

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

PRESENT

MR. JUSTICE SYED AFZAL HAIDER

CRIMINAL REVISION NO. 92/L OF 2005

Zafar Iqbal son of Muhammad Ramzan, caste Baloch, resident of Siddique Colony, Mouza Alipur Kanju, Tehsil Kehror Pacca, District Lodhran.

.... Appellant

VERSUS

3. The State
4. Allah Yar Khan son of Ellahi Buksh Khan, caste Baloch, resident of Mouza Rind Jada, Kehror Pacca, District Lodhran.
5. Mst.Naseem Tahira daughter of Tahir Khan, caste Baloch, resident of Mouza Rind Jada Kehror Pucca, District Lodhran.

..... Respondents

Counsel for petitioner ---	Mr.A.Rashid Hijazi, Advocate
Counsel for respondents ---	Ch.Muhammad Yasin Zahid, Advocate
Counsel for the State ---	Mr. Arif Karim Chaudhry, DPG
F.I.R No. date and Police Station ---	307/2003, dated 12.11.2003, City Kehror Pacca, Lodhran
Date of order of the Trial Court ---	25-06-2005
Date of Institution ---	28-09-2005
Last date of hearing ---	08-07-2009
Date of Decision ---	09-07-2009

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JUDGMENT

SYED AFZAL HAIDER, J.- This revision, moved by Zafar Iqbal, is directed against the order dated 25.06.2005 passed by learned Additional Sessions Judge, Kehror Pacca, whereby his application moved under section 265-K of the Code of Criminal Procedure was dismissed on the grounds that in order to determine the guilt or innocence of the accused, prosecution evidence must come on record. It was observed by the learned trial Court that the prosecution evidence could not be recorded due to the deliberate efforts of the accused.

2. Brief facts leading upto this Revision are that a crime report was registered as F.I.R No.307/2003 dated 12.11.2003, under section 16/10 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979, with Police Station City Kehror Pacca on the complaint of Allah Yar Khan, a retired Headmaster, who stated that his wife Mst.Naseem Tahira, mother of two sons and one daughter, was abducted by Zafar Iqbal accused/petitioner. The incident, as narrated by complainant, is that on

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15.10.2003, on his return home he found that his wife Mst.Naseem Tahira was missing. During the search, he met Falak Sher and Fayyaz Ahmad who told him that they saw Mst.Naseem Tahira and Zafar Iqbal going in a wagon. Then the complainant, alongwith the witnesses, went to the house of Zafar Iqbal. The accused at first avoided the issue on one or the other pretext but then promised to return the abductee Mst.Naseem Tahira which promise he did not fulfill. It was further alleged that the accused abducted Mst.Naseem Tahira for the purpose of committing adultery. The complainant also alleged that gold ornaments were taken away at the time of abduction.

3. The accused-petitioner filed an application under section 265-K of the Code of Criminal Procedure before the learned trial Court for acquittal as lot of water had flown under the bridges. The precise grounds taken up by the petitioner were as follows:-

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- i) The alleged abductee had in fact filed a suit for dissolution of marriage against her husband Allah Yar, the complainant, on 06.11.2003 which suit was ultimately decreed on 03.03.2004;
- ii. As a counter-blast to the dissolution suit, having been moved on 06.11.2000, the complainant on 12.11.2003 maneuvered registration of a false case six days after the dissolution suit was filed;
- iii. The said abductee had been sent to Dar-ul-Aman on 12.11.2003 where her statement under section 164 of the Code of Criminal Procedure was recorded. She had stated therein that neither was she abducted nor subjected to Zina bil Jabr;
- iv. Allah Yar, the former husband of Mst.Nasim Tahira, filed a suit for the restitution of conjugal rights on 14.01.2004 wherein it was *stated that Mst.Nasim Tahira had left the house due to annoyance*. There was no allegation of abduction or rape till 14.01.2004;

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v. Accused petitioner was 20-25 years' old whereas the said Mst.Nasim Tahira was a woman of advance age approximately 55-60 years; and

vi. It was also urged that during Police investigation, accused-petitioner was found innocent.

4. The application of the petitioner was dismissed on 25.06.2005 on the ground that accused was making efforts to frustrate prosecution evidence being recorded. The learned trial Court proceeded to observe that even "*if the abductee herself says to the abductor to take her away even then offence under section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 is completed*". The learned trial Court at the end observed that evidence must be recorded before determination about the guilt or innocence of the accused could be made. Learned trial Court in para 18 of the impugned order observed that

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prima-facie section 16 of the Offence of Zina (Enforcement of Hudood)

Ordinance VII of 1979 was attracted.

5. This matter at one stage had been agitated before Lahore High Court, Multan Bench, Multan in a constitutional petition registered as W.P.No.100/2004. The order sheet dated 10.03.2004 discloses that Mst.Tahira Naseem, the alleged abductee had been produced in the Court from Dar-ul-Aman, in response to the order of the learned single judge dated 16.02.2004. She made a statement "that she was never abducted ---- that she was a retired teacher and mother of three grown up children... she was subjected to torture by Allah Yar i.e her husband". She was set at liberty to join her mother and children under the orders of the High Court.

6. That it is also on record that Mst Nasim Tahira filed Cr.Misc.No.2758/B/2004 for pre-arrest bail before the Lahore High Court, Multan which was allowed on 28.09.2004. The learned single Judge had observed that "It seems that the criminal proceedings have been initiated so as to compel the woman to resuscitate the marital contract, which has

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been tarnished due to the strained and bad relations of the parties.” No doubt these observations were relevant for the purpose of her bail but it was the second time when the alleged abductee had stated in solemn proceedings before the Provincial High Court that she was a retired teacher, aged about 50/55 years, has three grown up children and one of the offspring was a student of M.B.B.S and further that she was never abducted by any body and that she had left the house of her husband as a result of the torture being perpetrated upon her by the complainant.

7. The contents of F.I.R No.307/2003 dated 12.11.2003, lodged by the complainant himself do not reveal any incident of abduction or enticing or taking away or detaining Mst.Nasim Tahira as contemplated by section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979. The question at this stage is relevant whether in the given facts and circumstances of the case conviction of the petitioner would be possible. The accused has a statutory right to seek remedy by way of invoking jurisdiction of the trial Court under section 265-K of the Code of

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Criminal Procedure and seek a clean acquittal particularly when continuation of criminal proceedings would end into a mock trial. The provisions of Code of Criminal Procedure cannot be allowed to be misused. Such an attempt is the abuse of process of Court.

8. The law does not stipulate that the trial Court must record evidence before it can justifiably exercise jurisdiction under section 265-K of the Code of Criminal Procedure. What is necessary for the Court is that its final order must be based upon material available on the record. Usually the order of acquittal is passed after some evidence has been recorded but situations can arise when, on the given admitted facts no further evidence would be needed and the case could be decided expeditiously on the material available on record. In such an eventuality the need to record evidence is obviated. It is not the purpose of law to delay disposal of cases because the ritual of recording evidence has yet to be undertaken, nor is it in the interest of justice to pursue a mock trial or

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expose an accused to the agony of a protracted trial or to cause harassment to any party.

9. The reasons that prevailed upon the learned trial Court in rejecting the application of the petitioner may be summarized as follows:-

i) That prima-facie a case under section 16 of Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 is made out. The learned trial Court, in para 16 of the impugned order observed that "if the abductee herself says to the abductor to taken her away even then "offence of taking away/enticement is completed;

ii) The accused use to visit the house of the complainant and "under the influence of illicit relations" he took away the legally wedded wife of complainant;

iii) no doubt the Court has the jurisdiction to acquit the accused even if witnesses are not examined but "the threat of the prosecution cannot be pressed"; and

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iv) after framing of charge, the accused deliberately made efforts that the evidence of prosecution is not recorded.

10. I have gone through the file. The material on record justified exercise of jurisdiction under section 265-K of the Code of Criminal Procedure. There is no material on record that leads to the conclusion that a) the accused had developed illicit relations with an aged lady; or ii) that the petitioner was instrumental in removing her from the house of her husband or inducing her to leave the house of complainant. On the contrary the F.I.R was lodged only after the wife had filed a suit for dissolution of marriage. Mst.Nasim Tahira is mother of grown up children and she is herself a teacher. She repeatedly stated that she left the house on her own due to the ill treatment of her husband. She also has a right to be believed. It is not only the husband whose version merits recognition.

11. As a result what has been stated above it is abundantly clear that the learned trial Court, without lawful reasons, failed to exercise jurisdiction vesting in him under the law. The exercise of such a

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jurisdiction is the right of an aggrieved party. The Court must come forward to the rescue of a person who is being subjected to un-necessary harassment through legal proceedings which is an abuse of the process of Court. Existence of jurisdiction in a tribunal is a trust. It is not the property of the Court. The trust belongs to persons who are covered by such an eventuality. Ayat 58 Sura 4 of the Holy Quran enunciates a very significant legal principle:-

Surely Allah commands you to make over trusts to those worthy of them, and that when you judge between people, you judge with justice; surely Allah admonishes you with what is excellent; surely Allah is Seeing, Hearing.

12. In this view of the matter, the impugned order dated 25.06.2005 is liable to be set aside. F.I.R No.307/2003 dated 12.11.2003 will not bear fruit. Mock trials are not countenanced by law nor are the provisions of law to be moulded according to the idiosyncracies of an individual. Consequently application moved by petitioner under section

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265-K of the Code of Criminal Procedure succeeds. Petitioner is acquitted.

Syaidar

JUSTICE SYED AFZAL HAIDER

Announced at Lahore on 09.07.2009.

Fit for reporting.

Syaidar

JUSTICE SYED AFZAL HAIDER

Anjad/*