

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. 02/I OF 2021

1. HAMMAD HUSSAIN SON OF MUHAMMAD HUSSAIN PARVEZ BUTT, RESIDENT OF HOUSE NO.39, STREET NO 01, SECTOR E, D.H.A., PHASE-1, ISLAMABAD
2. MUHAMMAD IRFAN KHAN SON OF LAL KHAN SEHRAEE, RESIDENT OF HOUSE NO CB-66/A, GULSHAN COLONY, TEHSIL TAXILA, WAH CANTT.

PETITIONERS

VERSUS

- 1 FEDERATION OF PAKISTAN THROUGH SECRETARY MINISTRY OF LAW & JUSTICE, 3RD FLOOR, R&S BLOCKS, PAK SECRETARIAT, RED ZONE, ISLAMABAD.
2. PROVINCE OF PUNJAB THROUGH SECRETARY LAW PUNJAB, LAW & PARLIAMENTARY AFFAIRS DEPARTMENT, CIVIL SECRETARIAT, LAHORE.

RESPONDENTS

PETITIONER IN PERSON ... MR. MUHAMMAD IRFAN KHAN

DATE OF INSTITUTION ... 31.12 2020
OF PETITION

DATE OF HEARING ... 02.06 2021

DATE OF ORDER .. 25.10.2021

ORDER:

DR. SYED MUHAMMAD ANWER, J: The petitioners have filed this Shariat petition under Article 203-D of the Constitution through which they have challenged Section 10(3) of the West Pakistan Family Courts Act (Act XXXV of 1964), which according to them is repugnant to the injunctions of Islam. In addition to that, they also challenged Section 10(3) of the Family Courts Act, 1964 (As amended for Punjab). The West Pakistan Family Courts (Act XXXV of 1964) states as follow

“10. Pre-trial proceedings. - (1) When the written statement is filed, the Court shall fix an early date for a pre-trial hearing of the case.

(2) -

(3) At the pre-trial, the Court shall ascertain the points at issue between the parties and attempt to effect a compromise or reconciliation between the parties, if this be possible.”

Section 10(3) of the Family Courts Act, 1964 (As amended for Punjab) states as follow.

“10. Pre-trial proceedings - (1) When the written statement is filed, the Court shall fix an early date for a pre-trial hearing of the case.

(2) -

(3) The Family Court may, at the pre-trial stage, ascertain the precise points of controversy between the parties and attempt to effect compromise between the parties.”

The petitioners state that the said provision of the stated laws are in conflict with *Ayat 35 of Surah Nisa*. They also relied upon two *Ahadis*, from *Sunan Abu Dawood*, which stress upon the importance of making compromise (*sulah*) between any conflicting parties in general. The petitioners made arguments in favour of their

petition. The petitioners also stressed upon the importance of family system in Islam. While relying upon *Ayat 35 of Surah Nisa*, the petitioners claimed that the process of reconciliation referred to in the impugned section of the law must be made mandatory upon the Family Courts.

2. We have heard the arguments and reached at the following conclusions:

- i) it is correct understanding of the petitioners that in Islamic society, the protection of family unit or family system has core-importance, which is rightly reflected in Article 35 of the Constitution of Pakistan, 1973 stating one of the principles of policies in the Constitution. Article 35 states that “the State shall protect the marriage, the family, the mother and the child”,
- ii) in the light of Quran and Sunnah, divorce is legally permissible but it is considered as the most abhorrent and unpleasant act; therefore, Quran and *Sunnah* stress upon reconciliation and compromise to be made between the spouses in case of any unpleasant rift occurs between them to avoid divorce. The Quran puts a moral and religious duty upon the elders and family members of the parties to put efforts for making compromise between the spouses in case any unpleasant rift occurs between them. The referred *Ayat of Sura Al-Nisa* explains the manner in which such reconciliation efforts may be made between the parties within the family. The *Ayat 35 of Sura Al-Nisa* is

directed for the family members and elders of the conflicting spouses for making compromise or doing efforts for reconciliation between them. For ready-reference, the *Ayat* 35 of Surah Nisa is reproduced below.

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ
أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا
خَبِيرًا ۝٣٥

اور اگر تم کو معلوم ہو کہ میاں بیوی میں ان بن ہے تو ایک منصف مرد کے خاندان میں سے
اور ایک منصف عورت کے خاندان میں سے مقرر کر دوہ اگر صلح کرادینی چاہیں گے تو خدا ان
میں موافقت پیدا کر دے گا کچھ شک نہیں کہ خدا سب کچھ جانتا اور سب باتوں سے خبردار
ہے (۳۵)

3. This matter was very clearly decided by this Hon'ble Court in Para-8 of its earlier judgment dated 04.07.2013, whereby Sh. Petition No.20-I of 1999 titled "Muhammad Zoonoon Khan Vs. Federal Government of Pakistan & another" and Sh. Petition No.06-I of 2010 titled "Muhammad Shah, etc. Vs. The State" in which it was pointed out that the authority given to Family Court for reconciliation or compromise at pre-trial proceedings under Section 10 of the Family Courts Act, 1964 or after conclusion of trial under Section 12 of the said Act, is adopted on the basis of *Verse* 35 of *Sura Al-Nisa* of Holy Quran.

The reference made by the petitioners to the Holy Quran and *Sunnah* while challenging Section 10(3) of the West Pakistan Family Courts Act (Act XXXV of 1964) and Section 10(3) of the

Family Courts Act, 1964 (As amended for Punjab) is completely misconceived. Hence, the Shariat petition is dismissed accordingly and the Shariat Miscellaneous Application No.4-I of 2021 being infructuous is disposed of.

JUSTICE DR. SYED MUHAMMAD ANWER

**JUSTICE MUHAMMAD NOOR MESKANZAI,
CHIEF JUSTICE**

JUSTICE KHADIM HUSSAIN M. SHAIKH

**Announced in open Court
On 25.10.2021 at Islamabad**

1/3/2021

Approved for reporting