

**IN THE FEDERAL SHARIAT COURT**  
(REVISIONAL JURISDICTION)

**PRESENT**

**MR. JUSTICE MEHMOOD MAQBOOL BAJWA**

**REVISION PETITION NO.01-L OF 2019**

FAREHA BOKHARI WIFE OF TAJAMAL HUSSAIN SHAH, CASTE  
SYED, RESIDENT OF CHAK PINDI, TEHSIL AND DISTRICT GUJRAT.

PETITIONER

VERSUS

1. THE STATE.
2. SHAMIM KOUSAR WIFE OF SYED AMEEN SHAH (DECEASED),  
CASTE SYED, RESIDENT OF KEERIANWALA SYEDAN, TEHSIL AND  
DISTRICT GUJRAT.

RESPONDENTS

3. SYED MANZOOR HUSSAIN SHAH SON OF SYED DEWAN SHAH,
4. ANWAR SADAT SON OF SYED MANZOOR HUSSAIN SHAH,

BOTH BY CASTE SYED, RESIDENT OF CHAK PINDI, TEHSIL AND  
DISTRICT GUJRAT.

PROFORMA RESPONDENTS

COUNSEL FOR THE PETITIONER ... CH. MUHAMMAD LEHRASIB  
KHAN GONDAL, ADVOCATE.

COUNSEL FOR RESPONDENT NO.2 MR. ASIF MIRAN, ADVOCATE.

COUNSEL FOR THE STATE MR. ALI HASSAN,  
DISTRICT PUBLIC PROSECUTOR.

DATE OF ORDER ... 12.11.2018  
OF TRIAL COURT

DATE OF FILING OF ... 04.01.2019  
REVISION PETITION

DATE OF HEARING ... 11.04.2019

DATE OF DECISION ... 11.04.2019

DATE OF JUDGMENT ... 15.04.2019

**JUDGMENT:**

**Mehmood Maqbool Bajwa, J:** Propriety, correctness and legality of order dated 12<sup>th</sup> November, 2018, rendered by a learned Additional Sessions Judge, Gujrat, has been impugned by filing present revision petition, by the petitioner, person complained of, in the complaint made under the provision of The Offence of Qazf (Enforcement of Hadd) Ordinance VIII of 1979 (Hereinafter called Ordinance VIII of 1979), by respondent No.2, whereby petitioner was summoned as an “accused” under Section 204 of The Code of Criminal Procedure, 1898 (Act V of 1898) (Hereinafter called The Code), declining the prayer to the extent of Syed Manzoor Hussain and Anwar Sadat, arrayed as proforma respondents No.3 and 4 in the revision petition.

2. The respondent No.2 (Hereinafter called The Respondent) was married with Anwar Sadat son of Syed Manzoor Hussain Shah, who later on divorced her. The present petitioner was married with Tajamal Hussain, step son of Syed Manzoor Hussain Shah. Husband of petitioner was an army personnel, who was martyred.

Dispute arose between the adversaries over the immovable property comprising house, regarding which litigation is pending before learned Civil Court at Gujrat.

Bitterness increased on the submission of application by the petitioner to the Incharge “Shuhda Cell, 15 Division Sialkot Cantt.”, agitating her grievance, seeking protection of her interest

in the house, claiming to be the exclusive owner being widow of “Shaheed”.

In the contents of application dated 9<sup>th</sup> January, 2018 (Mark-A), the words “آوارہ عورت” was used against the respondent, prompting her to file complaint under the provisions of Ordinance VIII of 1979 not only against the petitioner but also impleading proforma respondents as respondents No.2 and 3 in the Court of Sessions at Gujrat, entrusted to a learned Additional Sessions Judge for decision.

3. The learned Additional Sessions Judge, Gujrat, taking into consideration, statement of the respondent and contents of application (Mark-A), summoned the petitioner as an accused through order assailed.

4. Assailing the legality of order, making reference to the contents of application (Mark-A), it was contended that there is nothing on record to suggest that said application was made by the petitioner which does not bear her signature as well as name. Mere incorporating the words “widow of Tajamal Hussain Shah” in the application, argued, does not prove the identity of its author.

Touching to the merits of the grievance, drawing the attention of the Court to the definition of “Zina” and “Qazf” made in Section 4 of The Offence of Zina (Enforcement of Hudood) Ordinance VII of 1979 (Ordinance VII of 1979) and Section 3 of Ordinance VIII of 1979, it was submitted that the words

“عورت آوارہ” by no stretch of imagination can satisfy the yardstick enumerated and as such impugned order is not sustainable.

5. Controverting the arguments, learned Counsel for the respondent maintained that incorporation of words “widow of Tajamal Hussain”, also disclosing place of residence is sufficient to suggest the identity of author of the application (Mark-A). The expression “عورت آوارہ” attributed to the respondent in the said application in the opinion of learned Counsel for the respondent, clearly demonstrates intention of the petitioner, falling in the mischief of Sections 4 and 3 of Ordinances VII and VIII of 1979 respectively.

Seeking help from the Ratio of a case<sup>1</sup>, decided by learned Sindh High Court, it was argued that words attributed clearly suggest illicit liaison within the meaning of Section 4 of Ordinance VII of 1979.

Referring to the meaning of objectionable expression highlighted in “فیروز اللغات اردو”, it was contended that grievance of the respondent was rightly appreciated by learned Trial Court.

Continuing the arguments, it was submitted that perception of public at large has to be kept in view while interpreting the words used.

6. Section 435 read with Section 439 of The Code deals with powers of revisional Court, also describing parameters for interference in the order of “Inferior Criminal Court”.

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<sup>1</sup> “MUSHTAQ AHMED AND ANOTHER v. THE STATE AND MST. SHAHNAZ ALI” (NLR 1991 SD 660)

7. Constitutional mandate<sup>1</sup> also empowers and authorizes this Court to exercise Revisional Jurisdiction at its own to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed by any Criminal Court under any law relating to the enforcement of "Hudood".

Under the command of The Constitution, this Court can pass any order as it may deem fit.

8. Propriety and correctness of order assailed has to be examined keeping in view the parameters and powers of this Court conferred not only by the statute but also the Constitution.

9. Before examining the moot point, one has to dilate upon the definitions of "Qazf" and "Zina" as well as yardstick contained in Section 204 of The Code, keeping in view the provision of Section 17 of The Ordinance VIII of 1979, according to which the provisions of The Code shall apply "*mutatis mutandis*" except Sections 391 (3) and 393 to the proceedings under Ordinance VIII of 1979.

10. The expression "Qazf" has been defined in Section 3 of Ordinance VIII of 1979. To constitute the offence, there must be an imputation of "Zina" against any person with an intention or having reason to believe that such imputation will harm the reputation or hurt the feeling of such person. Imputation may be by words spoken or intended to be read. It may be either made or published. It is not necessary that imputation must be direct.

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<sup>1</sup> Article 203-DD of the Constitution of Islamic Republic of Pakistan (The Constitution)

Allegation by sign or visible representation leaving no doubt in the mind about the allegation of “Zina” will also fall within the mischief of the provision. However, while examining the allegation, not only Explanations (1) and (2) but also Exceptions appended are to be kept in mind.

Expression “Zina” has been defined in Section 4 of Ordinance VII of 1979, according to which “A man and a woman are said to commit “Zina” if they willfully have sexual inter-course without being married to each other”.

**11.** Prior to issue of process against a person complained of, the Court taking cognizance has to (1) Formulate opinion, (2) about the sufficient ground for proceeding.

Expression “Sufficient ground” used in Section 204 means availability of facts or evidence prima facie constituting an offence, enabling the Court to procure attendance of person against whom there is accusation.

However, in view of the use of expression “*mutatis mutandis*”, in Section 17 of Ordinance VIII of 1979 regarding the applicability of the provision of The Code, keeping in view the nature of offence, defined by “GOD made law” not subject to any addition, alteration or omission, the expression “Sufficient ground” has to be construed strictly.

In the Holy Quran, such like accusation has been described as “Rami” (رمى).

Command of ALLAH ALMIGHTY regarding punishment for offence of Qazf has been given in *Sura Al-Nūr*, the English translation of which is reproduced for ready-reference.

“Those who accuse honourable women (of unchastity) but do not produce four witnesses, flog them with eighty lashes, and do not admit their testimony ever after. They are indeed transgressors.....”

**(Sura 24.A.4)**

According to the command, three punishments have been provided for the offence. We do not find any other offence within the ambit of “Hadd” providing said number of punishments, putting a horrible stigma not only in this world but also on the day of judgment.

With this background, following ingredients are to be taken into consideration while determining question of “Sufficient ground”:

- (i) Evidence led must substantiate the requisite ingredients of offence.
- (ii) Interpretation of a particular word used in common parlance has to be made on the touchstone of commandment of Holy Quran and Sunna (S.A.W).
- (iii) General perception about the meaning of a objectionable expression cannot be taken into consideration.
- (iv) In case of possibility of various meanings of objectionable word, premium has to be granted to the person complained of.<sup>1</sup>
- (v) Questionable remarks, may harm the reputation and feeling of a person but by itself would not be sufficient to constitute offence of “Qazf” for which appropriate

<sup>1</sup> “ZULFIQAR ALI v. THE STATE” (1998 SCMR 1016)

remedy under any other law, if provided can be availed.

12. Keeping in view the above, evidence led by respondent has to be analyzed.

13. Perusal of para (3) of the complaint reveals that while making reference to the contents of application (Mark-A), it has been written that petitioner used derogatory remarks i.e., "بے راہ روی، آوارہ عورت" against respondent. She in her cursory statement as (P.W.1) also repeated these word with addition of leveling allegation of "bad character".

However, in the application (Mark-A), only words "آوارہ عورت" has been used.

14. Question for consideration is to know the meaning of "آوارہ".

In "Feroze-ul-Laghat Urdu" (فیروز اللغات اردو), it has been assigned following meaning.

"بیہودہ، پریشان، خراب و خستہ، اوباش، بدچلن، شہدا"

The meaning assigned by no stretch of imagination can be equated with the allegation of "Zina", even applying the principle of "Sign" or "visible" representation. No doubt, one of the meaning stated is بدچلن (Bad Character) but even application of this meaning would not make out a prima facie case in order to formulate opinion about the availability of "Sufficient ground". The word "بدچلن" cannot be construed as attribution of "Zina" with precision in all eventualities. The fact is sufficient to formulate adverse opinion against the respondent in the present case.



The impression got multiple dimension and cannot be confined to the meaning canvassed. The said definition by no stretch of imagination can be interpreted in the mode and manner suggested.

Argument that attribution referred is derogatory, sufficient to injure the feelings of victim though may not be disputed but I am unable to understand, how it will fall within the mischief of expression "Zina" in order to provide actionable claim under Section 3 of Ordinance VIII of 1979.

15. Rule of law<sup>1</sup> cited at bar on behalf of respondent has been gone through in which Mst. Shahnaz Ali was described not to be a person of "good repute". With great respect, I cannot subscribe the view point in view of discussion made and law enunciated by this Court going to be dealt with in proceeding para.

16. Almost, similar proposition<sup>2</sup> was examined by this Court while deciding appeal of conviction recorded under Section 11 of The Ordinance VIII of 1979. Perusal of the facts of Report (para 2 of the judgment) reveals that in the application for custody of minor, the petitioner (Ali Haider Jafari) took the plea by adding that "respondent (Mst. Shabana Naz) was living on the earning of her paramour and is a woman of questionable character." The application containing allegation was supported by an affidavit.

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<sup>1</sup> "MUSHTAQ AHMED AND ANOTHER v. THE STATE AND MST. SHAHNAZ ALI" (NLR 1991 SD 660)

<sup>2</sup> "Syed ALI HAIDER JAFARI v. Mst. SHABANA NAZ and another" (2002 PCr.LJ 934)

Dealing with the implication of expression “paramour” used it was held at page-936 as follows:

“No doubt, the word “paramour” is not used in good sense but it by itself would not amount to sustain in the charge of Qazf and entail conviction under section 11 of the Qazf Ordinance.”

17. I am not un-mindful of the fact that Rule of law referred was enunciated when the matter came up before this Court after conclusion of trial. It can be argued that examination in depth is not required at initial stage. This presumptive argument though appears to be attractive in form but is of little help to the respondent in substance.

When the attribution, taking it as gospel truth, does not constitute the offence, it will be an abuse of the process of the Court to allow proceedings to continue.

Even at the time of framing of charge, while examining material referred in Section 265-D of The Code with application of judicial mind, the learned Trial Court will face difficulty to proceed.

18. A learned Full Bench of this Court in the case of “BEGUM RASHIDA PATAIL AND OTHERS v. FEDERATION OF PAKISTAN”<sup>1</sup>, while dealing with the expression concluded at page-136 in para (46) of the judgment as under:

"یہاں یہ ذکر کر دینا بھی مناسب معلوم ہوتا ہے کہ موجودہ دور میں الزامات اور شکایات میں بلا سوچے سمجھے "ارتکاب زنا" کے الفاظ استعمال کر دیئے جاتے ہیں چاہے مطلوبہ شہادت میسر نہ ہو، اور متن شکایات سے بھی اس قسم

<sup>1</sup> (PLD 1989 Federal Shariat Court 95)

کے الزام کا ارتکاب ظاہر نہ ہوتا ہو۔ اس سلسلہ میں ان شرعی نتائج کی وجہ سے انتہائی احتیاط لازم ہے۔ عوام اور خاص طور پر شکایات اور الزام لگانے اور لکھنے والوں کو تلقین (Educate) کرنے کی ضرورت ہے تاکہ انتہائی سزائے حد قذف سے محفوظ رہیں۔ لہذا جملہ متعلقہ لوگوں کو ہدایت جاری کی جائیں، کہ وہ ابتدائی اطلاعی رپورٹ (ایف آئی آر) کے وقت "زنا"، "زناکاری" یا "اغوا برائے زنا" وغیرہ کے الفاظ صرف اس صورت میں لکھیں، جب مطلوبہ شہادت ہو۔ ورنہ زنا کی بجائے بے حیائی و بدفعلی، بدکاری، وغیرہ محتاط الفاظ میں رپورٹ درج کریں۔ اور اسی قسم کی احتیاط عوام الناس بھی برتیں۔"

(underlining is mine)

Suggested words for use in such like cases in order to avoid prosecution for "Qazf" clearly supports the view point formulated.

19. Denial of authorship of application (Mark-A) due to the availability of particulars on the last page, suggesting the person approaching the authority at this stage cannot be validly pleaded.

20. Viewed from whichever angle, the expression used in the application (Mark-A) against the respondent by no stretch of imagination can be interpreted to cover the case within the mischief of Section 4 of Ordinance VII of 1979 read with Section 3 of Ordinance VIII of 1979.

21. While summoning the petitioner as an accused, the learned Trial Court completely ignored the parameter for summoning the accused in the offence under which complaint was filed by the respondent.

22. Consequent upon, while accepting the revision petition, setting aside the order assailed, complaint filed by the respondent is hereby dismissed.

23. On 11<sup>th</sup> April, 2019, after hearing the arguments, revision petition was accepted through short order. Hereinbefore are the reasons for conclusion.

(MEHMOOD MAQBOOL BAJWA)  
JUDGE

Dated, Islamabad the  
15<sup>th</sup> April, 2019.

*Mubashir\**

**Approved for Reporting**

**Judge**