

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,
PESHAWAR.**

JUDICIAL DEPARTMENT

W.P No. 770-P of 2019.

JUDGMENT

Date of hearing.....25.03.2019.....

Petitioner (s) (Waqas Khan) By Mr. Fida Gul, Advocate.

Respondent (s) (Dr. Seema Hanif) By Malik Nasruminullah,
Advocate.

ISHTIAQ IBRAHIM-J:- Waqas Khan son

of Nasrullah Khan, the petitioner, has challenged

the judgment and order dated 04.01.2019 passed

by the learned Additional District Judge-III,

Peshawar, whereby the Criminal Revision filed by

the respondent was accepted and set aside the

order and judgment dated 17.10.2018 passed by

the learned Judicial Magistrate.

2. The brief and essential facts of the case are

that complainant-respondent No.1 (Dr. Seema

Hanif Khan) had filed a criminal complaint under

section-6 of the Muslim Family Law Ordinance,

1961, against Waqas Khan, the petitioner before the Court of Judicial Magistrate-IV, Peshawar to the effect that Nikah of the complainant with Waqas Khan, the petitioner, was solemnized on 31.05.2015 while the Rukhsati took place on 9.4.2016; that dower was fixed as Rs.500,000/- cash, 30 Tolas gold ornament, and maintenance allowance of Rs.10,000/- per month; that the complainant was residing with the petitioner and after few months the attitude of the petitioner and his family members became harsh with the complainant; that the petitioner threatened the complainant with dire consequences; that her cousin Abid Saeed lodged a report in the concerned police station; that her mother, brother and Abid Saeed, her cousin, came and rescued her; that the petitioner without her consent and proper permission of Union Council contracted 3rd marriage with Mst. Maryam Sajjad.

3. The learned Judicial Magistrate-IV, Peshawar, recorded the statement of the complainant, and the complaint was sent to the SHO concerned with direction to conduct proper inquiry and to submit the report within fourteen days. The inquiry was conducted by ASI of Police Station Hayatabad, who prepared his report on 7.7.2018 and duly forwarded by the SHO to the Judicial Magistrate. After hearing the arguments of learned counsel, vide order dated 17.10.2018 dismissed the complaint in limini due to lack of jurisdiction.

4. Feeling aggrieved from the order dated 17.10.2018 passed by the Judicial Magistrate-IV, Peshawar, the complainant-respondent challenged the same by filing Criminal Revision Petition before the Revisional Court. After hearing arguments of learned counsel for the parties, vide impugned judgment dated 04.01.2019 accepted the

Criminal Revision Petition, set aside the order dated 17.10.2018 passed by the Judicial Magistrate-IV, Peshawar, and the parties were directed to appear before the Judicial Magistrate-IV, Peshawar, on 15.01.2019, with direction to the Judicial Magistrate to proceed with the complaint in accordance with law.

5. The petitioner being dissatisfied from the judgment dated 04.01.2019 passed by the learned Revisional Court, challenged the same by filing the instant writ petition before this Court.

6. Arguments of learned counsel for the parties heard and available record gone through with their valuable assistance.

7. Perusal of record reveals that Nikah of the complainant Mst. Dr. Seema Hanif with petitioner Waqas Khan was performed on 31.05.2015 at Peshawar while Rukhsati took place on 09.04.2016, and the complainant Mst. Dr. Seema

Hanif was residing with the petitioner in his house at Islamabad, but due to certain differences between them, the complainant came to her parents home at Peshawar, but the marital status between them remained intact. Thereafter, the petitioner Waqas Khan has contracted third marriage without the consent of complainant and proper permission from Arbitration Council/Union Council. There is no denial of the petitioner that the Nikah of the parties was solemnized at Peshawar, and contracting third marriage without the consent of the complainant Mst. Dr. Seema Hanif. The first question is with regard to the maintainability of direct complaint by the wife before the Judicial Magistrate, at Peshawar.

Initially rule-21 of the Muslim Family Laws Ordinance, 1961, provides that;

“No Court shall take cognizance of any offence under the Ordinance or these rules save on a complaint in writing by the Union

Council, stating the facts constituting the offence.”

The Provincial Government issued Notification bearing No.AO(LG)1(20)/81 dated 24th September, 1992, whereby the Governor of the North-West Frontier Province, has made amendment in the West Pakistan Rules under Muslim Family Laws Ordinance, 1961, which reads;

“In the said rules, in rule-21 for the words “Union Council”, the words, “aggrieved party” shall be substituted.”

This Court has resolved the identical question raised in **Writ Petition No.577-P of 2015 titled “Said Wali..vs..Gul Naz” decided on 08.04.2015.**

The second premise on which the maintainability of the complaint was challenged by the petitioner is that the subsequent Nikah had been solemnized at Islamabad while the complaint has been filed by the respondent-complainant

before the Judicial Magistrate at Peshawar, which is violative of section-177 of Cr.PC, which reads;

“Ordinary place of inquiry and trial.

Every offence shall ordinary be inquired in and tried by a Court within the local limits of whose jurisdiction it was committed.”

No doubt, that the subsequent Nikah has been solemnized at Islamabad, but it is a matter of record that the Nikah with the respondent-complainant was solemnized at Peshawar and she was also residing at Peshawar with her parents, when the petitioner contracted second marriage.

Section-179 of the Cr.PC provides that;

“Accused triable in District where act is done or where consequence ensues.

When a person is accused of the commission of any offence by reason of anything which had been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.”

Rule-3(a) of West Pakistan Rules Under the Muslim Family Laws Ordinance, 1961, also cater such like situation, which reads;

“3. The Union Council which shall have jurisdiction in the matter for the purpose of clause (d) of section-2 shall be as follows namely;

(a) In the case of an application for permission to contract another marriage under subsection (2) of section-6, it shall be the Union Council of the Union or Town where the existing wife of the applicant, or where he has more wives than one, the wife with whom the applicant was married last, is residing at the time of his making the application.”

From the scanning of the above mentioned provisions, it can be safely held that Courts both at Islamabad as well as at Peshawar has got the jurisdiction to try the offence rather the permission of Union Council where the wife is residing and thereafter the Court where the said Union Council is situated has got the jurisdiction and can validly try the case before it. Reliance is placed upon the judgment of Hon’ble Supreme Court rendered in **Basharat Iqbal’s case** (1993 SCMR 1901).

The similar controversy has also been resolved by the Hon’ble Lahore High Court in its

judgment rendered in Nazabat's case (1971 P.Cr.LJ-148), wherein it was held that;

“(c) Muslim Family Laws Ordinance (VIII of 1961)-----

Ss. 3 & 6 read with West Pakistan Rules under Family Laws Ordinance, 1961, r. 3-Polygamy Permission to contract second marriage-Only Union Council of existing residence of wife at time of application empowered to grant such permission-Accused contracting second marriage pursuant to permission from Union Council of his own residence Case fell within mischief of subsection (5) of S. 6 of Ordinance, Complaint filed by Union Council of wife's residence in Court having jurisdiction over area.”

In another judgment rendered in Khalil Ahmad's case (2000 YLR 2318), the Lahore High Court, has very elaborately discussed the identical controversy.

Keeping in view the above discussion, the Courts at Peshawar has got the jurisdiction to proceed with the complaint in accordance with law. This petition being bereft of any merit is hereby dismissed while the order of the learned Additional Sessions Judge-III, Peshawar is maintained.

Announced.
Dated.25.03.2019.

J U D G E

(S.B)
Hon'ble Mr. Justice Ishtiaq Ibrahim.
(K.Ali PS)