

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

**PRESENT**

**MR.JUSTICE CH. EJAZ YOUSAF, CHIEF JUSTICE**

**CRIMINAL REVISION NO.30/I OF 2003**

Muhammad Ali Babar son of -- Petitioner  
Bashir Ahmed, Caste Awan,  
Resident of Kalyam Sharif,  
P.S.Mandra, Distt:Rawalpindi.

Versus

1. The State -- Respondents  
2. Mst.Robina Firdous  
D/o Muhammad Yousaf,  
Resident of House No.870,  
Street No.2, Mohalla  
Sadiqabad,Chirah Road,  
Rawalpindi.

Counsel for the petitioner -- Mr.M.Bashir Khan,  
Advocate.

Counsel for respondent -- Mr.Muhammad Ilyas Siddiqui,  
Mst.Robeena Firdous Advocate.

Counsel for the State -- Mr.Muhammad Sharif Janjua,  
Advocate.

No.date of FIR and -- No.561 dt: 15.10.2002  
Police Station P.S.Sadiqabad.

Date of the order -- 1.10.2003  
Of trial Court

Date of institution -- 12.12.2003

Date of hearing -- 14.1.2004

Date of decision -- 14.1.2004

JUDGMENT

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This revision is directed against the order dated 1.10.2003 passed by the learned Additional Sessions Judge, Rawalpindi, whereby he, in view of the private complaint filed by respondent No.2 Mst.Robina Firdaus regarding the same occurrence, has stayed proceedings in the police challan case.

2. Facts, giving rise to this petition, in brief, are that FIR bearing No.561 dated 15.10.2002 was got registered with Police Station Sadiqabad District Rawalpindi under sections 10/11/15 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as "the Ordinance") by one Mst.Sadia Iram, on the allegation that the petitioner, on 8.9.2002 at about 8.00 p.m. had abducted her, took her to Mardan and committed zina with her. Thereafter, she was brought to Rawalpindi and confined in a house at Dhoke Hassue belonging to a friend of the petitioner from where, she having found an opportunity fled, returned home and narrated the entire occurrence to her father. It was further alleged that three years ago the petitioner had also taken her away and

forcibly subjected her to zina after forging a nikahnama, as a result whereof she gave birth to a daughter namely, Maheen. Pursuant to report, the petitioner was arrested and challaned to face trial under section 10(3) of "the Ordinance".

3. It would be worthwhile to mention here that at the trial, complainant Mst.Sadia Iram having been examined as P.W.9, took a somersault by stating that the petitioner after divorcing her real sister Mst.Robina Firdaus, i.e. the respondent No.2 had contracted marriage with her and that she was neither abducted nor was she subjected to zina by the petitioner. Later on, an application, under section 265-K Cr.P.C, was also submitted by the petitioner before the trial Judge, which was adjourned to 28.8.2003 for arguments. On 28.8.2003 an application, was submitted by Mst.Robina Firdaus under section 540 Cr.P.C. alleging that she having been married with the petitioner on 15.8.1994 gave birth to two daughters and a son and that since she was still in the wedlock when the petitioner contracted second marriage with her real sister Mst.Sadia Iram and that said Sadia Iram, having joined hands with the petitioner has, in order to save him, i.e.

the petitioner from punishment has resiled from her earlier statement, therefore, she may be allowed to be examined as a court witness. On 10.9.2003 Mst.Robina Firdaus, moved two more applications one for seeking stay of proceedings on the basis of "Noor Elahi's case (PLD 1966 SC 708) and the other under section 476/195 Cr.P.C. praying that since Mst.Sadia Iram, by resiling from her earlier statement and making false statement on oath was guilty of committing the offence of perjury, therefore, she may be proceeded against. After hearing arguments of the learned counsel for the parties on the application for stay of proceedings, the learned trial Judge, allowed the application and stayed proceedings in the challan case on the ground that since with regard to the same occurrence private complaint filed by respondent No.2 was also pending in his Court, therefore, in view of the principle enunciated in Noor Elahi's case, the private complaint had to proceed first.

4. Mr.M.Bashir Khan, Advocate, learned counsel for the petitioner has contended that since respondent No.2 was neither complainant nor was she cited as a witness in the challan case and was, despite application

made, not summoned as a court witness, therefore, the learned trial Judge, was not justified to stay proceedings in the challan case.

5. Mr.Muhammad Ilyas Siddiqui, Advocate, learned counsel for respondent No.2 while controverting the contention raised by the learned counsel for the petitioner has submitted that since one and the same matter i.e. commission of zina by the petitioner with Mst.Saadia Iram was in issue in both the cases, therefore, the learned trial Judge in order to avoid conflicting judgments as well as future complications, has rightly stayed proceedings in the challan case.

6. I have given my anxious consideration to the respective contentions of the learned counsel for the parties besides perusing record of the case, minutely. In the instant case, the allegation contained in the FIR lodged by Mst.Saadia Iram precisely, is that Mst.Saadia Iram was abducted by the petitioner and subjected to zina. In the complaint it has been alleged by Mst.Robina Firdous, who happens to be the real sister of Mst.Saadia Iram, that the complainant was in the wedlock with the petitioner and the marriage was still subsisting when the petitioner contracted second

marriage with her sister and since it was void, therefore, both i.e the petitioner and Mst.Sadia Iram were guilty of zina. She has further alleged that in order to save the petitioner from punishment, in the police challan case, Mst.Saadia Iram has resiled from her earlier statement, therefore, she may also be proceeded against on that score.

Though altogether two different versions have been introduced in both the cases yet, the fact remains that the allegation contained in the FIR as well as the complaint in pith and substance, is one and the same i.e. commission of zina by the petitioner with Mst.Sadia Iram with the addition of charge of abduction in the police challan case. The learned counsel for the petitioner too, has not disputed that the matter in issue in the complaint as well as challan case is one and the same but his grievance is that since the complainant was neither a party to the police challan case nor was she cited as a witness or was allowed to appear as a court witness despite application made for the purpose therefore, proceedings in the challan case should not have been stayed on her application. Indirectly he has challenged locus standi of Mst.Robina Firdous as complaint. It would

be pertinent to note here that Courts always take cognizance of the offence and not of the offenders and likewise it is also not important or significant as to who is the complainant or informant because once the Court is cognizant of the matter it has to be proceeded with in accordance with law. It may also be noted here that since no person can be prosecuted or punished for the same offence more than once, in view of the bar contained in Article 13 of the Constitution of the Islamic Republic of Pakistan as well as section 403 of the Criminal Procedure Code, therefore, once challan case as well as complaint case with regard to the same occurrence or arising out of the same transaction are instituted then in order to avoid double jeopardy and conflicting judgments it would be highly appropriate to see that both the cases are tried by the same Court, in the manner, that prejudice is not caused to any of the parties.

Though normally in the situation when police challan case as well as complaint case, with regard to the same occurrence or the offence are filed, it is not necessary for the trial Court to stay proceedings in the challan case as per observations made by the Hon'ble Supreme Court of

Pakistan in Nur Elahi's case, because it has also been laid down by the Hon'ble Supreme Court in a number of cases that the particular procedure advised in Nur Elahi's case does not amount to a declaration of law but was suggested to avoid prejudice to the complainant only and a different mode for trial of cases, keeping in view the circumstances of each case, may be adopted. Reference, in this regard, may usefully be made to the cases reported as Karim Bakhsh vs. Zulfiqar and four others 1997 SCMR 334, Raja Khushbakht-ur-Rehman and another vs. The State 1985 SCMR 1314 and Zulfiqar Ali Bhutto vs. The State PLD 1979 SC 53.

In my view, however, where the prosecution versions in the police challan case and the complaint case are considerably different and the case set up in the complaint case is at variance with that of in the police challan case it would be beneficial to stay proceedings in the challan case and proceed with the complaint case, at first.

In the case of Harjinder Singh v. State of Punjab and others AIR 1985 Supreme Court 404, it was held that it is not permissible for the Court under section 223 of the Code to club and consolidate the case on a

police challan and the case on a complaint where the prosecution versions in the police challan case and the complaint case are materially different, contradictory and mutually exclusive. In the case of Khetrabasi Samual etc v. The State of Orissa 1969(2) Supreme Court Cases 571, there were two separate cases, of which, cognizance was taken separately. One started on the basis of a police report while the other on the complaint of one Jagabandhu Behera. As the accused in both the cases were said to have committed the offences in the course of the same transaction, the cases were clubbed together for the purpose of trial under section 239 Cr.P.C. and it was held that such a course was permissible under the law. In the case of Kewal Krishan v. Sura Bhan and another AIR 1980 Supreme Court 1780, complainant got injuries and one Banta Singh was killed. The complainant informed the police about the occurrence but no action was taken on his report. On the contrary, a case against him and others was registered at the instance of one Tehla Ram. Since the question as to in what circumstances, Banta Singh received the fatal gun-shot injuries, was in issue in the cross-case also, which was instituted on a police report

under section 173, Cr.P.C. against Kewal Krishan and others, and he had been committed to the Court of Session for trial and story set up by Kewal Krishan in his complaint with regard to the death of Banta Singh, was likely to be his defence version in the counter-case, in which, he was being tried for the murder of Banta Singh, there was a risk of two courts coming to conflicting findings. To obviate such a risk, it was held that ordinarily it is desirable that the two cases should be tried separately but by the same Court. In the case of Shaikh Sumir and others v. Beni Madhab Gope and another AIR 1923 Calcutta 644, it was held that simultaneous trial of the two cases before two different Courts over one and the same occurrence is undesirable and unsatisfactory and the proper course is that both cases should be tried by one Magistrate one after the other. In the case of Jagabandu Behera v. Kshetrabasi Samal and others AIR 1978 Orissa 26 (V 55 C 11), certain accused were named in police report. Same accused alongwith others were named in the complaint as well. All were charged with offences committed in the course of same transaction. Magistrate amalgamated both cases and jointly tried them as a complaint case. It was

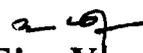
held that since no prejudice was caused to accused hence the procedure was neither illegal nor improper because such a course was permissible under section 239 Cr.P.C. However, it was observed that Magistrate is not bound to hold a joint trial for there may be circumstances in a particular case where it may not be proper to hold a joint trial e.g. though the offence may be one, the persons prosecuted by the police may be totally different from the persons named in the complaint. In such a case it will obviously be improper to amalgamate the two cases and hold a joint trial

7. It would be worthwhile to mention here that, in the instant case, though FIR as well as the complaint have been lodged with regard to one and the same offence/occurrence yet, altogether two different versions have been introduced and another accused has been added in the complaint. In the FIR, the petitioner has been charged for abduction as well as commission of zina-bil-jabr whereas, in the complaint Mst.Sadia Iram has also been arrayed as an accused. Hence, the course adopted by the learned trial Court, whereby he has stayed proceedings in the challan case appears to be proper and justified because otherwise there was every

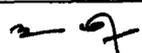
likelihood that either of the parties would have been prejudiced. For instance, if he would have proceeded with the police challan case at first and it had resulted in acquittal of the accused then there was every possibility that complaint would have been frustrated.

The upshot of the above discussion is that this petition being misconceived is hereby dismissed in limine.

These are the reasons of my short order of the even date.

  
( Ch. Ejaz Yousaf )  
Chief Justice

Islamabad, dated the  
14<sup>th</sup> January, 2004  
ABDUL RAHMAN/\*\*

FIT FOR REPORTING  
  
CHIEF JUSTICE