

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT,**  
**ABBOTTABAD BENCH.**  
**JUDICIAL DEPARTMENT**

**W.P No.995-A/2019**  
**Malik Wajid Vs. The State & others.**

Date of hearing: 11.03.2020

Petitioner (Malik Wajid.) by: Mr. Shad Muhammad Khan,  
Advocate.

State by: Sardar Muhammad Asif, AAG.

Complainant Mst. Bushra Bibi in person along with Mr.  
Muhammad Shafique Awan,  
Advocate.

**JUDGMENT**

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**AHMAD ALI, J.** Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 561-A, Cr.P.C., petitioners Malik Wajid and two others seek quashment of case F.I.R. No. 730 dated 03.07.2019, registered at Police Station City, District Mansehra, for an offence under section 365-B/34 PPC, on the complaint of Mst. Bushra Bibi widow of Nazakat.

2. Mst. Faiza Bibi daughter of Muhammad Nazakat appeared before this Court on 21-08-2019 and stated that she being sui juris contracted marriage with petitioner Malik Wajid with her free consent and will. She also

produced her form "Bay" according to which she was born on 01-12-1999. She opted to go along with her husband, but since the complainant of the case was not present, therefore, notice was issued to her.

3. Today, complainant Mst. Bushra Bibi appeared and stated that since her daughter has contracted Nikah with Malik Wajid, therefore, she has effected compromise and does not want to proceed further in case FIR lodged by her. Her statement has been recorded and placed on file, wherein she stated that the compromise is genuine, without any pressure or coercion and in the best interest of parties.

4. Perusal of record reveals that upon report of Mst. Bushra Bibi widow of Nazakat, a case vide FIR No. 730 dated 03.07.2019 under Section 365-B/34 PPC of Police Station City, Mansehra was registered against the petitioners wherein it was alleged that on 01.07.2019, Mst. Faiza Bibi was abducted by Wajid with the help of Mst. Safia and Bisharat. The case of the Mst. Faiza Bibi is that she being sui juris has contracted marriage with petitioner Malik Wajid with her free consent and that nobody had abducted her. She has placed the registered *Nikahnama* on the file. Section 251 of *Mahomedan Law* says that "*Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of*

*marriage.* According to Muslim law, term 'adult' means a person being a male, has attained the age of eighteen years or, being a female the age of sixteen years, or has attained puberty.

5. There are traditions to the effect that the consent of an adult virgin for her *Nikah* validates the marriage and that such consent may be given by a girl remaining silent.

Some of the traditions are reproduced as follows;-

*"33. Abu Hurairah reported that the Messenger of Allah said: A previously married woman shall not be married till she gives consent, nor a virgin be married till her consent is sought -----"*

*34. Ibn Abbas reported that the Messenger of Allah said: A previously married woman is more a guardian for herself than her guardian, and a virgin should be asked permission about herself; and her permission is her silence. In a narration he said: 'A previously, married woman having consummation has got greater right to herself than her guardian, and a virgin shall be asked of her consent; and her permission is her silence (Muslim).*

*35. Abu Hurairah reported that the Prophet said: A Grown-up girl shall be asked permission about herself. If she is silent, it is her permission and if she declines there shall be no compulsion on her. (Tirmizi, Abu Daud, Nisai)."*

6. Imam Abu Hanifa opined that the marriage of a woman is subject to her personal consent. This is clear from

page 233 of the book "Tuhfatul Ahawazi". This opinion of Imam Abu Hanifa is to be found in all other books too. In Hidayah, the principal of Hanafi Law is stated as under:-

*"An adult female may engage in the contract without her guardian's consent----A Woman who is an adult, and of sound mind, may be married by virtue of her own consent although the contract may not have been made or acceded to by her guardian."*

7. The august Supreme Court in the case of "***Hafiz Abdul Waheed v. Mrs. Asma Jhangir and another (PLD 2004 SC 219)***" maintained the majority decision of the High Court, passed in "***Hafiz Abdul Waheed's case (PLD 1997 Lahore 301)***" and observed that, "as per judgments of the Federal Shariat Court, consent of 'Wali' is not required and a sui juris Muslim female can enter into valid 'Nikah'/marriage of her own free-'will."

8. In the light of aforementioned dictum laid down by the superior Courts, this Court is not hesitant to hold that the marriage in between petitioner Malik Wajid and Mst. Faiza is a valid marriage. Moreover, Mst. Faiza being sui juris, appeared before this Court and confirmed the factum of her Nikah with her free will and consent with petitioner Malik Wajid. Her such statement was further authenticated by the

statement of complainant Mst. Bushra Bibi recorded in Court today.

9. For what has been discussed above, this writ petition is accepted and case F.I.R No. 730 dated 03.07.2019, registered under Section 365-B/34 PPC of Police Station City, Mansehra, is quashed.

***Announced:***  
***11.03.2020***

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