

JUDGMENT

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This revision is directed against the order/judgment dated 13.12.2005 passed by Mr.Muhammad Rashid Qamar, learned Additional Sessions Judge, Vehari whereby while acquitting co-accused namely, Siddique son of Allah Bakhsh he had directed for issuance of perpetual warrants of arrest against the petitioners as they were already declared absconders in the case.

2. Facts of the case, in brief, are that the petitioners as well as the acquitted accused named above, were charged for abduction and zina by Mst.Afzal Bibi. Resultantly, FIR bearing No.51 dated 14.2.2003 was registered under section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 at Police Station Ludden, District Vehari. Since all the accused persons were at large, therefore, they were declared absconders and challan was submitted in their absence. However, during pendency of the case Siddique accused appeared in Court. He was accordingly, charged,

tried and acquitted vide the aforementioned judgment as both P.W.1 Mst.Afzal Bibi, the alleged abductee and P.W.2 Allah Yar, the complainant exonerated him of the charge. However, since the rest of the accused persons did not appear and they were already declared absconders, therefore, perpetual warrants of arrest were issued against them.

3. Having been questioned as to why the petitioners were avoiding to appear before the trial Court, the learned counsel for the petitioners has stated that the petitioners are not hesitant to appear before the trial Court but since the co-accused namely, Siddique has already been acquitted of the charge, therefore, further proceedings in the case would be an exercise in futility. States that he would, however, direct the petitioners to appear before the trial Court, at the first opportunity.

4. Since the petitioners were declared proclaimed offenders as they did not appear before the trial Court when summoned and also remained absent at the trial, therefore, the learned trial Judge was

justified to order for issuance of the perpetual warrants of arrest against them.

5. It is well-settled that a fugitive from law and Courts loses some of the normal rights granted by procedural as well as substantive law and the appeal/petition filed by him is entertained, in exceptional cases, only when either it was filed properly when he was in custody or was prepared to or had actually surrendered.

Intentional absence, disappearance or defiance of Court process has never been appreciated because it is regarded as in contempt.

Reference, in this regard, may usefully be made to the following reported judgments:-

1. Mohtarma Benazir Bhutto, M.N.A., Leader of the Opposition, Bilawal House, Karachi v. The State through Chief Ehtesab Commissioner 1999 SCMR 1619;
2. Mohtarma Benazir Bhutto and another v. The State 1999 SCMR 2726;
3. Awai Gul v. Zawar Khan and others PLD 1985 SC 402
4. Kh.Azhar Hussain and another v. The State 1983 SCMR 978;
5. Mairaj Begum v. Ejaz Anwar and others PLD 1982 SC 294;
6. Hayat Bakhsh v. The State PLD 1981 SC 265;

7. Rao Qadeer Khan v. The State PLD 1981 SC 93;
8. Amir and others v. The State PLD 2004 Quetta 16; and
9. Begum Nusrat Bhutto through daughter Ms. Sanam Bhutto 194, Queen Gali, London v. The State through Chairman, National Accountability Bureau PLD 2002 Lah. 74.”

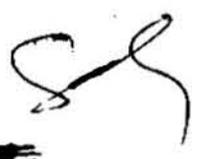
Proper course for the petitioners therefore, was to appear before the trial Court and participate in the proceedings.

6. The upshot of the above discussion is that the instant petition being misconceived and unwarranted by facts and law is hereby dismissed in limine.


(Ch. Ejaz Yousaf)
Chief Justice

Islamabad, dated the
31st March, 2006
ABDUL RAHMAN//

FIT FOR REPORTING.


CHIEF JUSTICE