

IN THE FEDERAL SHARIAT COURT
(ORIGINAL JURISDICTION)

PRESENT

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

SHARIAT PETITION NO.10-I OF 2021

SHAHID ORAKZAI, VILLA NO.191, SAFARI VILLAS-III,
BAHRIA TOWN, RAWALPINDI.

PETITIONER

VERSUS

IMRAN AHMAD KHAN NIAZI, PRIME MINISTER OF
PAKISTAN, BANI GALLA, ISLAMABAD.

RESPONDENT

COUNSEL FOR THE PETITIONER ... PETITIONER IN PERSON.

DATE OF INSTITUTION ... 15.10.2021
OF PETITION

DATE OF HEARING ... 12.01.2022

DATE OF ORDER` ... 07.02.2022

ORDER:

DR. SYED MUHAMMAD ANWER, J. The petitioner through this Shariat Petition No.10-I of 2021 has challenged Section 10 of Family Courts Act, 1964 and raised following 10 questions:

- I. کیا قرآن بذریعہ خلع کسی مسلم بیوی کو اپنے مسلم خاوند سے علیحدگی کا کوئی حق دیتا ہے؟
- II. کیا قرآن کی سورۃ طہ کی بارہویں آیت ”فَاخْلَعْ“ کا مسلمان میاں بیوی کے ازدواجی رشتے سے کوئی قانونی تعلق نکلتا ہے؟
- III. کیا اس شرعی عدالت کے جج مسلمان کی بیوی کو اس کی جوتی کے برابر دیکھتے ہیں؟
- IV. کیا بوقت نکاح کوئی مسلمان اپنی دلہن کو اپنی چاہت یا برابری کیلئے طلاق کا اختیار دے سکتا ہے؟
- V. کیا رائج الوقت نکاح نامے (عقد نکاح) میں طلاق کا حق قرآن کے مطابق ہے؟
- VI. کیا کوئی مسلمان بیوی محض دوسری شادی کی خاطر اپنے بال بچوں کو چھوڑنے کا حق رکھتی ہے؟ کیا ایسی عورت کو قرآن بچے کے ماں تسلیم کرتا ہے؟
- VII. کیا خلع کے ذریعے خاوند سے علیحدگی قرآن کی نظر میں طلاق کے مترادف ہوگی؟
- VIII. کیا کوئی مسلمان کسی ایسے نکاح کیلئے رضامند ہو سکتا ہے جو مسلمان کی مردانہ غیرت کی نفی نظر آئے؟
- IX. کیا ایسا نکاح آئین کے آرٹیکل 14 کیلئے قابل قبول ہوگا؟
- X. کیا آئین کا آرٹیکل 35 اس کو اسلامی شادی مانے گا؟

2. On the very outset, it may be observed that the petition is not filed in accordance with the Federal Shariat Court (Procedure) Rules, 1981, which were framed and notified by the Federal Shariat Court in exercise of the powers conferred upon it by Article 203(J) of the Constitution of the Islamic Republic of Pakistan. The Chapter-II of these rules very elaborately contains the forms and manner in which a petition should

be filed and presented before this Court. The relevant sections of Chapter-II are reproduced herein below:

**“CHAPTER-II
OF PETITIONS**

Form and Contents of Petition:-(1) Every petition shall:-

(d) describe the law which is considered to be repugnant to the Injunctions of Islam;

(e) state the number of article, section, clause, paragraph, provision, or provisions of a law which is or are considered to be repugnant to the Injunctions of Islam;

(f) set forth concisely, consecutively numbered and under distinct heads the grounds for such repugnancy;

(g) state, in support of such grounds, the relevant verse or verses of the Holy Quran, Sunnah of the Holy Prophet with reference to the relevant Ahadis;

(2) Where a petitioner claims more than one law or provisions thereof to be repugnant to the Injunctions of Islam, a separate petition in respect of each law shall be made.”

[Emphasis added]

The above-mentioned Federal Shariat Court Procedure (Rules), 1981 are not followed by the petitioner while drafting his Shariat Petition. With reference to Rule (1)(g) of the Chapter-II of the Federal Shariat Court Procedure (Rules), 1981, he was supposed to:

“state, in support of such grounds, the relevant verse or verses of the Holy Quran, Sunnah of the Holy Prophet with reference to the relevant Ahadis”

But in the Shariat Petition, the petitioner referred only one verse, i.e., verse 12 of Surah Taha, which reads as follow:

إِنِّي أَنَا رَبُّكَ فَاخْلَعْ نَعْلَيْكَ ۗ إِنَّكَ بِالْوَادِ الْمُقَدَّسِ طُوًى ۝١٢
(طه : 12)
یقین سے جان لو کہ میں ہی تمہارا رب ہوں۔ اب تم اپنے جوتے اتار دو ، تم اس وقت طوی کی مقدس وادی میں ہو۔

This verse has no link whatsoever with the dissolution of marriage on the basis of Khula, which is supposed to be the main matter in issue of this petition.

3. It is the constitutional requirement for systemic functioning of the Court that its procedural rules should be followed strictly.

4. Without prejudice to procedural defect pointed hereinabove, the petitioner argued his case at length and he was informed that this Court has already examined Section 10(4) of the Family Courts Act in Shariat Petition No.03-L of 2005 SALEEM AHMAD and others Vs. GOVERNMENT OF PAKISTAN through Attorney General of Pakistan and 2 others (PLD 2014 FSC 43). Appeal against this judgment is pending before the Shariat Appellate Bench Supreme Court of Pakistan.

5. So far as the questionnaire is concerned, in fact, besides running contrary to prevalent procedure, even otherwise, most of the questions are irrelevant and have got nothing to do with the business of this Court, for instance question No.3 is absurd, derogatory and absolutely irrelevant. It is defamatory to honourable and respectful relation of marital tie as well as contemptuous to this Court. On the same analogy, questions No.8 to 10 are ambiguous, inconceivable, un-understandable rather were not supposed to be framed at all. Rest of the questionnaire except questions 4 and 5, revolves around *KHULA*. The petitioner may file a separate petition by challenging the corresponding provisions incorporated in (NIKAHNAMA), if so advised. The petitioner was required to have shown either collectively or individually any corresponding law or provision of the law enacted and enforced, runs contrary to the injunctions of Holy Quran or Sunnah of the Holy

Prophet (P.B.U.H). The petitioner argued his case almost for two hours but except Section 10(4) of the Family Courts Act, not a single provision could be referred to. So far as Section 10(4) KHULLA of the Family Courts Act is concerned, as mentioned in the preceding para, is a past and closed chapter as far as this Court is concerned. The petitioner may become a party in the appeal pending before the Shariat Appellate Bench of Supreme Court, if so advised.

6. The petitioner has not specified any specific provision of law being repugnant to the injunctions of Quran and Sunnah as required by the Constitution as elaborated in the Federal Shariat Court (Procedure) Rules, 1981.

We are of the considered view that this petition is not maintainable; hence, this petition is dismissed in *limine*.

JUSTICE DR. SYED MUHAMMAD ANWER

**JUSTICE MUHAMMAD NOOR MESKANZAI,
CHIEF JUSTICE**

JUSTICE KHADIM HUSSAIN M. SHAIKH

Dated the 07th February, 2022
at Islamabad.

*Mubashir/**