

IN THE FEDERAL SHARIAT COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE

MR. JUSTICE SYED MUHAMMAD FAROOQ SHAH, JUDGE

CrI. PSLA No.05-I of 2019

Muhammad Ramzan son of Hukamdad,
Resident of Mauza Siri Saral, Post Office Golra Sharif,
Tehsil and District, Islamabad.

.....Appellant.

Versus

1. Shakeela Bibi daughter of Muhammad Nazir,
2. Mir Dad son of Juma Khan,
3. Mushtaq Ahmed son of Hukam Dad,
All residents of Siri Saral, Post Office Golra Sharif, Tehsil and
District, Islamabad.
4. The State.

...Respondents.

Counsel for the petitioner. --- Raja Yasir Shakeel Janjua, Advocate
Counsel for the State --- Mr. Muhammad Atif Khokhar,
State Counsel on behalf of
Advocate-General (ICT), Islamabad.
Date of impugned Judgment --- 18.04.2019.
Date of institution --- 12.12.2019.
Date of hearing --- 13.02.2020.
Date of decision --- 13.02.2020.

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**JUDGMENT.**

**SYED MUHAMMAD FAROOQ SHAH, J --** Through this petition for special leave to appeal, the petitioner Muhammad Ramzan has sought permission to file appeal against acquittal, challenging the judgment dated 18.04.2019, passed by the learned additional Sessions Judge (West) Islamabad, whereby private complaint No.07 of 2018 filed by him was dismissed and the respondent No.1 to 3 were acquitted from the charges under section 6 & 7 of the offence of Qazf (Enforcement of Hadd) Ordinance, 1979.

2. Relevant facts for disposal of instant petition are that the Petitioner Muhammad Ramzan had married Mst. Shakeela Bibi (the Respondent No. 1) on 12.08.1996. He contracted second marriage with Mst. Rabia on 10.08.2010. The petitioner averred that on instigation of respondent No.2 and 3, Mst. Shakeela Bibi filed application by leveling allegation of zina against petitioner Muhammad Ramzan and his wife Mst. Rabia before SHO P.S. Golra Sharif. The police after summoning the petitioner and seeking his explanation filed the application. The respondent Mst. Shakeela Bibi repeated same allegation in her application before Arbitration Council on the instigation of respondent/accused No.2 and 3. Hence, the Petitioner filed complaint of Qazf against the respondents before the Court of Illaqa Judicial Magistrate, Golra, Islamabad which was later on entrusted for trial to the Learned Additional Sessions Judge (west) Islamabad. During proceedings, respondents No.2 and 3 were acquitted on 10.01.2014 under Section 265-K Cr.P.C. The said order dated 10.01.2014 was assailed by the petitioner Muhammad Ramzan through Cr.P.S.L.A No.01-I of 2014 before Federal Shariat Court which was dismissed as withdrawn on 15.05.2014 alongwith Cr.Misc.A.No 14 and 15-I of 2014. At the end of trial, Mst. Shakeela Bibi was also acquitted on 18.04.2018 by the learned Additional Sessions Judge (west), Islamabad. The said order dated 18.04.2018 was challenged through Cr. PSLA.NO 02-I of 2018 before this Court. The said Cr.P.S.L.A No 2-I of 2018 was also dismissed in *limine* by the Division Bench of this Court on 17.10.2018.

During Pendency of the above case, the respondents Mst. Shakeela Bibi, Mirdad and Mushtaq Ahmed had filed in the Court of Civil/Family Judge 1<sup>st</sup> Class (West) Islamabad a suit for declaration to the effect that defendant No.1 Muhammad Ramzan (the petitioner of this case) and defendant No.2 Mst. Rabia are not legally wedded couple and *Nikahnama* dated 10.08.2010 is a forged document. The

said suit filed by the respondents was dismissed on 19.04.2016. After dismissal of the said suit, the petitioner Muhammad Ramzan again filed compliant case of Qazf against Mirdad, Mushtaq Ahmed and Shakeela Bibi in the Court of Judicial Magistrate Islamabad P.S. Margala Islamabad, which was entrusted for trial to the learned A.S.J.(West) Islamabad. On conclusion of trial, all three respondents were acquitted from the charge on 18.04.2019 by the learned A.S.J.(west) Islamabad. Hence, the petitioner Muhammad Ramzan filed Cr.P.S.L.A No.02-I of 2019 before this Court.

During pendency of the second complaint case of Qazf, respondents Mirdad, Mushtaq Ahmed and Mst. Shakeela Bibi had filed application u/s 265-K Cr.P.C which was dismissed on 20.05.2017 by the learned A.S.J.(West) Islamabad. The said order was challenged by the respondents through Cr. Revision No.03-I of 2017 before this Court. The Said Cr. Revision was disposed of having become infructuous as private complaint against them was dismissed by the learned trial Court on 18.04.2019.

During pendency of the second complaint case of Qazf, respondents Mirdad, Mushtaq Ahmed and Mst. Shakeela Bibi also filed Cr. Revision No.05-I of 2018 before this Court challenging the order dated 21.07.2018, whereby right to cross-examine the PW-1 was declined and the application u/s 540 Cr.P.C was dismissed by the learned A.S.J.(West) Islamabad on 10.11.2018. The said Cr. Revision was also disposed of having become infructuous as private complaint against the respondents was dismissed by the learned trial court on 18.04.2019.

On 03.11.2019, the said Cr.P.S.L.A No.02-I of 2019 was dismissed in default for want of prosecution. On 02.12.2019 in Cr.Misc.A.No.39-I of 2019 (for restoration of Cr.P.S.L.A No.02-I of 2019) learned counsel for the petitioner sought a short date to file a fresh PSLA, after making some rectification. Thereafter, the instant

Cr.P.S.L.A No.05-I of 2019 has been filed by Muhammad Ramazan the petitioner before this court.

3. Keeping in mind the sensitivity and gravity of imposition and applicability of *Hadd* under *Qazf* Ordinance, to assume as a possible or legitimate operation with preliminary constructions of allegation, the learned counsel representing the petitioner was put on notice to satisfy as to the maintainability of instant appeal by leave of the Court in terms of second exception of Section 3 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979. Besides, keeping in view the scope of section 417 Cr.P.C and its sub section (2-A), the learned counsel to explain the illegality, gross-irregularity, perversity, invalidity of impugned judgment dated 18.04.2019; more particularly, on culmination of dismissal of earlier proceedings on same allegations attained finality through judgment dated 17.10.2018 in P.S.L.A No. 02-I of 2018 passed by this Court. Notice was also issued to the State.

4. To ascertain the authenticity or otherwise of the impugned judgment, opportunity of patient hearing at length has been afforded to the learned counsel representing the petitioner as well as the learned counsel representing the State. With their able assistance, record has carefully been scanned. On maintainability of instant petition, the relevant provisions applicable in the relevant statues have been perused. Arguments have been advanced by the learned counsel on legal proposition that as to whether the impugned acquittal judgment is result of misappreciation of evidence, leading towards illegalities, infirmities, based on surmises, conjectures, shocking, artificial, warrant interference of this Court by invoking the provision of Section 417 Cr.P.C.

5. Learned counsel for the petitioner contended that by repeating false allegations of zina by the petitioner Muhammad Ramzan with Mst. Rabia, the respondent No.1 in the suit for

declaration (Exh.PB/Page 60 of paper book), which was later on dismissed, the respondents have committed the offence of *Qazf* liable to Hadd under section 6 & 7 of *Qazf* Ordinance, 1979.

6. Conversely, learned State counsel by supporting the impugned judgment contended that the State being satisfied with the impugned judgment did not prefer appeal against the acquittal of the respondents. By supporting paragraph 14 and 15 of the impugned judgment, learned counsel representing the State contended that by no stretch of imagination, the prayer made in the civil suit falls under the offence of the *Qazf*. Next argued that sexual relationships of the petitioner with Mst. Rabia are admitted by the petitioner being his second wife; moreover, as per evidence, *Nikah* was performed by the petitioner with Mst. Rabia on 10.08.2010, entered in the record of the Arbitration Council on 10.11.2015, much after filing of the suit on 06.12.2014 by first wife Mst. Shakeela; this shows that first wife of the petitioner Mst. Shakeela being unaware of valid *Nikahnama* in between her husband/ petitioner and Mst. Rabia bonafidely had sought different legal recourses. Learned State Counsel submitted that the suit filed by the respondents No.1, covered by second exception of section 3 of the Offence of *Qazf*. He further argued that it is now well settled principle of law that a person may not be prosecuted or tried for the same offence in respect of which he has previously been acquitted or convicted as ordained by article 13(a) of our Constitution read with section 403 of the Criminal Procedure Code. Lastly, argued that the instant petition is having no merits for consideration, may be dismissed in *limine*.

7. We have thoroughly considered each and every aspect of the case in hand. *Qazf* as defined in section 3 of the Offence of *Qazf* Ordinance is reproduced as follows:-

**Sec.3. Qazf:** Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes as imputation of

'zina' concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation, or hurt the feelings, of such person, is said except in the cases hereinafter excepted, to commit 'qazf'.

Explanation 1:

It may amount to 'qazf' to impute 'zina' to a deceased person, if the imputation would harm the reputation, or hurt the feelings, of that person if living, and is harmful to the feelings of his family or other near relatives.

Explanation 2:

An imputation in the form of an alternative or expressed ironically, may amount to 'qazf'.

**First Exception (Imputation of truth which public good requires to be made or published):** It is not 'qazf' to impute 'zina' to any person if the imputation be true and made or published for the public good. Whether or not it is for the public good is a question of fact.

**Second exception (accusation preferred in good faith to authorized person):** Save in the cases hereinafter mentioned, it is not 'qazf' to refer in **good faith** an accusation of 'zina' against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation:-

(a) a complainant makes an accusation of 'zina' against another person in a Court, but fails to produce four witnesses in support thereof before the Court.

(b) according to the finding of the Court, a witness has given false evidence of the commission of 'zina' or 'zina-bil-jabr';

(c) according to the finding of the Court, a complainant has made a false accusation of 'zina-bil-jabr'.

(Underlines are ours)

8. Prayer clause in the civil suit for declaration, filed against the petitioner is not attracting the offence punishable under section 7 of Qazf Ord: It shall be advantageous to reproduce hereinbelow the prayer of the said civil suit filed by the respondents

against the petitioner in the court of Senior Civil Judge (West) Islamabad.

استدعا ہے کہ ڈگری استقرار حق و تکزیب نکاح بحق مدعیان بر خلاف مدعا علیہم بدین مضمون جاری فرمائی جائے۔ کہ مدعا علیہم نمبر 1 اور 2 کا آپس میں میاں بیوی کا رشتہ موجود نہ ہے۔ دونوں کا کٹھے رہائش اختیار کرنا۔ غیر قانونی۔ بلا جواز۔ حدود اللہ کی خلاف ورزی۔ مبنی بر فراڈ اور مدعیہ نمبر 1 کے حقوق پر کالعدم اور غیر موثر ہے۔ جعلی اجازت نامہ اور جعلی نکاح نامہ منسوخ قرار دیکر تکزیب نکاح مابین مدعا علیہم نمبر 1، 2 کی ڈگری جاری فرمائی جائے۔

9. To prove the offence of Qazf, the prosecution must indicate that such imputation was made with the intention to harm the person or his reputation by imputing such accusation of zina. In the present case, no intention to harm the person or reputation of petitioner or circumstance indicating such intention by imputing false accusation of zina was brought on record during the trial for the offence of zina by filing the above civil suit, so in absence of such evidence indicating such intention to harm the person and reputation of petitioner the offence of Qazf as mentioned in section 3 of the Offence of Qazf (Enforcement of *Hadd*), Ordinance, 1979 is not made out.

10. In the present case, the petitioner has filed a complaint after dismissal of suit, as mentioned supra. It is an admitted position that on the strength of identical charges, earlier complaint was dismissed and the petition (PSLA No.02-I of 2018) for special leave to appeal was dismissed vide order dated 17<sup>th</sup> October, 2018. It may be pertinent to mention here that the concept of “**double jeopardy**” as enunciated under article 13 (a) of the Constitution of Pakistan read with section 403 Cr.P.C which provides protection against double prosecution or trial of the same offence which was involved in the offence with which he was previously charged is attracting in the peculiar facts and circumstances of the case as the respondents/ accused have been acquitted by the court of competent jurisdiction and such finding attained finality, their trial on same charge again by the court is not permissible. In this case, the charge is based on

same allegations finally adjudicated in earlier proceedings, which may not be re-agitated in the subsequent trial as on the basis of same criminal charge the accused cannot be vexed twice. Article 13 (a) of our Constitution incorporates a fundamental right and reads as follows:-

13. **No Person-**

- (a) Shall be prosecuted or punished for the same offence more than once; or
- (b).....

**Section 403 Cr.P.C**

403. Persons once convicted or acquitted not to be tried for the same offence. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not to be liable to be **tried again** for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

- (2), (3), (4) and (5).....

11. A perusal of chequered litigation in between the parties reflects bitter acrimonious relations erupted due to second marriage contracted by the petitioner with Mst. Rabia. Stance of first wife Mst. Shakeela Bibi was that the petitioner was performing sexual relationship with Mst. Rabia without Nikah, hence she approached different forums for redressal of her grievances. A perusal of record reflects that petitioner contracted second Nikah with Mst. Rabia on 10.08.2010 which was entered in the record of Arbitration Council on 10.11.2015, therefore, by no stretch of imagination the assertion of Mst. Shakeela and others can be considered imputation of zina liable to Hadd under section 7 of Qazf ordinance.

12. *Insofar* as, scope to make interference in the judgment of acquittal is concerned, the parameter and yardstick is quite different

than that judgment of conviction as the judgment of acquittal would not disturb even though second opinion could be reasonably possible. The consistent view of our august Supreme Court is that when two views are possible, the view in favour of accused has to be given preference. Reliance in this regard may conveniently be placed on the cases reported as **PLD 1994 Supreme Court 31** (GHULAM HUSSAIN VS THE STATE), **2010 SCMR 1592** (QURBAN HUSSAIN alias ASHIQ VS State), **2017 SCMR 633** (Intizar Hussain VS Hamza Ameer), **PLD 2010 Supreme Court 632** (AZHAR ALI VS State) and **PLD 1985 Supreme Court 11** (GHULAM SIKANDAR VS MAMARAZ KHAN).

The appeal against acquittal is considerably limited as the accused earns double presumption of innocence with the acquittal. Moreso, the learned counsel for the petitioner could not substantiate that impugned judgment suffers from misreading *or* non appraisal of evidence *or* lack of appreciation of material evidence *or* reception of evidence illegally *or* jurisdictional defects *or* evidence of material nature produced by the prosecution were not recorded *or* the acquittal order on the face of it is contradictory *or/and* the order of acquittal was based without affording opportunity to the prosecution by violating principles governing the appreciation of evidence *or* that the acquittal judgment is based upon surmises, suppositions and conjectures and the acquittal is based upon reasons which do not appeal to a reasonable mind. On the contrary, the learned trial Judge has correctly extended benefit of doubt in favour of the respondent as one cannot dispute that even a single circumstance creating a reasonable doubt with reference to the guilt of the accused would be sufficient to grant premium to the accused not as a matter of grace and concession but as a matter of right.

13. Epitome of the above discussion persuades us to conclude that the learned trial court has rightly dismissed the complaint and acquitted the respondents as there was no probability of their convictions. Judgment impugned does not call for

interference, resulting in dismissal of petition for special leave to appeal in *limine*. These are reasons of short order of even date announced in court.

(MUHAMMAD NOOR MESKANZAI) (SYED MUHAMMAD FAROOQ SHAH)  
CHIEF JUSTICE JUDGE

Approved for reporting

Islamabad  
February 13<sup>th</sup>, 2020.  
Ajmal/\*.