

**IN THE FEDERAL SHARIAT COURT OF PAKISTAN  
(Appellate/Revisional Jurisdiction)**

**Present:**

**MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE  
MR. JUSTICE DR. SYED MUHAMMAD ANWER  
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH**

**Criminal Appeal No.12/I of 2021**

1. Muhammad Akram son of Ahmed Ali,
2. Nasir Abbas son of Muhammad Yar,

Both Sayal by Caste, Residents of Chak No.141/RB, Aqil Sundar  
Wala, Tehsil Chak Jhumra, District Faisalabad.

3. Qamar Hussain son of Muhammad Yousaf,  
Resident of Chak No.217-RB, Chak Lawa, Chakaira, Tehsil &  
District Faisalabad.

..... Appellants

***VERSUS***

1. The State
2. Ishrat Bibi daughter of Allah Ditta, Caste Sial, Resident of Chohdu  
Khuda Yar, Tehsil Pindi Bhattian, District Hafizabad.

..... Respondents

**Criminal Reference No.03/I of 2021**

The State ***VERSUS*** Muhammad Akram etc.

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Counsel for Appellants .... Mr. Asif Abbas, Advocate  
Alongwith appellants Muhammad Akram,  
Nasir Abbas and Qamar Hussain present on  
bail.

For Respondent No.2/Complainant.... Mst. Ishrat Bibi in person.

Counsel for the State .... Mr. Muhammad Usman,  
Deputy Prosecutor General (Punjab)

Date of judgment of Trial Court.... 08.11.2021

Date of receipt of Appeal .... 08.12.2021

Date of receipt of Cr. Ref. .... 14.12.2021

Date of hearing .... 03.03.2022

Date of Judgment ....

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**JUDGMENT:**

**MUHAMMAD NOOR MESKANZAI, CJ** --- Appellants

Muhammad Akram, Nasir Abbas and Qamar Hussain have called in question the legality, validity and propriety of the judgment dated 08.11.2021 handed down by the learned Additional Sessions Judge, Pindi Bhattian, whereby the learned trial Court held the appellants guilty of commission of the offence of qazf liable to Hadd and sentenced them with whipping of 80-stripes each. The relevant portion of impugned judgment is reproduced:-

*“Thus the accused persons Qamar Hussain s/o Muhammad Yousaf, Muhammad Akram s/o Ahmed Ali and Nasir Abbas s/o Muhammad Yar are held guilty of commission of offence of qazaf liable to hadd and are punished with whipping of 80 strips each. Execution of the punishment is subject to confirmation by court of appeal as per section 7 (3) of the ordinance. Therefore reference is being submitted to the Honorable Federal Shariat Court for confirmation of the conviction and sentence of the accused persons. As the accused persons are sentenced to whipping only, as provided u/s 391 (1) clause (a) the accused persons shall remain on bail subject to their submission that they shall appear on the time and place fixed by this court for execution of the punishment of whipping, after confirmation of the conviction and sentence by the court of appeal, and submit bail bonds in the sum of Rs:1,00,000/- each with one surety each to the satisfaction of this court failing which they shall remain in custody of Superintendent District Jail Hafizabad for which they are taken into custody and sent to district jail Hafizabad alongwith warrants of punishment in the name of Superintendent District Jail Hafizabad.”*

The learned trial Court has also sent a reference for confirmation of the sentence of whipping awarded to the appellants, which was registered in this Court as Criminal Reference No.03/I of 2021.

2. As both the above-mentioned matters are outcome of one and the same judgment, therefore are being disposed of by this single judgment.

3. Brief facts, as mentioned in the private complainant filed by Mst. Ishrat Bibi, respondent No.2/complainant, are that on 13.01.2018 she instituted a suit for recovery of maintenance allowance and dowry articles against appellant Qamar Hussain in Family Court, Pindi Bhatian. Appellant Qamar Husain filed written statement on 08.05.2019 and appellants Muhammad Akram and Nasir Abbas recorded their statements before the Court on 21.02.2020, wherein they levelled allegation against the respondent No.2/complainant that ten days before her Nikah, she eloped away with one Qasim, whereas the appellants did not have any evidence to this respect. She further stated that she belongs to a noble family and the appellants by leveling false allegation damaged her respect and reputation as well as the honour of her family. The appellants levelled false allegation against her in presence of witnesses Allah Ditta and Khizar Hayat, and committed an offence of Qazf. She further stated that she approached the concerned SHO as well as the DPO but could not find any remedy. Then she filed application under Section 22-A, B Cr.P.C in the Court of Additional Sessions Judge, Pindi Bhattian, which was withdrawn on 08.06.2020 with permission of filing

private complaint. She prayed for acceptance of private complaint and for conviction and sentence of the appellants.

4. After recording some evidence, the learned trial Court summoned the appellants to face trial. Charge was framed against the appellants on 19.06.2021. The appellant did not plead guilty and claimed trial. In order to prove the allegations, the complainant produced two witnesses. PW.1 Ishrat Bibi reiterated the facts of her complaint. Allah Ditta, father of Mst. Ishrat Bibi appeared as PW.2 and supported the statement recorded by the complainant. Thereafter, the learned trial Court recorded statements of accused/appellants under Section 342 Cr.P.C. They neither opted to record their statements on Oath as contemplated under Section 340(2) Cr.P.C nor proposed to produce any defense evidence.

5. The learned trial Court, while appreciating the evidence, found the appellants guilty of the offence and awarded the sentence as mentioned in opening paragraph of this judgment, followed by a reference for confirmation of Hadd sentence.

6. The learned Counsel for the appellants, inter-alia, contended that the very complaint filed by the respondent No.2/complainant does not constitute any offence within the ambit of Qazf Ordinance. There is no allegation of commission of zina, so, a complaint without mentioning such an allegation is not sufficient to attract the provisions of Qazf Ordinance but the learned trial Court failed to appreciate this legal position. It was further contended that when the

complainant appeared before the Court and recorded her statement she admitted in her cross-examination that no allegation of zina is mentioned in the complaint. According to the learned Counsel for the appellants, neither there was any occasion for entertaining the complaint under the Qazf Ordinance nor the proceedings so initiated are in accordance with law. Therefore, the impugned judgment as well as criminal reference for confirmation of sentence of whipping are contrary to the law and norms of natural justice. The learned Counsel stated that without prejudice to above legal position even otherwise the parties have entered into compromise and the respondent No.2/complainant has withdrawn the allegation contained in the complaint. In support of this plea, he produced an affidavit of respondent No.2/complainant.

7. Mst. Ishrat Bibi, respondent No.2/complainant earlier appeared and stated that she has withdrawn her allegation as they have entered into a compromise. However, after entertaining affidavit of the respondent No.2/complainant, she was once again issued Notice, in pursuance whereof, she appeared and confirmed the contents of her affidavit.

8. We have heard the parties and have gone through the record. The perusal of the record reveals that by no stretch of imagination the allegation levelled in the complaint does constitute any offence within the ambit of Qazf Ordinance. For the sake of convenience the allegation contained in the complaint is reproduced:-

”یہ کہ مستغیثہ نے مورخہ 13.01.2018 کو ایک دعویٰ خرچہ نان  
ونفقہ معہ واپسی سامان جہیز بعدالت فیملی کورٹ پنڈی بھٹیاں میں

دائر کیا ہے جس میں الزام علیہان مسمیان (1) قمر حسین ولد محمد یوسف قوم سیال سکنہ چکنمبر 217 ر، ب چک لاو ۱ چکیرہ (2) محمد اکرم ولد احمد علی قوم سیال (3) ناصر عباس ولد محمد یار قوم سیال سکنائے چکنمبر 141 ر، ب عاقل سنڈروالا تحصیل چک جہمرہ ضلع فیصل آباد نے الزام علیہ نمبر 1 قمر حسین نے اپنے جواب دعویٰ میں مورخہ 08.05.2019 و شہادت میں مورخہ 21.02.2020 کو مستغیثہ کے خلاف ایک الزام لگایا کہ مستغیثہ نکاح سے 10 یوم قبل قاسم نامی شخص کیساتھ بھاگ گئی تھی جبکہ الزام علیہان کے پاس کوئی ایسی شہادت موجود نہ ہے اور نہ ہی الزام علیہان نے پیش کی ہے۔

Emphasis supplied.

9. The allegation looked at viz-a-viz the definition of Qazf contained in Section 3 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 reflects that by no stretch of imagination any case within the meaning of terms ‘Qazf’ is made out. For ready reference relevant Section 3 of Qazf Ordinance is reproduced:-

*“3. Qazf. Whoever by words either spoken or intended to be read, or by signs or by visible representation, makes or publishes an imputation of ‘zina’ concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation, or hue the feelings, of such person, is said, except in the cases hereinafter expected, to commit ‘qazf’.”*

10. It can safely be concluded that the said allegation is not sufficient to constitute and make out an offence within the ambit, seisin and ordain of the term Qazf either in the form of Hadd or Tazir. Hence, we find sufficient force in the submissions of learned Counsel for the appellants that on the basis of said allegation the learned trial Court committed material irregularity even in initiating the proceedings under the Qazf Ordinance. Furthermore, since the parties have entered into a compromise and the respondent No.2/complainant has withdrawn the allegation, therefore, this is an additional ground for acceptance of appeal. Legally, as per the mandate of Section 9(2) of the Ordinance,

even prior to execution of sentence of Hadd in case of withdrawal of allegation by the complainant, Hadd cannot be enforced. In this case, prior to confirmation of sentence of Hadd passed by the learned trial Court, the respondent No.2/complainant has withdrawn her allegation. In such state of affairs, we are of the considered opinion that no case is made out against the appellants, besides, withdrawal of the allegation by the respondent No.2/complainant is an additional ground, which entitles the appellants to acquittal.

11. In the light of above discussions, **we are inclined to accept Criminal Appeal No.12/I of 2021, set aside the judgment dated 08.11.2021 passed by the learned Additional Sessions Judge, Pindi Bhattian and acquit the appellants of the charge.** The appellants are present on bail, their bail bonds stand discharged.

Since the appeal has been accepted and the impugned judgment has been set aside, therefore, **Criminal Reference No.03/I of 2021 for confirmation of sentence of whipping is answered *in negative.***

**MR. JUSTICE MUHAMMAD NOOR MESKANZAI**  
CHIEF JUSTICE

**MR. JUSTICE DR. SYED MUHAMMAD ANWER**  
Judge

**MR. JUSTICE KHADIM HUSSAIN M. SHAIKH**  
Judge

Dated, Islamabad the

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