

IN THE FEDERAL SHARIAT COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT

MR. JUSTICE IQBAL HAMEEDUR RAHMAN, CHIEF JUSTICE
MR. JUSTICE DR. SYED MUHAMMAD ANWER
MR. JUSTICE AMEER MUHAMMAD KHAN

Criminal Appeal NO. 5/I OF 2024

Muhammad Aman son of Zar Aman, resident of Brep, presently residing at
Teek Lasht Booni, Tehsil Mastuj, District Upper Chitral.

.....APPELLANT

VERSUS

1. The State
2. Sharif Aman son of Zar Aman, resident of Brep, Tehsil Mastuj, District
Upper Chitral.

.....RESPONDENTS

LINKED WITH

Criminal Reference NO. 01/I OF 2024

The State

.....PETITIONER

VERSUS

Muhammad Aman son of Zar Aman, resident of Brep, presently residing at
Teek Lasht Booni, Tehsil Mastuj, District Upper Chitral.

.....RESPONDENT

Counsel for Appellant:	Qazi Zaki ud Din, Advocate for appellant (Muhammad Aman)
Counsel for Respondent:	Mr. Muhammad Amir Malik, Advocate for respondent No.2 Sharif Aman Mr. Asad Jan Durrani, Addl. AG, KP for the State
Dates of Institution:	02.04.2024 (Crl. Appeal No.5/I of 2024) 28.03.2024 (Crl. Reference No.1/I of 2024)
Date of Hearing:	29.04.2025
Date of Judgment:	30.05.2025

JUDGMENT

DR. SYED MUHAMMAD ANWER, J: Through this judgment we have
decided the captioned criminal appeal arising out of the judgment passed by

the Additional Sessions Judge / IZQ, Upper Chitral, dated 18.03.2024, whereby the appellant Muhammad Aman has been awarded punishment under Section 7 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (***Ordinance of 1979***) with whipping of 80 stripes to the appellant. We have also answered the captioned Criminal Reference No. 01/I of 2024, filed by the Additional Sessions Judge / IZQ, Upper Chitral for confirmation of the punishment awarded through the impugned judgment, dated 18.03.2024.

2. Brief facts of the case are that on 01.08.2022, the appellant Muhammad Aman recorded his statement as DW-8 in a civil case, titled "*Sharif Aman vs. Muhammad Aman*", in the court of the Civil Judge/IQ, Booni, Upper Chitral, wherein he allegedly leveled allegations of Zina against the plaintiff i.e. Sharif Aman, respondent No.2 i.e. complainant in the instant case. The appellant, who is also a real brother of the respondent No.2 / complainant, while recording his statement in the abovementioned civil case, which was regarding some property dispute between these two real brothers, has allegedly leveled an allegation of Zina that the complainant Sharif Aman "commits Zina", thus committed Qazf, as a result whereof the respondent No.2 (Sharif Aman) filed a complaint of Qazf, which was decided by the Additional Sessions Judge / IZQ, Upper Chitral through the impugned judgment, dated 18.03.2024.

3. After submission of the complaint under Section 265-B of the Criminal Procedure Code (***Cr.P.C***) proceedings were initiated and statement of the complainant (respondent No.2) was recorded on oath, where-after the appellant (accused) was summoned and subsequently upon his appearance before the Court charge was framed against him on 10.12.2022, to which the

appellant pleaded not guilty and claimed trial. Thereafter, the case was fixed for production of evidence by the prosecution and consequently from the complainant side, only one witness i.e. the complainant himself appeared as PW-1, who re-affirmed the allegation of Qazf leveled against him as mentioned in the complaint. In support of his statement he produced the relevant record of the civil case, titled "Sharif Aman vs. Muhammad Aman", which was exhibited as Exh.PW-1/1 and Exh.PW-1/2.

4. After closure of the prosecution evidence, statement of the appellant (accused) was recorded under Section 342 Cr.P.C on 22.06.2023, wherein he opted to produce evidence in defense, hence his statement under Section 340(2) Cr.P.C was recorded as DW-1. In his statement the appellant (accused) took the stance that he never made any such statement in that civil case, which is relied upon by the complainant, instead the appellant took the stance that when his statement-in-chief was being recorded in a civil case, referred hereinabove, the Presiding Officer i.e. the Civil Judge was not present in the court. Furthermore, according to him the parties in that case quarreled while the statement of the accused was being recorded in the referred civil matter on 01.08.2022 and when that quarrel got prolonged, the Presiding Officer left the court and the alleged statement was recorded. Hence, on the basis of same the complaint of Qazf was filed against him, which, according to him, was fraudulently managed by the complainant (respondent No.2) under some premeditated scheme. He further stated that even on 18.08.2022, when the cross-examination was being recorded in that same civil suit, the Presiding Officer was not present initially, rather he arrived after a while, so according to the appellant, pages No. 5 to 10 in the record of that case were not

recorded by the Presiding Officer himself. The relevant portion of the statement recorded by the appellant (accused) in his defense, is as follow:

”مستغنیث نے جس بیان کا سہارا لیا ہے مذکورہ متنازعہ بیان مستغنیث نے ایک سوچے سمجھے منصوبے کے تحت جھوٹ سے منصوبہ ریکارڈ کروایا ہے۔ حقیقت یوں ہے کہ مذکورہ بیان جو کہ 01-08-2022 کو قلمبند ہو رہا تھا تو ملزم کے بیان کے صفحہ نمبر 5 کے آخر میں جو متنازعہ بیان ملزم سے منصوبہ ہے اس وقت پر پریزنڈنگ آفیسر عدالت میں موجود نہیں تھا تو مذکورہ متنازعہ بیان کے ریکارڈ کے وقت عدالت میں جھگڑا ہو گیا، کیونکہ ملزم نے اعتراض کیا کہ مذکورہ متنازعہ بیان ملزم کا نہ ہے، کافی دیر تک جھگڑا ہونے کے بعد اس روز شہادت ملتوی کی گئی۔ اور مقدمہ مورخہ 18-8-2022 کیلئے پیش ہوا۔ تاہم 18-8-2022 کو ملزم کے علم میں لائے بغیر متنازعہ بیان ریکارڈ کرنا بعد میں معلوم ہوا۔ حالانکہ حقیقتاً متنازعہ بیان سے آگے یعنی ملزم کے بیان کے صفحہ نمبر 5 سے آگے مورخہ 18-8-2022 تحریر ہو کر ملزم پر جرح کی گئی ہے۔ اور اس وقت یعنی بدوران جرح بھی پریزنڈنگ آفیسر عدالت میں موجود نہیں تھا۔ جو بعد میں آگیا۔ اس طرح ملزم کے بیان پر جرح کے صفحہ نمبر 10 میں جو متنازعہ بیان ملزم سے منصوبہ کی گئی ہے وہ ملزم کے بیان کا حصہ نہ ہے۔۔۔۔۔۔۔۔۔۔“

5. Similarly, when questions were put to the appellant (accused) in the instant case while recording his statement under Section 342 Cr.P.C, the appellant (accused) reiterated his stance that he never made such statement, as alleged against him, containing material that amounts to Qazf, rather the Presiding Officer of the Civil Court was not present at that specific time when such statement was recorded against him, because the Presiding Officer left the room due to a quarrel between the parties inside the Court. The appellant (accused) also took the stance that though the complainant is his real brother, but they are at loggerheads in a property dispute involving in several civil and criminal cases, therefore, due to such enmity the respondent No.2 (complainant) managed to maneuver the recording of the alleged statement containing allegation of Zina amounting to Qazf against him in order to put an undue pressure upon him of a serious criminal case. The appellant (accused) took the stance that the complainant (respondent No.2) trapped him through a statement which is wrongly recorded against him.

6. The alleged statement upon which the complaint of Qazf under Section 7 of the Ordinance of 1979 was filed against the appellant was recorded in the Court of law in some civil matter as mentioned hereinabove, which was pending between the parties. The learned counsel of the appellant argued in the defence that the statement so recorded was not before the Court of competent jurisdiction, therefore, the same is not admissible and does not fulfill the requirement of Section 6(1)(b) of the Ordinance of 1979. On the very outset, this argument of the appellant's counsel that the statement is not admissible in this case because the statement was not made before the court of competent jurisdiction does not hold any ground as Section 6(1)(b) of the Ordinance of 1979 states as follows:

6. Proof of qazf liable to hadd. (1) *Proof of qazf liable to hadd shall be in one of the following forms, namely:*

(a)

(b) *the accused commits 'qazf' in the presence of the Court.*

The bare reading of the above referred Section shows that it does not contain any such qualifier that the statement containing Qazf should be made before a court of competent jurisdiction, rather it only shows that if a statement is made in the presence of the court, the same is enough to be accepted as a prove of Qazf liable to Hadd. The alleged statement in this case was duly recorded by a Civil Judge in a civil matter titled (Sharif Aman v. Muhammad Aman) containing the seal and signatures of a Civil Judge, which means a presumption is attached to that statement that it was recorded by the Civil Judge i.e. the Court itself and this presumption can only be rejected upon presentation of some facts to prove it otherwise. In the instant case, we have noticed that the appellant (accused) not only denounced the alleged statement but also stated that while recording that statement some kind of

dispute occurred between the parties or between their counsels, hence allegedly the statement was mis-recorded or maneuvered on the behest of the complainant to fulfill some pre-meditated designs against the accused in order to further entangle him in some criminal case as he did subsequently by filing the instant Qazf case against him.

7. Upon perusal of the record it reveals that the complainant (respondent No.2) while recording his statement completely denied all the suggestions made to him being wrong suggestions, however during his cross examination as PW-1 in his criminal petition of Qazf, recorded on 16.05.2023, the complainant admitted that some quarrel happened between the appellant (accused) and his counsel after recording of that piece of statement containing the disputed allegation of Zina, on the basis of that statement subsequently the case of Qazf was filed. The complainant voluntarily described about this quarrel in the following words:

” از خود کہا کہ بیان / chief مکمل کرنے کے بعد متنازعہ الزام کی وجہ سے مسئول الیہ کے وکیل نے مسئول الیہ کے ساتھ جھگڑا کیا۔“

This piece of statement has raised a question that some dispute did happened inside the Court, which has rendered some doubts regarding the recording of statement containing the allegation of Zina amounting to Qazf, which apparently the Trial Court has ignored.

8. We again reiterate it here that any statement which is a part of judicial proceedings containing signatures of the Presiding Officer i.e. the Court in that case, bears a presumption that the statement was recorded by the same Presiding Officer / Court himself, unless proven otherwise, therefore, in this case we have noticed that the Trial Court has failed to appreciate the evidence of the parties available on record to evaluate that (a) whether that statement

containing the allegation of Zina was recorded by the Court itself or not, or (b) whether the court was present at that time while the alleged statement was being recorded or not? These aspects of the case not only are relevant but crucial in Hudood laws because such questions are pivotal to evaluate the authenticity of the evidence for proving the allegation against the accused beyond any shadow of doubt. It is settled law in the Holy Quran and Sunnah that the execution of Hadd punishment must be devoid of any kind of doubt.

9. The reason of lapses pointed out hereinabove revealed upon the perusal of the record that the Trial Court has failed to adopt the procedure mentioned in section 203-B of Cr.P.C, which the Trial Court was bound to follow in the light of Section 17 of the Ordinance of 1979, which states as follow:

17. Application of the Code of Criminal Procedure, 1898 (Act V of 1898).--(1) Unless otherwise expressly provided in this Ordinance, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the said Code, shall apply, mutatis mutandis, in respect of cases under this Ordinance:

Provided that an offence punishable under Section 7 shall be triable by a Court of Sessions and not by or before a Magistrate authorized under Section 30 of the said Code and an appeal from an order of the Court of Sessions shall lie to the Federal Shariat Court.

Provided further that a trial by, or proceeding before, the Court of Sessions under this Ordinance shall ordinarily, be held at the headquarters of the Tehsil in which the offence is alleged to have been committed or, as the case may be, the husband who has made the accusation ordinarily resides.

(2) The provisions of the said Code relating to the confirmation of the sentence of death shall apply, mutatis mutandis, to the confirmation of a sentence under this Ordinance.

(3) *The provisions of sub-section (3) of Section 391 or Section 393 of the said Code shall not apply in respect of the punishment of whipping awarded under this Ordinance.*

(4) *The provisions of Chapter XXIX of the said Code shall not apply in respect of a punishment awarded under Section 7 of this Ordinance.*

Hence, according to this Section of the Ordinance of 1979, the Code of Criminal Procedure shall apply on the proceedings of matters pertaining to Qazf *mutatis mutandis*. In this connection, the relevant provision of the Cr.P.C, which the Trial Court was bound to follow is Section 203-B Cr.P.C, complaint in case of Qazf, which states as follow:

203B. Complaint in case of Qazf.—(1) Subject to sub-section (2) of Section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), no Court shall take cognizance of an offence under section 7 of the Said Ordinance, except on a complaint lodged in a Court of competent jurisdiction.

(2) *The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine on oath the complainant and the witnesses as mentioned in section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979) (VIII of 1979) of the act of Qazf necessary to the offence.*

(3) *The substance of the, examination of the complainant and the witnesses shall be reduced to writing and shall be signed by the complainant, and the witnesses, as the case may be, and also by the Presiding Officer of the Court.*

(4) *If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue summons for the personal, attendance of the accused.*

(5) *The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.*

[Emphases added]

However, the Trial Court failed to understand that a complaint could not be declared as a sacrosanct document and its impact needs to be examined before granting permission as held by the apex court in case reported as **2010 SCMR 194**, titled "*Abdul Mukhtar vs. District and Sessions Judge, Jhang*". The same point is further elaborated by the apex court in another latest judgment, reported as **PLD 2025 SC 40**, titled "*Muhammad Rajar vs. The State through Prosecutor General Sindh and others*", wherein it has held as under:

"The provisions of Sections 202, 203 and 204 of the Cr.P.C require the Trial Courts to conduct a thorough examination of the evidence supporting allegations made against the individuals. In this context, the Trial Court must consider not only the factual basis for the accusations but also the underlying purpose of bringing those charges forward. This includes evaluating whether there is a legitimate objective behind the allegations or if they serve to unjustly target or harass the accused. Moreover, the Trial Court should assess the possibility of victimization, ensuring that individuals are not subjected to legal actions that could lead to unnecessary distress or humiliation."

10. This point is reiterated in a number of judgments of the apex court explaining *raison d'être* of Sections 202 to 204 of the Cr.P.C. For instance, the apex Court in its latest judgment reported as **PLD 2025 SC 40**, titled "*Muhammad Rajar vs. The State through Prosecutor General Sindh and others*" explained these sections of the Cr.P.C for a trial in the following manner:

*"14. In the case of **Abdul Mukhtar and another v. District and Sessions Judge, Jhang and 2 others** (2010 SCMR 194), it has been observed that initiation of process under sections 202 and 204 of the Code depends upon the availability or non-availability of sufficient incriminating material. Moreover, in the case of **Abdul Wahab Khan v. Muhammad Nawaz and 7 others** (2000 SCMR 1904) it was held that provisions as contained in sections 202 to 204 of the Cr.P.C, if read together, would show that a proper safeguard has been provided by the Legislature by using the words "if any" and "sufficient grounds*

for any" in section 203 of the Code and accordingly the frivolous and vexatious complaints must be buried at their inception where no prima facie case is made out."

11. We have gone through the impugned judgment together with the record available on the file and observed that the non-compliance of procedure as noted by us and mentioned hereinabove by the Trial Court has deprived the appellant Muhammad Aman of his right of having a fair trial, therefore, in such view of the matter, the instant criminal appeal is hereby **disposed of** and the case is remanded back to the Trial Court for **de novo trial**. Consequently, the captioned criminal reference filed for confirmation of the punishment awarded to appellant is hereby answered in **negative**. It is pertinent to mention here that this Court vide order dated 22.05.2024, passed on Crl. Misc. Application No.04-I/2024, has continued the bail already granted to the appellant Muhammad Aman by the Trial Court, hence, the appellant Muhammad Aman is directed to join the trial and appear before the Trial Court on each and every date of hearing. The Trial Court is directed to decide the case within the period of three (03) months, positively.

(JUSTICE DR. SYED MUHAMMAD ANWER)
JUDGE

(JUSTICE IQBAL HAMEEDUR RAHMAN)
CHIEF JUSTICE

(JUSTICE AMEER MUHAMMAD KHAN)
JUDGE

Announced in Open Court
on 30.05.2025, at Islamabad.

*Khalid/**