariat Court which was accepted on 26.10.2005. The learned single Judge of the Federal Shariat Court found that "Father of the petitioner is alive and he is not complainant in this case. He was the best person to lodge the F.I.R and not any other person. The F.I.R was lodged by the maternal uncle."

4. Learned counsel for the petitioners states that the case of the co-accused Mst.Sobia has been accepted by the Federal Shariat Court on the basis of the same facts and the same F.I.R ~~and~~ the learned Additional Sessions Judge was, therefore, not justified in rejecting the application of the petitioners under section 265-K of the Code of Criminal Procedure in identical circumstances.

5. I have heard the learned counsel for the complainant as well. His contention is that the case originally was registered under section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 wherein "enticement" or "taking away" or "detaining with criminal intention" is an offence. Learned counsel has further stated that the order of the learned Additional Sessions Judge dated 24.12.2005 is well reasoned and the learned trial Additional Sessions Judge has tried to explain the meaning of the words "enticement" or "taking away". Learned counsel for the complainant, however, contended that sending up Mst.Sobia for trial was unjustified because under section 16 of the Offence of Zina

(Enforcement of Hudood) Ordinance VII of 1979 the woman enticed away is not an accused person.

6. Be that as it may, the mistake on the part of the Investigating Officer has not been held to vitiate the trial. This is at best the irregularity and the person dragged has already been acquitted by the appellate authority. I have drawn the attention of learned counsel for the complainant to the words appearing in section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 i.e “enticing” or “taking away with the intent that she may have illicit intercourse with any person”. It is on record that she voluntarily stated, before the Magistrate Section 30, that she had left the house of her parents of her own and she had not been subjected to illicit intercourse nor was she abducted by any one. There is no mention of the element of force or enticement in the F.I.R itself. Any statement if made subsequently would amount to improvement and if the lady comes in the Court of law to state that she was never abducted or enticed away or she was never subjected to sexual intercourse by any

one that would mean that any action against the petitioners sheer waste of time. The learned counsel for the petitioners, therefore, submits that instead of making the petitioners suffer further agony of trial, which is not likely to succeed, it will be futile to maintain this order.

7. Learned Deputy Prosecutor General for the State supports the contention of counsel for the complainant and also supports the impugned order. He has not been able to point any thing on record which could show that Mst.Sobia was allured or enticed away by any body.

8. Agreeing with the contention of learned counsel for the petitioners, I set-aside the impugned order dated 24.12.2005 passed by learned Additional Sessions Judge, Kehror Pacca (Lodhran) and acquit the petitioners.

S. Haider

JUSTICE SYED AFZAL HAIDER

Announced on 18.11.2008

Fit for reposting

S. Haider