

IN THE FEDERAL SHARIAT COURT
(APPELLATE/REVISIONAL JURISDICTION)

PRESENT:

MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

CRIMINAL REVISION NO.01-K OF 2023

MST. SASSI HIZBULLAH, DAUGHTER OF HIZBULLAH CHHAJRO,
MUSLIM, ADULT, RESIDENT OF AHMED COMFORTS, FLAT NO.215,
MUHALLAH, GULISTAN-E-JOHAR, KARACHI.

PETITIONER

VERSUS

1. JUNAID AHMED KHAN, SON OF KAMAL AHMED KHAN,
RESIDENT OF HOUSE NO.16B, 32 STREET, KHAYABAN-E-
SHAMSHER, DHA, PHASE-V, KARACHI.

2. THE STATE

RESPONDENTS

Counsel for the Petitioner : Ms. Fouzia Waheed, Advocate

Counsel for the Respondent : Mr. Ali Asghar, Advocate

Counsel for the Respondent : Mr. Khadim Hussain Khuharo,
Additional Prosecutor General,
Sindh.

Private Complaint No. : 4112 of 2022

Date of Impugned Order : 23.02.2023

Date of Institution of Petition : 05.04.2023

Date of Hearing : 14.02.2025

Date of Judgment : 25.03.2025

J U D G M E N T

KHADIM HUSSAIN M. SHAIKH -J. By means of the captioned Criminal Revision, the petitioner named above has called in question Order dated 23.02.2023, passed by the learned Additional Sessions Judge-XI, Karachi South, dismissing private complaint No.4114 of 2022 re-Mst. Sassi Hizbullah Vs. Junaid Ahmad Khan, being not maintainable.

2. Briefly, the facts of the case are that petitioner Mst. Sassi Hizbullah and respondent Junaid Ahmad Khan were married on 10.01.2020 according to Islamic Sharia. The parties lived peacefully for some time and then there arose between them. It is alleged that in the month of March, 2020, the petitioner went to her parent's house for her medical examination by a doctor, whereafter the respondent neither brought her back nor did he allow her to return back to his house; then the respondent divorced the petitioner and sent a written divorce deed dated 07.06.2020, by leveling allegations against the petitioner that *"the first party has discovered that the second party has indulged in illicit behavior and has admittedly has affairs and relations out of marriage with a person namely Rafay Maqbool"*. It is further alleged that at that time the petitioner was five months pregnant, however, on 07.10.2020, a baby boy named Muhammad Hamdan was born. The petitioner had also sent a legal notice dated 15.07.2020 to the respondent asking him to tender apology against such false allegations leveled against her and to pay her all the medical expenses, with the maintenance and her dower and to also return her dowry articles, but with no response. Then the petitioner filed family suit for maintenance, recovery of dower and dowry articles etc and she also filed suit and complaint for defamation. The respondent filed his written statements/objections in the cases wherein he repeated the allegations of zina against the petitioner. Then the respondent submitted the same divorce deed dated 07.06.2020 before the local Union Council and he then submitted application dated 10.11.2020 with his own hand writing before the Union Council office Pelwan Goth, Karachi by leveling the aforesaid allegation against the petitioner, The respondent was allegedly constant in making false allegations of zina against the petitioner in proceedings before various Courts,

and on 18.07.2022 he allegedly leveled allegation against the petitioner in open Court before the learned 1st Family Judge, East Karachi by saying that *“aap k dusron k sath rishtay thay isliye app ko talaaq hui”*, the petitioner filed statement before the learned 1st Family Judge, East Karachi about such words used by the respondent, which was kept on record by the learned 1st Family Judge, advising the petitioner to approach proper forum of law. The petitioner has categorically stated that the respondent on number of times orally and in writing before the Courts, in public, offices of Union Council and in the open Court as well as in the chambers of the learned Judges had imputed false allegations of zina/illicit relationship with man named Rafay Maqbool against the petitioner, therefore, the petitioner filed the subject private complaint against the respondent before the learned XIIth Judicial Magistrate, Karachi South, who vide order dated 17.11.2022 sent up the said direct complaint alongwith relevant documents to the learned District and Sessions Judge South on the ground that the alleged offence of Qazf is exclusively triable by the Sessions Court and ultimately the subject direct complaint was transferred to the Court of learned Additional Sessions Judge-XI Karachi, South **(the learned trial Judge)**.

3. On receiving the said private complaint, the learned trial Judge after recording cursory statement of the petitioner, sent the complaint to the learned XIIth Judicial Magistrate, Karachi-South vide order dated 26.12.2022 for conducting preliminary enquiry under Section 202 Cr.P.C, who after recording the statements of petitioner's witnesses submitted his enquiry report dated 16.01.2023, in affirmative with his view that *“I am of considered view that complaint of complainant is genuine and true against respondent, after securitizing contents of statements of complainant and her witnesses,*

documentary evidences, nature of allegations, material in support of accusation". However, the learned trial Judge vide impugned order dated 23.02.2023 has dismissed the subject private complaint, being not maintainable. The petitioner being aggrieved by and dissatisfied with the said impugned order has preferred the instant Criminal Revision.

4. The learned Advocate for the petitioner has mainly contended that the respondent by leveling false allegations of zina against the petitioner in writing and oral in various matters in the Court proceedings and also before the presiding Judge of Family Court and officials of Union council, harmed the reputation of the petitioner and hurt her feelings, thereby the respondent has committed offence of Qazf; that the learned XIIth Civil Judge/Judicial Magistrate Karachi South after preliminary enquiry submitted his report that the complaint of the complainant is genuine and true against the respondent; that the learned trial Judge has passed the impugned order dismissing the complaint of the petitioner without appreciating the material brought on the record; that the impugned order passed by the learned trial Judge is unjust and illegal, which has caused miscarriage of justice to the petitioner. The learned counsel has prayed that the instant Criminal Revision may be allowed and the impugned order may be set aside and the case may be remanded back to the learned trial Judge for passing fresh orders after appreciating the material brought on the record by the petitioner in accordance with law.

5. The counsel for the respondent has mainly contended that the petitioner has filed various proceedings against the respondent before various Courts; that the learned trial Judge after considering the material brought on the record has rightly dismissed the subject direct complaint filed by the petitioner vide the impugned order; and, that there is no illegality in the

impugned order. The learned counsel prays for dismissal of the instant Criminal Revision.

6. The learned Additional Prosecutor General, supporting the version of the petitioner's counsel, has contended that the respondent repeatedly leveled allegations of zina against the petitioner in various proceedings even in presence of the Family Court, when the parties were no longer husband and wife; that the learned trial Judge without considering such aspects of the case has dismissed the subject direct complaint of the petitioner vide impugned order dated 23.02.2023, which per him is illegal and not sustainable. He has also prayed that the case may be remanded back to the learned trial Judge for passing an appropriate order after considering the material brought on the record by the petitioner.

7. Heard the learned counsel for the parties and have gone through the material brought on the record with their assistance.

8. In order to appreciate the contentions of the learned counsel for the parties, it would be essential to reproduce the penultimate paragraph of the impugned order dated 23.02.2023 passed by the learned trial Judge, which reads as follows:-

"5- After hearing the learned counsel for the complainant and carefully scanning the available record, it transpires that the respondent/proposed accused was the husband of the complainant and he made the accusation of Zina/illicit relation against the complainant, during subsistence of the marriage but he had no witness except himself. It further transpires that he also made the accusation of Zina/illicit relation in divorce deed sent to the complainant and he also made the same accusation before learned 3rd Additional District Judge, Karachi East, through his written statement,

during the proceeding of suit No.10/2020 filed by the complainant against him, so also he made the same accusation through his written statements, in Family Suit No.1778/2020 and G & W No.450/2021 before 1st Family Judge, East Karachi, so also he made the same accusation against the complainant before U.C. Counselor. It also transpire that not only the accusation was made by the respondent/husband against the complainant/wife but he made the same accusation either during subsistence of the marriage or in various judicial/non judicial proceedings conducted in relation to their marriage and therefore, provisions of Section 14 of Qazf Ordinance, 1979, is clearly attracted to the case of the complainant as laid down in the case law reported as Muhammad Safdar Satti Versus Mst. Assia Khatoon (2005 SCMR 507), PLD 1986 F.S.C. 187, Mushtaq Ali Versus Noor Muhammad (1989 SCMR 428), Manzoor Hussain Versus Zahoor Ahmed (1992 SCMR 1191) and Abdul Ghafoor Versus Federation of Pakistan (1992 MLD 2326). It appears that in the case law reported in PLD 1986 F.S.C. 187, it is held that for attracting the provisions of section 14 of Qazf Ordinance, 1979, two conditions must be satisfied. First, the accusation is made by the husband during subsistence of the marriage; and second, the husband has no witness except himself, to prove the allegation. It is also held in same case law that for the purpose of conducting li'an (under section 14 of Qazf Ordinance, 1979) proceedings relationship of husband and wife must exist between spouses while lodging a charge of unchastity in li'an against wife or husband. But if marriage between parties has already been dissolved proceeding of li'an under Section 14 of the Ordinance cannot be appropriately taken".

9. From a perusal of the record, it would be seen that the petitioner and the respondent were married on 10.01.2020 according to Islamic Sharia, which

had not lost long, as after sometime there arose dispute between the parties and ultimately the respondent had divorced the petitioner vide divorced dated 07.06.2020 wherein the respondent had leveled the allegations of zina against the petitioner as follows:-

the first party has discovered that the second party has indulged in illicit behavior and has admittedly has affairs and relations out of marriage with a person namely Rafay Maqbool.

Vide divorce registration certificate, issued on 05.06.2023, and filed through statement dated 13.02.2025 by the petitioner, the divorce was shown effective from 7th September, 2020, which at the best was effective after the birth of parties' son Muhammad Hamdan on 07.10.2020; the respondent, who by divorcing the petitioner had himself severed his marital bond with the petitioner, imputed zina against the petitioner in his written statements filed in Suit No.10/2020 in the Court of learned 3rd Additional District Judge Karachi, East, in Family Suit No.1778/2020 and G & W No.450/2021 in the learned Courts of Family Judge, and then on 18.07.2022 he also allegedly stated in open Court before the learned 1st Family Judge East Karachi that *"aap k dusron k sath rishtay thay isliye app ko talaaq hui"*, whereupon the petitioner filed the statement for taking action against the respondent, which was kept on record as per Diary Sheet, wherein the learned 1st Family Judge East Karachi allegedly advised her to approach proper forum of law, besides that the respondent allegedly on a number of times orally and in writing in public, office of union council and before the Judges in open Court and in their chambers, has been imposing false allegation of zina/illicit relations against the petitioner.

10. It is worthwhile to mention here that Islam places great emphasis upon the reputation of women in the society and the right of reputation being a sacred right as well preserved by the Holy Quran, which casts a duty on the person against whom a false case of adultery or commission of zina has been brought to bring a direct action of prosecution against the accuser under Qazf under the dictates of the Holy Quran as envisages in Surah Al Noor (24), verse (4), which has stipulated that the accuser of zina must bring four witnesses to prove the allegation or else he would be awarded the punishment of qazf:-

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ بَشَاهِدَتِهِمْ أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ

“Those who accuse chaste women [of zina] but do not produce four witnesses, flog them with eighty lashes, and do not admit their testimony ever after; they are indeed rebellious”.

11. Admittedly, the accusation of zina/illicit terms with Rafay Maqbool against the petitioner imputed by the respondent in divorce deed dated 07.06.2020, which he repeatedly made in the pleadings of the suits and family matters, which he also reiterated and reaffirmed in presence of the Court and in public, in union council office, judicial /non judicial proceedings, even after long time of his having severed his marital bond with the petitioner and no longer remained her husband, prima facie falls within the definition of Qazf as given in Sections 3 & 5 of Offence of Qazf (Enforcement of Hadd) Ordinance, 1979, constituting offence punishable under Section 7 of The Ordinance, and there was no question of applicability of the provisions of Section 14 of the Ordinance regarding the li'an in this case. A glance on the aforesaid reproduced paragraph of the impugned order would reveal that despite having noted the aforesaid aspects of the case relating to imputation of zina/illicit relations against the petitioner by the respondent, which he repeatedly made in the

pleadings of the suits and family matters, which he also reiterated and reaffirmed in presence of the Court and in public, in union council office, judicial /non judicial proceedings, even after long time of his having severed his marital bond with the petitioner and no longer remained her husband, yet the learned trial Judge, very conveniently overlooked such aspects of the case and dismissed the subject complaint, being not maintainable, holding that the respondent, who was the husband of the petitioner, had made the accusation of zina/illicit relations against the petitioner during subsistence of the marriage, therefore, the provisions of Section 14 of the Qazf Ordinance, 1979 were attracted to the case of the petitioner.

12. The petitioner has supported the contents of her complaint by cursory evidence, and she has also been supported by the witnesses in their respective cursory statements recorded before the learned XIIth Judicial Magistrate, Karachi-South, who after conducting preliminary enquiry under Section 202 Cr.P.C, and recording the statements of petitioner's witnesses submitted his enquiry report dated 16.01.2023, in affirmative with his view that *"I am of considered view that complaint of complainant is genuine and true against respondent, after securitizing contents of statements of complainant and her witnesses, documentary evidences, nature of allegations, material in support of accusation"*, which has also been completely ignored by the learned trial Judge while passing the impugned order.

13. The aforesaid material brought on the record had to be considered to determine whether a prima facie case was made out or not and no deeper appreciation was required at the initial stage and it is reiterated

that prima facie case only means that there is ground to proceed against the accused and it is not the same thing as proof of the charge, which comes later when the trial Court, after the evidence is brought on the record, is to see whether the accused is guilty or not guilty and process within the contemplation of Section 204 of Cr.P.C, can be issued only upon existence of sufficient ground in the wake of cursory evidence as formation of such opinion by the Court does not require full dress rehearsal nor anticipated failure of case of the petitioner would stand as an impediment, but the learned trial Judge without even considering such aspect of the case, has passed the impugned order and dismissed the subject direct complaint.

14. In view of what has been stated above, it is crystal clear that the learned trial Judge while passing the impugned order had very conveniently overlooked the material aspects of the case as discussed *supra*, and thus, the impugned order, which is patently illegal, suffering from misreading and non-reading of the record, cannot sustain in the eyes of law. Accordingly, the instant Criminal Revision is allowed, the impugned order dated 23.02.2023 is set aside and the case is remitted back to the learned trial Judge with directions to pass an appropriate order based upon the consideration of the complaint and cursory evidence of the petitioner etc in accordance with the law with sole object of determining whether a prime facie case is made out or not, which shall be done within a period of 30 days from the date of receipt of copy of this order. While parting with this order, it is made clear that the observations of this Court hereinabove made are tentative in nature only for the purpose of decision of the instant Criminal Revision, which shall not in

any manner influence the mind of the leaned trial Judge while passing the fresh order.

(JUSTICE KHADIM HUSSAIN M.SHAIKH)
JUDGE

Islamabad
25.03.2025
Khurram