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BEFORE THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT:

MR. JUSTICE S. A. MANAN

Cr. Appeal NO. 362/L/2003

Muhammad Imran son of Muhammad Ramzan alias Jehan Khan, r/o
Ucha Chait Ram Road, Tibbi City, Lahore.

APPELLANT

Versus

The State

RESPONDENT

Counsel for the appellant	...	Nemo.
Counsel for the State	...	Raja Akhter Nawaz, Advocate
FIR No. Dated Police Station (District)	...	145/02 dt 18.04.2002 Tibbi City (Lahore)
Date of impugned judgment	...	05.12.2003
Date of receipt of appeal	...	18.12.2003
Date of hearing & decision	17-03-2005

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JUDGMENT:**S. A. MANAN, J.**

Mr. Farhat Abbas Khan, Advocate

for the appellant has been served while the appellant could not be because of incomplete address. Neither the appellant nor his counsel is present, however Raja Akhter Nawaz, learned State counsel is present.

2. Briefly stated one Muhammad Afzal, S.I. received information from the informer that Muhammad Asif son of Khadim Husain, proclaimed offender was present in Billi Building and he should be arrested. The police officer alongwith others raided the place but did not find the proclaimed offender and thereafter, entered into some other room of the building and allegedly saw the present appellant Muhammad Imran with Mst. Goshi. It is the case of prosecution that they were preparing to commit zina on a cot after removing their shalwars. They were asked to cover themselves and the present FIR No.145/02 dated 18.04.2002 Police Station Tibbi City, Lahore was registered.

3. On 26.08.2002 the trial court framed the charge that “on 18.04.2002 on or about 12:00 p.m. night, in the area of house of Imran situated at Nilli Building, Uncha Chat Ram Road, within the jurisdiction of P.S. Tibbi City, Lahore, you Imran alongwith your co-accused Mst. Goshi were attempted to commit zina-bil-jabr and in this way, you have committed an offence punishable U/S 18 Offence of Zina (Enforcement of Hudood) Ordinance, 1979, which is within the cognizance of this court.”

Thereafter, prosecution evidence was recorded.

4. Both the accused Muhammad Imran and Mst. Goshi were examined under Section 342 Cr.P.C. and they denied the version of the police.

5. Finally, the learned trial court by judgment dated 05.12.2003 convicted appellant Imran for a term of two years R.I. with benefit of Section 382-B Cr.P.C.

Warrants of arrest were issued against co-accused Mst. Goshi as she was declared as proclaimed offender.

6. On the facts of the case it is clear that the police officer had only gone to the building to arrest proclaimed offender and thereafter entered into the room where Imran and Goshi were allegedly residing. According to the ASI both the accused persons were preparing to commit zina and, therefore, the present case has been registered against them.

7. From the facts of the case, it is manifestly clear that this is a case of over indulgence, high handedness and miss use of power on the part of the police. This is how the private citizens are being harassed. The police officer had no authority whatsoever to enter into the room of the appellant, which was separately located. He had not located the proclaimed offender and thereafter could not trespass into the house of the appellant.

8. Zina is defined in Section 4 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 in that "a man and a woman are said to commit 'Zina' if they willfully have sexual intercourse without being validly married to each other."

It is amply demonstrated and clear from the facts of the case that not even one of the ingredients of Section 4 of the Ordinance is present in the case and the ASI acted without lawful authority and without jurisdiction to register the case against the two persons.

9. From the facts of the case it is further clear that the police officer has violated the privacy of the appellant, which is forbidden under Article 14 of the Constitution of Islamic Republic of Pakistan. According to the Article 14, “ (1) the dignity of man and, subject to law, the privacy of home, shall be inviolable. (2) No person shall be subjected to torture for the purpose of extracting evidence.”

If applied the facts of the case there could be no doubt that the police officer had transgressed, disregarded and violated the provisions of the Constitution and has invaded the privacy of the appellant.

10. Learned State counsel is also of the view that the facts of the case do not constitute the offence allegedly committed by Muhammad Imran and Mst. Goshi.

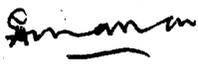
11. Besides the above, it is settled law that no police officer can enter the house of the private citizen unless possessed with warrants of arrest. There may be some exception to the general law.

12. Unfortunately, the trial court is not aware of the relevant law and has convicted and sentenced the appellant without applying its mind. I do not see one single reasoning of the trial court by which the appellant has been convicted and sentenced. In this view of the matter, the issuance of the warrants of arrest against Mst. Goshi is also without jurisdiction and not legally sustainable.

13. As a result of above discussion, the impugned judgment dated 05.12.2003 is set aside and the appeal is accepted. Appellant Imran was granted bail by this court, his bail bonds are

discharged. The warrants of arrest issued against Mst. Goshi are also discharged.

Announced.


(S. A. Manan)
Judge

Dated, Lahore the
17th day of March, 2005
M. Imran Bhatti/*

Fit for reporting.