

S.P.No. 7/I of 1998

Capt.(Retd)Mukhtar Ahmed Shaikh

Versus

Government of Pakistan

In this petition, the petitioner has challenged sub Section 4 of Article 151 of Qanoon Shahadat Order 1984 being contradictory to the Islamic injunctions as appeared in the Holy Quran a Sunnah of the Holy Prophet PBUH.

It has been provided in the impugned article that "When a man is prosecuted for rape or an attempt to ravish, It may be shown that the prosecutrix of generally immoral character."

Under article 151 of Qanoon Shahadat, the mode and ways of impeaching the credit of a witness by the adverse party have been mentioned. The man who has been prosecuted for rape has been given rights to impeach the character of prosecutrix and to prove that the prosecutrix is generally of immoral character

If a man, who has been prosecuted for rape, proves that the prosecutrix is generally of immoral character, in such circumstances, she is treated as a consenting party to the act of Zina. As a result, the act of Zina bil Jibr(Rape) change into Zina bil Raza. Where a women or prosecutrix is also punished keeping in view her being Muhsina or Ghair Muhsina While in a case of Zina bil Jabr,a man committing rape is punished while the women on whom, compulsion applied, is exonerated from Hadd punishment

According to the petitioner, under the impugned article of Qanoon Shahadat, right to impeach the credit of the woman (Prosecutrix) is given to a man prosecuted for rape but not given to a woman or prosecutrix to

impeach the character of the man, which, according to him, is discriminatory and against the principles of justice and equality in Islam. According to him, the general character of a man may be immoral and objectionable. He may be habitual offender

According to petitioner concealment of evidence is not allowed in Islam. When it was in the knowledge of a witness that such and such woman is of immoral character, why he kept silent for such a long time till the occurrence of this incidence, without proceeding against her according to procedure prescribed by Islam? According to the petitioner, the impugned law provides protection to those who commit Qazf

It is pertinent to reproduce here the comments of Justice Lord William and Malik regarding the language of this particular law, and the meaning generally derived therefrom, as appeared in (A I R-1932 Calcuta-523) that- "Such evidence in our opinion, means something more than that it can be proved that she has on specific occasions done acts which may be called immoral. Some meaning must be given to the word "Generally" and we think that the sub-section refers to such evidences as that her general reputation was that of a prostitute, or that she had the general reputation of going about and committing immoral acts with a number of men"

When we examine this law, in light of Islamic injunctions, it is not permissible to treat a woman as Zania before proving her guilt through the court of law giving her a chance of being heard. In this respect, the august Supreme Court has held that: "The word Zania should not be used against a girl unless she has been tried for that offence properly and has been given full opportunity to defend herself. This is very serious word which cannot be used for a girl or a woman summarily in the course of arguments in some other case without examining the evidence against her and in violation of

her right of defence According to Islamic teachings the word Zina or Zania cannot be used against a person unless Zina liable to Hadd is proved against him. Even when Zina liable to Tazir has been established against a person, he cannot be termed as Zani absolutely (SCMR 1995-1645)

Under Islamic law, leveling false allegation of Zina without producing four witnesses has a very serious consequence. If a man charged a woman with the offence of Zina with clear words and failed to prove it by producing four male witnesses, as provided in the Holy Quran, he will be liable to a punishment under Offence of Qazf (Enforcement of Hudood) 1979, as enforced in Pakistan.

The petitioner has pointed out a delicate issue, which requires to be settled in the light of Islamic injunctions. Because, if a man, an accused of rape impeach the character of a prosecutrix or proves her to be a prostitute, a case of rape change into Zina-bil-Raza. As a result, the quantum of punishment prescribed for rape is also converted. Likewise, if a woman, accused of Zina-bil-Raza, claims that the man has used force or applied compulsion in committing Zina and she was not a consenting party to the act of Zina, the conviction is also converted keeping in view the circumstances of the case.

This issue requires thorough consideration and the government of NWFP have also stressed the need to bring this article in line with the Islamic Injunctions. In this respect, the viewpoint of jurisconsults may be heard by fixing this petition at Lahore and Karachi apart from Principal seat.


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