

IN THE FEDERAL SHARIAT COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT

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

SH. PETITION NO. 01-I OF 2022


IRUM MALIK D/O UMER HAYAT R/O HOUSE NO. 391, STREET
NO. 12, SECTOR-B, ASKARI-14, RAWALPINDI

PETITIONER

VERSUS

FEDERATION OF PAKISTAN THROUGH SECRETARY LAW AND
JUSTICE, 3RD FLOOR, "S" BLOCK, PAK. SECRETARIAT,
ISLAMABAD.

RESPONDENT

 PETITIONER IN PERSON ... IRUM MALIK

DATE OF INSTITUTION OF PETITION ... 13.12.2021

DATE OF HEARING ... 02.03.2022

DATE OF DECISION ... 02.03.2022

DATE OF JUDGMENT ... 02.03.2022

JUDGMENT

MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE: The petitioner has filed this petition under Article 203-D of the Islamic Republic of Pakistan and thereby has challenged the provision of Section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as the Ordinance, 1979), on the ground that under Shariat punishment for Offence of Zina is 100 Stripes, therefore, the sentence of Rajm provided under Section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 is contrary to the Injunctions of Islam, be declared as such.

2. It is pertinent to mention that earlier the petitioner filed Sh. Petition No. 01/I of 2021 before this Court wherein she challenged a couple of provisions of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, but when confronted with the Federal Shariat Court (Procedure) Rules, 1981, that in a petition only one law can be challenged, she withdrew the petition with permission to file a fresh one, hence, the present petition.

3. Legally, the question raised by the petitioner is a past and closed chapter as, it has, already been decided. In the year 1979 two Shariat Petitions i.e. Sh. Petition No. 59/L of 1979 titled as Hazoor Bakhsh Vs. Federation of Pakistan and Sh. Petition No. 62/L of 1979 titled as M.I. Chaudhry and another Vs. Islamic Republic of Pakistan were filed in this Court, whereby the provisions of

Sections 2(a), 2(b), 2(d), 2(e), 5, 6, (2) 8 and 17 of the Ordinance, VII of 1979, were challenged and this Court by a Bench consisting upon five Hon'ble Members vide its judgment dated 21.03.1981 by a majority of four to one declared the provisions of sentence of Rajm under Sections 5 & 6 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, repugnant to the Injunctions of Islam by holding that the sentence provided for the offence of Hadd is only 100 Stripes and directed for necessary amendments in the law.

Operative portion of judgment is reproduced:-

"In view of the above discussion, I am clear in my mind that the provisions of 'Rajm' as laid down under sections 5 and 6(2) in the Ordinance are not repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah of the Prophet Muhammad (Peace be upon Him) and so is the case of the impugned definitions. These petitions are therefore liable to be rejected.

By a majority of four to one both the petitions are allowed, and it is declared that the provision of sentence of 'Rajm' as Hadd in sections 5 and 6 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, are repugnant to the Injunctions of Islam and that the only Hadd is one hundred stripes. Necessary amendments be made in the sections noted above by the 31st of July, 1981.

Feeling dissatisfied and aggrieved, an appeal against this judgment was preferred by Federation of Pakistan before the Hon'ble Supreme Court of Pakistan.

4. It is pertinent to mention here that during the pendency of that appeal (Sh. Appeal No. 14 of 1981), Dr. Riazul Hasan Gilani, Advocate filed Review Sh. Petition No. 13/I of 1981, wherein this

Court reviewed its judgment dated 21.03.1981 vide its short order dated 20.06.1982 which reads as under:-

“For reasons to be recorded, this petition is allowed, the order of this Court passed on 21st of March, 1981 is recalled. The result is that the petitions of the respondents shall stand dismissed. No orders as to costs”

The judgment is reported in PLD 1983 FSC 255 Titled as Federation of Pakistan Vs. Hazoor Bakhsh and 2 others and for the sake of convenience, the concluding portion of this judgment is reproduced as under:-

۳۱. مذکورہ بالا بحث کی روشنی میں مجھے اس بارے میں کوئی شبہ نہیں ہے کہ 'زانی محصن' کے لئے رجم کی سزا حد شرعی ہے جو ابدی طور پر واجب العمل ہے، اور شرعی اعتبار سے کوئی قاضی، حاکم یا لیجسلیچر اس میں تبدیلی کا مجاز نہیں ہے۔ لہذا جرم (نفاذ حدود) آرڈی نانس 1979، 7ء کی دفعہ (5) ذیل 2 (اے) اور دفعہ 6 ذیل 3 (اے) میں کوئی بات قرآن و سنت کے خلاف نہیں ہے۔

چنانچہ نظر ثانی کی یہ درخواست منظور کی جاتی ہے، ایس پی 162 ایل 1979ء کے بارے میں عدالت ہذا کا فیصلہ مورخہ 21 مارچ 1981ء واپس لیا جاتا ہے، اور مسنول الیہم کی درخواستیں خارج کی جاتی ہیں۔

5. In the wake of the review judgment passed by this Court, the appeal against the said judgment dated 21.03.1981 was withdrawn on 09.04.1983. For the sake of ready reference the same is reproduced as under:-

“Learned Advocate-on-Record placed on record the latest communication received through telegram for the withdrawal of this appeal. He has accordingly made a request for withdrawal, this appeal accordingly is dismissed as withdrawn”.

6. Since no appeal against this judgment has been filed before Shariat Appellate Bench of Hon'ble Apex Court and the judgment passed by this Court has attained finality. This question pertaining to Section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, for all intent and purposes is a past and closed chapter and cannot be reopened through any fresh petition before this Court. Hence, this petition before this Court is not competent. We are not here to hear appeal against our own judgment, hence petition is dismissed in-limine.

7. The petition was dismissed vide our short order dated 02.03.2022 and above are the reasons of the short order of even date. No order as to cost.

MUHAMMAD NOOR MESKANZAI
CHIEF JUSTICE

DR./SYED MUHAMMAD ANWER
JUDGE

KHADIM HUSSAIN M. SHAIKH
JUDGE

Dated, Islamabad the
02nd March, 2022
Salman