

IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR MUHAMMAD RAZA, CHIEF JUSTICE

CRIMINAL REVISION NO.32/L OF 2009

Muhammad Amer Iqbal son of Muhammad Iqbal
resident of 191-E, PIA Society, Lahore.Petitioner

VERSUS

1. Mst. Naseem Akhtar wife of Altaf Hussain,
resident of House No.925, Kaleem Shaheed
Colony No.2, Faisalabad.
2. Parveen Akhtar D/O Basheer Ahmad,
resident of Chak No.206/JB, Tehsil Chiniot,
District Jhang.
3. The StateRespondents

For the Petitioner	.....	Dr. Muhammad Akmal Saleemi, Advocate
For the Respondents	.....	Rao Nisar Ahmed, Advocate
For the State	.....	Dr. Muhammad Anwar Khan Gondal, Additional Prosecutor General Punjab
Date of complaint	.....	14.09.2009
Date of Order of the learned Trial Court	.....	29.09.2009
Date of Institution of Revision Petition	01.12.2009
Date of Hearing	28.10.2014
Date of Judgment	28.10.2014


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JUDGMENT:

SARDAR MUHAMMAD RAZA, CHIEF JUSTICE: Muhammad Amer Iqbal has filed this revision petition against the order dated 29.09.2009 of the learned Additional Sessions Judge, Faisalabad who, on the application of the petitioner, declined to take cognizance of the offence of Qazf against the respondents.

2. The relevant background is to the effect that Mst. Naseem Akhtar had lodged an FIR No.723 dated 19.08.2007 at police station Ghulam Muhammad Abad, District Faisalabad against Muhammad Amer Iqbal petitioner charging him for the commission of zina with Mst. Parveen Akhtar, the maid servant of Mst. Naseem Akhtar. The trial proceeded and at the conclusion thereof, the present petitioner was acquitted by learned Additional Sessions Judge, Faisalabad vide judgment dated 24.12.2008.

3. After more or less eight months the petitioner filed application against Mst. Naseem Akhtar and others for trying them under the provisions of Offence of Qazf (Enforcement of Hadd) Ordinance, 1979. The dismissal of such application has resulted into the instant revision petition.

4. From the perusal of impugned order dated 29.09.2009, it appears that the learned Additional Sessions Judge, Faisalabad was of the view that the cognizance of the offence of Qazf, in view of the latest amendment in Section 6 of Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 through

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Protection of Women (Criminal Laws Amendment) Act, (VI of 2006), could only be taken by the trial Court itself when it acquits an accused under Section 5 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance VII of 1979) and shall proceed to pass sentence there and then under Section 7 of Offence of Qazf (Enforcement of Hadd) Ordinance, 1979.

5. After listening to the arguments of learned counsel on either side and the Additional Prosecutor General for the State and after going through the relevant provisions of Cr.P.C. and the latest amendment aforesaid, I have come to the conclusion that the latest amendment whereby Sub-section (2) was added to Section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 has no nexus at all with the taking of and manner of taking cognizance as laid down under Section 203-B Cr.P.C. Section 203-B is the only Section that deals with the matter and manner of cognizance in a Qazf case whereas newly added Sub-section (2) to Section 6 of Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 deals with proof of Qazf liable to Hadd. For facility of reference, newly added Sub-Section (2) is reproduced:-

“The Presiding Officer of a Court dismissing a complaint under Section 203A of the Code of Criminal Procedure, 1898 or acquitting an accused under Section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance VII of 1979), if satisfied that the offence of qazf liable to had has been committed, shall not require any proof of qazf and shall proceed to pass sentence under Section 7.”

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A plain reading of the above Sub-section would indicate beyond any stretch of arguments that apart from various proofs of Qazf liable to Hadd, the acquittal of a person in a case of zina would by itself be a proof of Qazf committed by the complainant of the case. It also gives power to the trial Court that if it is satisfied that the offence of Qazf liable to Hadd has been committed, it would not require any proof and shall proceed to pass sentence under Section 7 of Offence of Qazf (Enforcement of Hadd) Ordinance, 1979.

6. In the light of the above interpretation, coming to the present case, if the trial Court has not passed the sentence under Section 6(2) of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979, it does not in any manner curtail or abridge the right of an accused to bring a complaint under the provision of Qazf. It is the power of a Court to pass sentence there and then but if the Court has failed to do so, it would certainly be an act of the Court whereby the right of anybody affected cannot be curtailed. The filing of application by the petitioner/acquitted accused under Section 203-B Cr.P.C. was perfectly in order and was wrongly dismissed by the learned Additional Sessions Judge, Faisalabad by mixing up "the matter and manner of cognizance" with the "proof or otherwise of an offence".

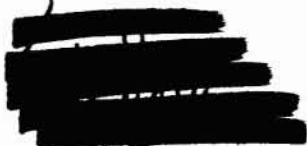
7. My above interpretation is further fortified by Sub-section (1) of 203-B Cr.P.C. which clearly lays down that the cognizance in case of Qazf shall be taken only on a complaint lodged in a Court of competent jurisdiction; unless

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of-course the Court itself has taken cognizance under the newly added Sub-section (2) of Section 6 of Offence of Qazf (Enforcement of Hadd) Ordinance, 1979.

8. Consequently the revision petition is accepted, the impugned order dated 29.09.2009 is set aside and the learned Additional Sessions Judge, Faisalabad/trial Court is directed to proceed under Section 203-B Cr.P.C.

Announced at Lahore
the 28th October, 2014

Mr. Justice 
Sardar Muhammad Raza,
Chief Justice

Approved for reporting. 