IN THE COURT OF MUHAMMAD AFZAL MAJOKA, ADDITIONAL SESSIONS JUDGE, ISLAMABAD-WEST

(1)

Imran Ahmad Khan Niazi son of Ikram Ullah Khan Niazi, resident of 2-Zaman Park, Lahore (presently confined at Central Prison, Rawalpindi Adyala Jail).

Appellant

Versus

1. The State,
2. Khawar Farid Maneka son of Mian Ghulam Muhammad Khan Maneka, resident of House No.3, Street No.2, Bani Gala, Islamabad.

Respondents

(2)

Bushra Imran Khan wife of Imran Ahmad Khan Niazi, resident of 2-Zaman Park, Lahore (presently confined at Central Prison, Rawalpindi Adyala Jail).

Appellant

Versus

1. The State,
2. Khawar Farid Maneka son of Mian Ghulam Muhammad Khan Maneka, resident of House No.3, Street No.2, Bani Gala, Islamabad.

Respondents

Present:- Mr. Salman Akram Raja, Mr. Muhammad Usman Riaz Gill, Ch. Zaheer Abbas, Mirza Asim Baig, Sardar Masroof Khan Abid, Mr. Ansar Mehmood Kiani, Mr. Khalid Yousaf Chaudhary, Mr. Jawad Ahmad, Mr. Murtaza Hussain Toori, Mr. Changeez Khan Kakar, Ms. Nahid Saif, Ms. Naheed Iqbal, Awan, Barrister Rai Salman Amjad, Dr. Ali Imran Shahzad, Raja Yasir Husnain, Mr. Atiq Siddiqui, Mr. Talat Rizwan Sial, Malik Tariq Mahmood Noon, Barrister Malik Talha Ahmed Rahim, Mr. Zahid Bashir Dar, Mr. Aman Ali, Raja Haroon, Ms. Komal Jadoon, Mr. Hamna Gillani, Mr. Yasir Khan, Ms. Hina Abbasi and Sheikh Rauf, learned counsel for Imran Ahmad Khan Niazi appellant No.1.

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Barrister Salman Safdar, Mr. Muhammad Usman Riaz Gill, Ch. Zaheer Abbas, Barrister Khadija Siddique, Barrister Rai Salman Amjad, Ms. Zainab Umair, Mr. Khalid Yousaf Chaudhary, Mirza Asim Baig, Sardar Masroof Khan Abid, Mr. Ansar Mehmood Kiani, Mr. Zahid Bashir Dar, Mr. Aman Ali, Ms. Naheed Iqbal Awan, Raja Haroon, Ms. Komal Jadoon, Mr. Murtaza Hussain Toori, Mr. Hamna Gillani, Mr. Yasir Khan, Ms. Hina Abbasi and Sheikh Rauf, learned counsel for Bushra Imran Khan appellant No.2.

Mr. Zahid Asif Chaudhary, Mr. Muhammad Iqbal Kakar and Mr. Hassan Salah-u-Din Raja, learned counsel for Khawar Farid Manika complainant/respondent.

Mr. Mazhar Bashir, learned SPP for State.

CONSOLIDATED JUDGMENT

Both the criminal appeals relate to same judgment dated 03-02-2024 passed by Mr. Qudrat Ullah, learned Senior Civil Judge/Judicial Magistrate Section 30, Islamabad-East, therefore, these are disposed of together.

2. Khawar Farid Manika (hereinafter to be mentioned as respondent) filed private complaint against Imran Ahmad Khan Niaz (hereinafter to be mentioned as appellant No.1) and Bushra Imran Khan (hereinafter to be mentioned as appellant No.2) on the ground that respondent married with appellant No.2 in year 1989. Appellant No.1 started visiting house of respondent in his absence under the garb of "Peeri Mureedi". Respondent admonished appellant No.1 and ousted him from his house in disgraceful manner. He alleged that once hot words were exchanged between him and appellant No.1 and that both the appellants developed illicit relations with each other which fact was reported to him by his servant Lateef Pw-4. According to the respondent, he tried his level best to reconcile the matter but ultimately he pronounced divorce against appellant No.2 on 14.11.2017.

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He alleged that both appellants contracted Nikah during Iddat. According to him, said Nikah and marriage ceremony was neither legal nor Islamic and it was solemnized without observing period of Iddat. He alleged that both the appellants developed illicit relations with each other and that marriage ceremony was fraudulent. He alleged that appellants committed fornication, went to Lahore for marriage ceremony and later on started residing at Islamabad.

3. In cursory evidence respondent produced his evidence and learned trial court summoned the appellants to face trial. After observing all the legal formalities, learned trial court framed charge against the appellants under section 496 PPC to which they pleaded not guilty. It is not of place to mention here that no charge under section 496-B PPC was framed against the appellants. Accordingly respondent was directed to produce his evidence against the appellants.

4. Respondent produced as many as four witnesses. Khawar Farid Manika respondent appeared as PW-1. He reiterated contents of the complaint. Muhammad Oan Saqlain appeared as Pw-2 and maintained about Nikah on 01.01.2018 between the appellants and that he is witness of Nikahnama Ex.PF. He alleged that Nikah on 01.01.2018 was performed prior to completion of period of Iddat and that due to this reason appellants performed another Nikah between 14 to 18 February, 2018 regarding which all the arrangement was made by him and Zulfi Bukhari. Mufti Muhammad Saeed Khan appeared as Pw-3 and deposed about performing of Nikah of appellants on 01.01.2018 and then second Nikah was performed by him which was oral. Muhammad Lateef Pw-4 deposed about illicit relations between the appellants. Statements of the above said witnesses would be discussed in detail during appraisal of evidence.

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5. After close of evidence of the complainant statements of appellants under section 342 Cr.PC were recorded. They denied the accusations and maintained that they have falsely been involved in this case due to political rivalry. Both the appellants maintained that about 200 cases have been registered against appellant No.1 and several cases against appellant No.2 which is part of larger scheme to suppress democracy. According to them, the PWs have deposed against them falsely due to fear and threats.

6. Both appellants opted not to appear in witness box under section 340(2) Cr.P.C. However, they expressed to lead evidence in defense but their right to lead evidence was closed. Learned trial court after hearing arguments of learned counsel for the parties convicted both the appellants under section 496 PPC and sentenced them to undergo SI for seven (07) years each with fine of Rs.5,00,000/- each and in default whereof to further undergo SI for four (04) months each.

7. Mr. Salman Akram Raja learned counsel for appellant No.1 maintained that as per law laid down in case of Allah Dad 1992 SCMR 1273 presumption can be drawn regarding period of Iddat of thirty nine (39) days in favor of appellants but same has not been rebutted by the complainant party; that case of Kaneez Fatima 1993 SC 901 is judgment of Hon'ble Supreme Court of Pakistan and this judgment has not set-aside the case of Allah Dad supra; that article 2-A of the Constitution can be used to interpret the constitution; that if far the sake of arguments it is admitted that Nikah was performed during Iddat, which act in law might be defective but is not necessarily fraudulent or dishonest; that there is nothing on record that Nikah is result of fraud and dishonesty; that all these circumstances are

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sufficient to hold that complaint against both appellants is not made out so they are entitled to clean acquittal.

8. Barrister Salman Safdar learned counsel for appellant No.2 adopted arguments of learned counsel for appellant No.1 on the period of Iddat; he added that it is a case of political victimization, abuse of process of law is in abundance in this case; that there is no precedent of such like case and trial was conducted in haste; that appellants were not provided fair trial under Article 10-A of the Constitution of Islamic Republic of Pakistan; that respondent woke up from slumber after about six (06) years when he was arrested in criminal case and after release on bail he filed private complaint; that first complaint on similar facts and by same learned counsel filed by Hanif was dismissed as withdrawn and without alteration in sentence and para, instant complaint has been filed; that allegation of fornication has been withdrawn, thus half of complaint proved false at the very outset; that no offence is made out under section 496 PPC against appellants because none of the parties leveled any allegation of fraudulent marriage against each other. Learned counsel has highlighted paras No.1 to 4 of complaint and maintained that no time and date is mentioned in these paras as to when respondent came to know about alleged visiting of appellant No.1 in the house of respondent, as to when he came to know about alleged illicit relations between appellants; that age of appellant No.2 has not been mentioned in her statement under section 342 Cr.PC and all these circumstances are sufficient to hold that complaint of respondent is totally false, baseless, so, both the appellants are entitled to clean acquittal. He contends that the trial in instant complaint was conducted in haste because formal charge was framed against appellants on 16.01.2024, evidence started on 01.02.2024 and judgment was announced on 03.02.2024 which shows that fair trial was not provided to the

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appellants which offends the provision of Article 10-A of the Constitution; that the mode and manner in which trial has been concluded has seriously prejudiced the appellants; that as per complaint the appellants allegedly committed fornication at Islamabad and then solemnized fraudulent marriage ceremony in Lahore and that as no charge was framed under section 496-B (fornication) jurisdiction if any was at Lahore and therefore, this judgment is result of jurisdictional error. Learned counsel for Bushra Imran appellant No. 2 contends that the complainant is false witness and that Oun Chaudhary is interested witness who has an axe to grind because he contested general elections on ticket of opponent political party of Imran Khan appellant No.1, therefore, no explicit reliance can be placed on their statements.

9. As against this, Mr. Zahid Asif Chaudhary, learned counsel for respondent has highlighted order sheet of learned trial court and maintained that most of the dates were granted on request of appellants; that charge was framed in presence of appellants and order sheet of learned trial court is very much clear on the point; that on 15.01.2023, learned trial court announced to conduct trial of complaint on day-to-day basis to decide the complaint but after twenty four days of this order judgment was announced; that fair trial was provided to the appellants by learned trial court; that judgment of Allah Dad case does not show that period of Iddat i.e. thirty nine (39) days is mandatory; that on latter judgment of five members bench of Hon'ble Supreme Court of Pakistan in Kaneez Fatima case has taken other view regarding period of Iddat; that both appellants committed fornication and this fact was witnessed by Haneef PW-4; that media trial of respondent has been done; that respondent and his witnesses have been able to prove the case against both the appellants, therefore, judgment of learned trial court does

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not call for any interference by this court. He maintained that every case has to be decided on its own peculiar facts and circumstances; he has relied upon 2020 SCMR 342, 2006SCMR 1755, 2088 SCMR 807, PLD 2005 SC 364. According to him, learned criminal court is competent to give findings on question of marriage. In this respect he has referred to PLD 1974 Lahore 202 and PLD 1973 Lahore 526. Learned counsel for the respondent maintained that offer of oath was given by appellant No.1 which was accepted by the complainant which cannot be resiled as per the law laid down in PLD 2016 Lahore 428 and 1989 ALD 328(2) Lahore. He maintained that delay in lodging of complainant per se is not fatal to the case of complainant when the delay was explained. He has relied upon 2012 P Cr.LJ 498 Lahore, 2008 SCMR 1602, PLD 2020 SC 295 and 2006 SCMR 512. According to him, oral divorce if not admitted by other party is not admissible as per the law laid down in PLD 2006 SC 457 and 2017 CLC N 105. Learned counsel for respondent maintained that documentary evidence excludes the oral evidence. He has placed reliance on 2023 SCMR 1642, 2002 SCMR 1635, 2022 SCMR 1532 and 2023 SCMR 1155. According to him as per section 7 of the Muslim Family Laws Ordinance, 1961 the period of iddat is 90 days. He has referred to 2003 YLR 2623 Lahore, 2017 CLC 1431 Sindh, 1988 SCMR 1812, 1994 SCMR 1720, PLD 1963 SC 51, 2023 CLC 2055, PLD 2023 Islamabad 75, 2021 CLC 1947 Islamabad and PLD 1982 FSC 292. According to him marriage during period of iddat is prohibited as per law laid down in PLD 1968 Lahore 587 and that offence under section 494 PPC is made out if marriage is solemnized during period of iddat. He has placed reliance on PLD 1988 FSC 89 and 1987 SCMR 518. He maintained that appellants could be convicted under any other offences. He has placed reliance on 2015 PCr.LJ 189 (Lahore); 2008 YLR 1453 (Lahore) and 1992 PCr.LJ 1799 FC. Learned counsel for

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respondent maintained that facts not cross examined would be treated as admitted as per the law laid down in 2018 YLR 1115, 2007 SCMR 518 and PLD 2007 SC 249. According to him, video played in the court was not brought on record as per the law laid down in PLD 2019 SC 675 so it has no evidentiary value. According to him speedy trial does not indicate biasness and partiality on the judge and that withdrawal of earlier complaint is not fatal to the cause of complainant. He has relied upon PLD 2002 SC 687, 2007 YLR 1503 Lahore, 2011 YLR 428 Lahore, 2008 MLD 816 Lahore and PLD 2022 Lahore 427.

10. This court has heard learned counsel for the parties and has gone through the record.

11. First of all this court would like to mention here that charge under section 496-B PPC was not framed against the appellants meaning thereby charge of commission of alleged fornication by the appellants was dropped and in such like situation marriage even if for the sake of arguments during period of iddat has no nexuses with the decision of these appeals yet the learned trial court connected marriage of the appellants during period of iddat with ceremony of fraudulent and dishonest marriage, therefore, this court would like to discuss the period of iddat. Learned counsel for appellant No.1 maintained that as per case of Allah Dad supra presumption can be drawn in favour of the appellants regarding period of iddat which has not been rebutted by the respondent. According to him under section 7 of Muslim Family Law Ordinance, 1961 period of iddat is not ninety (90) days rather it is period of re-conciliation and that it is not mandatory. It was held in case of <u>ALLAH DAD versus MUKHTAR and another (1992 S C M R 1273)</u> that:-

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> *"18. The logical result of this scheme of the provisions of the Ordinance is that if there is a clash between an existing law and the Injunctions of Islam with regard to the validity of a marriage, the Injunctions of Islam shall prevail for the purpose of this Ordinance. Thus, if a marriage is valid in Shariah, it shall be held valid for the purpose of this Ordinance even though it is not recognized as valid in any other law for the time being in force.*
>
> *19. Therefore, even if it is assumed that section 7 of the Family Laws Ordinance is a good law, the same cannot affect the validity of a marriage contracted according to Shariah at least to the extent of the criminal liability envisaged in the Ordinance".*

12. Learned counsel for appellant No.1 maintained that notice of divorce is not mandatory as per section 7 of the ordinance. It was held in Allah Dad supra that:-

> *"20. It is now evident that a notice of Talaq to the Chairman is not mandatory under the Injunctions of Islam and any divorce pronounced or written by a husband cannot be ineffective or invalid in Shariah merely because its notice has not been given to the Chairman, therefore, if a woman after obtaining a divorce from her husband and after the necessary period of `Iddat'; contracts a marriage with a third person, their marriage cannot be held as invalid marriage, at least for the purpose of the Ordinance. In the instant case, the respondents have contracted Nikah after the petitioner had divorced Mst. Rashida Akhtar (respondent No.2), so even though the petitioner had not given a notice to the Chairman, the divorce became effective in Shariah and the marriage contracted thereafter is a valid marriage, especially for the purpose of the Ordinance and the cohabitation of the respondents cannot be held as `Zina'."*

13. Learned counsel for the appellant No.1 maintained that there is presumption of thirty nine (39) days regarding period of iddat in favour of the appellant which presumption has not been rebutted so this presumption can be used in favour of appellant. It was held in case of **Allah Dad** supra that:-

> *"25. In the light of these principles, the minimum period of `Iddat' may be 39 days because this is the period in which it is possible for a woman to have three menstruations with two intervening periods of purity. It is thus clear that a marriage performed after 39 days from the divorce can be a valid marriage according to Shariah if the woman has passed through three period of menstruations during this period. In the instant case, the respondents married to each other after 79 days from the date of divorce given by Allah Dad, the petitioner. This period is sufficient for the completion of the period of `Iddat' as mentioned in the Holy Qura'n because it is quite*

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possible that Mst. Rashida Akhtar had passed through three periods of menses within 79 days, and there is nothing on the record to show that she did not complete three menses during these days. There is no provision whatsoever in the Holy Qura'n or in the Sunnah of the Holy Prophet (Peace be Upon Him) which declares 90 days as `Iddat' except for those women who either stopped menstruating due to old age, or did not start menstruating on account of their minority, only their `Iddat' has been mentioned in the Holy Qura'n as three (lunar) months; (See Alqura'n 65:4). Therefore; for- the reasons detailed in paras 14 to 24 of this judgment, if the respondents have contracted marriage after the completion of the period of `Iddat' in accordance with Shariah, their marriage cannot be held as invalid nor can their cohabitation be termed as `Zina'."

14. The above mentioned esteemed citation was discussed in later judgment of 05 member bench of Honorable Supreme Court of Pakistan reported as <u>Mst. KANEEZ FATIMA versus WALI MUHAMMAD and another (P L D 1993 Supreme Court 901)</u> that:-

"It may first be noticed that the Muslim Family Laws Ordinance is an existing law which has not so far been declared by the Federal Shariat Court or by the Shariat Appellate Bench of the Supreme Court in conflict with the provisions of Islamic Injunctions. Nothing has been brought on record to show that the Council of Islamic Ideology has made any recommend in this regard. The learned counsel for the appellant has referred to Allah Dad v. Mukhtar Ahmad and another 1992 SCMR 1273 where it has been observed that in the absence of notice under section 7 of the Ordinance Talaq becomes effective and reliance was placed on Mirza Qamar Raza v. Mst. Tahira Begurn and others PLD 1988 Kar. 169 where on the basis of Article 2A while exercising Constitutional jurisdiction in a family matter section 7 of the Ordinance was declared to be void and against the Injunctions of Islam. With respect it may be pointed out that the jurisdiction of the Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court does not extend to the Constitution and the Family Laws. Furthermore, Mirza Qamar Raza's case was set aside by a Bench of the Supreme Court on the ground that elucidation on the question of validity of section 7 on the touchstone of Article 2-A was not required in the facts and circumstances as it is an accepted principle that if a case can be decided on other issues properly, it is not necessary to enter into Constitutional issues. In Allah Dad's case decision would be made on the basis of Mst. Bashiran and others v. Muhammad Hussain and another PLD 1988 SC 186 which has been noted by the learned Judge in para. 21 of that judgment. As Allah Dad's case could be decided on the principles of Mst. Bashiran's case, there was no need to enter into questions of Constitutional issues particularly so when it did not fall within the jurisdiction of the Court".

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15. From perusal of the above mentioned esteemed citation, this court is of the view that section 7 of the ordinance was in field when the above said judgment was announced.

16. Learned counsel for the complainant maintained that in Allah Dad (supra) the Shariat Appellatte Bench of the Hon'ble Supreme Court of Pakistan preferred the view in Fatawa Alamgiri by observing period of Iddat as 39 days which was out of the scope of Shariat Appellate Bench of the Supreme Court. This Court has gone through the relevant law and precedents on the point. The President's Order No.3 of 1979 i.e., the Constitutional (Amendment) Order of 1979 was promulgated on 7th of February, 1979. By virtue of Article 203-B of this Constitutional (Amendment) Order jurisdiction was conferred on the High Courts to examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of the Holy Prophet (peace be upon him). Invoking the above jurisdiction a petition was filed in the Peshawar High Court for the first time challenging the validity of section 4 of the Muslim Family Laws Ordinance, 1961. The Shariat Bench of Peshawar High Court vide judgment reported as Mst. Farishta v. Federation of Pakistan (PLD 1980 Peshawar 47) held that section 4 of the Ordinance was opposed to the Injunctions of Islam. Appeal against this judgment of the Peshawar High Court was taken to the Shariat Bench of the Supreme Court of Pakistan on which the said judgment was set aside on the ground that section 4 of the Ordinance comes within the purview of the Muslim Personal Laws hence the examination of the same was beyond the jurisdiction of the Shariat Bench of the Peshawar High Court. This judgment of the Shariat Bench of the Supreme Court of Pakistan is reported as PLD 1981 SC 120. Constitution was again amended by President's Order No. 1, dated 25th of June, 1980 and

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Chapter 3-A was added to it where under the Federal Shariat Court was constituted. A number of Shariat Petitions were filed before the Federal Shariat Court questioning the provisions of Zakat and Ushr Ordinance, 1980. These were decided by a single judgment titled Dr. Mahmood-ur-Rehman Faisal v. Secretary, Ministry of Justice, Law and Parliamentary Affairs and others reported as PLD 1991 FSC 35. These petitions were dismissed holding that on the expiry of the period of 10 years the fiscal laws have now come within the jurisdiction of the Court but Muslim Personal Law still remains outside the pale of authority of the Court and so the Zakat and Ushr Ordinance of 1980, which falls within the definition of Muslim Personal Law, is outside the jurisdiction of the Court. Against the abovementioned decision of Federal Shariat Court appeal was taken to the Shariat Appellate Bench of the Supreme Court of Pakistan. The Shariat Appellate Bench of the Supreme Court of Pakistan decided the appeal on 13th of June, 1993 in the case titled "Dr. Mahmood-ur-Rehman Faisal v. Government of Pakistan" reported as PLD 1994 SC 607. Hon'ble Shariat Appellate Bench of Supreme Court of Pakistan differed with the earlier view of the Shariat Bench of Supreme Court of Pakistan in Mst. Farishta's case (PLD 1981 SC 120) and held that only by reasons of being a codified or statute law and applicable exclusively to the Muslim population of the country, a law would not fall in the category of 'Muslim Personal Law' unless it is also shown to be the personal law of a particular sect of Muslims based on the interpretation of Holy Qur'an and Sunnah by that sect and therefore, the Zakat and Ushr Ordinance was not outside the scope of scrutiny of the Federal Shariat Court under Article 203-D of the Constitution. Section 7 of the ordinance was challenged before the Federal Shariat Court of Pakistan and the Federal Shariat Court declared some provision of Section 7 of the ordinance as un-Islamic. Relevant portion of the

esteemed citation reported as ALLAH RAKHA and others Versus FEDERATION OF PAKISTAN and others (P L D 2000 Federal Shariat Court 1) reads as under:-

"103. However, we are of the view that subsection (3) as presently framed does not conform to the requirements of Injunctions of Qur'an. The period of Iddat can be clearly derived from the Ayaat hereinabove quoted and these cater for situations of all types that may arise in the event of Talaq. It may be pertinently observed that the matter of Iddat is of great importance as Can be seen from Ayat No.1 of Sura-e-Talaq. There is emphasis laid that the period of Iddat should be computed specifically and accurately and for each situation that may arise specifically period has been prescribed. For example in the case of a marriage which has not been consummated there is no period of Iddat as laid down by Ayat No.49 of Sura Al-Ahzab. Similarly in case of Talaq during the period of pregnancy the Iddat stands terminated immediately on the delivery of child which may well be within one minute of the pronouncement of Talaq as mentioned in Ayat No.4 of Sura Talaq. Now keeping this period of 90 days in such cases as well, is clearly violative not only of the Injunctions of Islam but is also a matter of grave hardship to the divorcee. Islam is the protector of rights of all human beings and is the first religion which has conferred all possible rights' that could be bestowed upon a woman. Fixation of period of 90 days of Iddat in all cases including those referred to above abridges the rights of women as bestowed upon them by Qur'an and, therefore, does not merit to be retained in the present form.

104. It may also be of benefit to express our firm view that the period of Iddat is to commence from the date of pronouncement of Talaq and not from the day of delivery of notice to the Chairman as the Talaq takes effect from the date of pronouncement of Talaq by the husband. Now it may well be that the husband may not give notice of Talaq as required by subsection (1) of section 7 with ill-intention for a long period, and thus, by virtue of subsection (3) keep the woman in suspended animation and cause her torture by keeping her bound, although according to the Quranic Injunctions she would stand released of the bond and under no obligation towards him. This will certainly be a cruelty to the woman who, by virtue of this provision, can be exposed to the hazards of litigation by an unscrupulous husband if she marries after the expiry of Iddat as enjoined by Holy Quran but before the expiry of period prescribed by subsection (3) (ibid). Such a situation of uncertainty entailing peril to a party should not be allowed to continue.

105. Adverting now to subsection (5) of section 7 the same when viewed in the light of the above discussion also appears to be an unwanted provision as it prescribes a period which is not in consonance with the period of Iddat prescribed by the Qura'nic Injunctions referred to above. To our mind there is no need to have subsection (5) as a separate provision because a comprehensive subsection (3) providing all periods of Iddat as may be enjoined upon

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a Muslim woman when Talaq is pronounced by her husband, should be succinctly provided in one and the same subsection.

106. In view of the foregoing discussion we would hold that section 7 of the Muslim Family Laws Ordinance, 1961 as a whole cannot be declared as violative of Injunctions of Islam. However, the provisions contained in subsection (3) and subsection (5) of the said section 7 cannot be maintained".

17. The above referred decision of the Federal Shariat Court in the case of Allah Rakha was challenged in an appeal under Article 203F of the Constitution before the Shariat Appellate Bench of Hon'ble Supreme Court, and leave was granted. Since the appeal is pending adjudication the said decision of the Federal Shariat Court has not come into effect, as per the second part to the proviso to clause (2) of Article 203(D) of the Constitution. Therefore 4, 7 of the Ordinance continues to be the subsistent law of Pakistan, and shall remain so till such time that the Shariat Appellate Bench of the Supreme Court either upholds the decision of the Federal Shariat Court in the Allah Rakha case or dismisses the said appeal. Reliance is planted on case of <u>Mst. KALSOOM BEGUM Versus PERAN DITTA and others (2022 S C M R 1352).</u> Therefore in humble view of this Court section 7 of the Ordinance is still in filed whereby period of Iddat is 90 days, irrespective of the kind of Talaq which certainly is not mandatory rather directory.

Muhammad Najoka
Addl. Sessions Judge

18. Now it is to be seen as to whether marriage of the appellants was solemnized during period of iddat or not. In this respect, complainant himself appeared as PW-1 and maintained that he pronounced divorce against appellant No.2 on 14.11.2017. In this respect, the prosecution has brought on record divorce deed Ex.PD which shows that the complainant pronounced divorce against appellant No.1 on 14-11-2017. Learned counsel for the appellants laid much stress on the point that there is cutting on the date and

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month of this divorce deed which was an attested copy. It is true that there is some cutting on the divorce deed on date and month but appellant No.2 did not bring on record any copy of divorce deed/notice which was communicated to her through Farah Jameel as per statement of complainant PW-1. Certainly divorce took place between the parties and due to this reason, appellant No. 2 contracted second marriage with appellant No.1. Although, appellant No.2 in her statement u/s 342 CrPC maintained that triple Talaq was pronounced against her in mid of April 2017 by the complainant yet no proof has been brought on record in this respect, therefore, claim of oral divorce by appellant No.2 does not appeal to reason. Furthermore, as per statement of Oun Chaudhary PW-2, Mufti Muhammad Saeed PW-3 Nikah was performed between the appellants on 01.01.2018 and second Nikah was performed in February between 14th to 18th, 2018. In statement under section 342 CrPC, appellant No.1 maintained that Nikah was performed between him and appellant No.2 on 01.01.2018. In reply to question No. 8 appellant No.1 maintained that public ceremony of dua was held in February 2018 after taking his sons in confidence. Similar is statement u/s 342 CrPC of appellant No.2. This ceremony of dua is supported by statement of Oun Chaudhary Pw-2 and Mufti Muhammad Saeed Pw-3 that second oral Nikah was performed in February 2018. In this respect, conduct of the parties is relevant under article 21 of the Qanun-e-Shahdat Order, 1984 which shows that second Nikah or dowa was performed after the period of Iddat. It was held in 1979 CLC 558 that:-

> *"It is, therefore, clear that the marriage having taken place during 'Iddat', the wife is entitled to terminate it and the fact that it was consummated, does not extinguish this right. Nor does the bar disappear on the termination of 'Iddat' so as to bring it on the plane of ordinary marriages. What is meant by the prohibition being temporary say in the case of 'Iddat' marriages, is not that these get clothed with all the legal consequences that flow from unprohibited*

marriage contracts, as soon as the waiting period is exhausted but that after that date, -there is no bar for the parties to enter into a new marriage contract in accordance with law whereas in perpetually prohibited marriages, the disability or disqualification is permanent."

19. In the instant case both the appellants contracted second marriage as per statement of complainant party after iddat, therefore, this marriage has become valid marriage. Similarly, under Sunni Law, an unlawful conjunction by way of marriage during Iddat period renders the marriage irregular and not void and an irregular marriage becomes regular the moment the bottleneck is removed i.e. Iddat period expires. However, husband marrying during Iddat period cannot be made liable for consensual zina under Section 10(2), of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, along with his marriage partner. Reliance is placed on PLD 2020 Islamabad 443.

20. Learned counsel for the complainant maintained that if marriage is performed during period of iddat, the Nikah remains intact and if during this period of iddat one of the spouses dies, the other has right of inheritance. Learned counsel for the appellants are unanimous with learned counsel for the complainant on this point of the matter but they grossly differ on the point of criminality, if marriage is performed during period of iddat. In case of Aziz-unnissa Khantoon V. Karim-unnissa Khatton[1] one Ghulam Ali, a landlord of the Sunni Sect had married two sisters Aziz-unnissa and Izza-unnissa, one after the other, by both of whom he had issues. In an administration suit brought after his death, first Court held that the children born of Izzat-unnissa were legitimate and entitled to share in his inheritance. Aziz-unnissa preferred an appeal before the High Court on the ground of legitimacy of his sister's children. The High Court of Calcutta held in last paragraph of the judgment as under:-

[1] (1896)ILR 23 CAL 130.

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"21. The case in question is cited in Macnaghten's Principles and Precedents of Mahomedan Law, and is thus put by him at page 257 (edition of 1870):

Q. If A, having married B, should afterwards marry her sister C during the lifetime of B, and if such second marriage should be invalid according to law, will the first marriage nevertheless hold good, and will B be entitled to dowel'?

R. - The marriage of A with B will stand good, notwithstanding the fact of his having subsequently married her uterine sister C. As C, however, by reason of her affinity falls within the prohibited degrees of relation, her marriage with A is null and void, and she is not entitled to dower; but this fact does not invalidate the prior contract with B, and on the death of A, his wife B will be entitled to the full amount of her dower out of his estate".

21. It was held in case of Muhammad Hayat Vs Muhammad Nawaz (AIR 1935 Lahore 622) that there is therefore no doubt that the child of Mst Fateh by Amir Khan, namely defendants No. 1 an 2 must be held to be legitimate sons of Amir Khan and entitled to inherit his estate although the marriage contracted by their mother with Amir khan was an invalid or fasid marriage.

22. Learned counsel for complainant maintained that as per Muhammadan Law and the case law the child would be legitimate and would take share from the inheritance but the Muhammadan Law is not a qualified law and the courts have been disagreeing from the Muhammadan Law. It was held in case of Mahnoor Shabbir vs. Additional District Judge another (2024 CLC 513) D.F Mulla's Muhammadan Law is just a text book, which can be referred or relied upon by courts like any other text book. Being neither statute nor a custom or usage, the opinion in it is not binding. Similar view was expressed in case of Gulzar Ahmad and another vs. Ayesha Naz Sarwar and two others (2022 CLC 675) that:-

"It has been held in Messrs Najaat Welfare Foundation through General Secretary v. Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 4 others (PLD 2021 Federal Shariat Court 1) that Muhammadan Law by D.F. Mullah is a reference book and is not a statue having

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binding force. In these circumstances, Muhammadan Law can only be consulted as a reference book and cannot be termed to be statutory law having binding effect, upon which any presumption can be drawn against a person."

23. Learned counsel for complainant maintained that superior courts of the countries have differed with the Muhammadan Law and sentenced the accused who contracted Nikah during period of Iddat. This argument of learned counsel for complainant would be discussed in latter paragraph of this judgment where fact of criminality would be discussed if marriage is solemnized during period of Iddat.

24. Similarly, in case of Mst. Rehmat Bibi Vs Mst. Shareefan Bibi and others (1988 SCMR 1812). Mst. Shareefan Bibi was divorced by her husband three days before his death and she was given inheritance from the estate of her husband because the divorce had not become effective before 90 days on account of the provision of the ordinance. In case of Mushtaq Ahmad and another Vs Mst. Sat Bharai and five others, one Gheba Khan divorced MSt. Sat Bahari on 19-05-1969 and served a notice under section 7 of the Ordinance on her. Said Ghaiba Khan died on 14-06-1969 before the completion of 90 days of service of notice of talaq. It was held that talaq shall not be effective till the expiry of 90 days from the date of service of notice to the Chairman. Therefore, Sat Bharai was entitled to inherit property of her husband.

25. It is not out of place to mention here that the divorcee is entitled to maintenance allowance till the period of iddat even if the divorced was by way of khullah. Reliance is placed on case of <u>Mst. Nadia Bibi vs Asad Khan and others (2023 CLC 2055).</u>

26. From perusal of the above mentioned esteemed citation, this court is of the view that if one of the spouses dies during the period of iddat the other is entitled to inherit property of the

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deceased. Similarly, divorcee is entitled to maintenance allowance till the period of iddat.

27. Now this court would like to discuss whether any offence is made out if marriage is solemnized by the divorcee with someone during period of iddat. In this respect, learned counsel for the complainant has relied upon judgment of Allah Dad supra and maintained that the marriage during period of iddat is void, thus the couple is liable to be punished under tazir. He has referred to para No.22 of the judgment wherein it was observed that a marriage contracted during the period of iddat is not merely irregular marriage, it has been termed by the Muslim Jurists as Batil (void). See Ibn Abidin: Raddul-Muhtar, Vol.2, p.482 and secondly because even if is held to be irregular, it is still an invalid marriage, for both the irregular (Fasid) and void (Batil) marriages fall in the category of "invalid marriage" (See Ibn Abidin. Vol. 2, p.835). This court has minutely gone through this judgment and finds that in Ibn Abidin: Raddul-Muhtar, two different views about the marriage in iddat have been mentioned and it is not categorically mentioned that unanimously marriage during iddat is void. Therefore, this para of the judgment does not help the case of complainant.

28. Learned counsel for the appellants has relied upon case of Kaneez Fatima supra and maintained that in that judgment, reference of case of <u>Mst. BASHIRAN and another versus MUHAMMAD HUSSAIN and another (P L D 1988 Supreme Court 186)</u> was given. In this esteemed citation, it was held as under:-

> *"An act or omission is 'wilfully' done, if done voluntarily and intentionally and with the specific intent to do something the A law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law."*
>
> *(Black's Law Dictionary Fifth Edition, Page 1434).*

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Thus, an act is done "wilfully" if it is done intentionally or deliberately to disobey or disregard a law but if it is not done with an evilll purpose or criminal intent but inadvertently it will not have been done wilfully. In Ashfaq Ahmad and another v. The State (P L D 1985 Federal Shariat Court 126) this term has been discussed at some length and the various meanings of this word noted. The following passage appearing in that judgment is relevant:-

"The terms ('wilful' and 'wilfully') imply a conscious act of the mind and denote the attitude of the mind and will, but they import something more than a mere exercise of the will and include the idea of consciousness or knowledge, that is, knowledge of all the circumstances; and, when used in connection with an act forbidden by law, the terms carry the idea that, with knowledge, the will consented to, designed and directed the act."

The conclusion of the Federal Shariat Court after relying on an earlier decision of its Court was:-

"Even this Court in Muhammad Siddique v. State (P L D 1983 F S C 173) interpreted the word 'wilfully' used in section 4 of Ordinance VII of 1979 to mean that there must be mens rea or guilty mind or guilty intention on the part of the accused, to convict him for the offence."

We are inclined to agree with this interpretation of the term "wilfully" used in Section 4."

29. In the above mentioned case of Mst. Basheeran Bibi, she was married to Muhammad Hussain on 10.06.1961. Muhammad Hussain divorced on 06-02-1979 orally and then went to City Courts and executed talaqnama which was handed over to Mst. Basheeran Bibi. Said Mst. Basheeran Bibi contracted second marriage with Abdul Rehman on 24.03.1980. Muhammad Hussain filed a private complaint on 22.05.1980 which resulted in conviction of the appellants under section 10(2) of offence of Zina (enforcement of Hudood Ordinance), 1979 on the ground that talaq nama was forged. The appellants were acquitted of the charge by Shariat appellate Bench of Honorable Supreme Court of Pakistan on the ground that Mst. Basheeran had not taken any part in fabricating the talaqnama and she believed bonafide that it was genuine document and that there was no impediment in her contracting second marriage. It was held in 1991 MLD 403 that criminal intent, guilty mind or mens rea is of essence in a prosecution

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of this character under section 10(2) of the offence of Zina (Enforcement of Huddod) Ordinance (VII of 1979), and where that is missing penal provisions of statute law cannot be applied and the accused is either not guilty or, at least, is entitled to benefit of oubt.

30. It was held in case of MUHAMMAD RIAZ and another versus STATE (PLJ 2009 FSC 84) that:-

> *"A Survey of the above mentioned Verses indicates that marriage contract can come to an end either by death of husband or divorce having been pronounced and the period of Iddat consequently depends upon the mode the marriage is terminated. In case of death of husband, when the marriage has been consummated, the period is four months and ten days and in case of pregnancy the period of Iddat would extend upto delivery or the occasion of miscarriage. In case of death of husband the period of Iddat for the wife commences from the time of death. In the case of divorce, on the other hand, the wife has to wait for three menstrual courses and in the event of wife not being subject to menstruation the period of Iddat is three lunar months and Iddat commences from the time the divorce is pronounced.*
>
> *21. One consequence, however, of an invalid marriage are (i) that the children conceived and born during irregular or invalid marriage (i.e. not "vitiated and rendered illegal by a radical defect" which makes the marriage void ab-initio) are legitimate; ii) Iddat becomes mandatory and iii) dower becomes payable. The reason for conferring legitimacy upon the children born out of an irregular marriage, we are told, is that legitimacy is traced to the date of copulation and not the date of marriage.*
>
> *22. However the period of Iddat is only a temporary impediment. It is specific period oriented. It is a relative or temporary disability. Under Sunni Law, to which the parties belong as per presumption, an unlawful conjunction by way of temporary barrier i.e. marriage during Iddat, renders the marriage irregular and not void. An irregular marriage automatically becomes regular the moment the bottleneck is removed i.e. the Iddat period expires".*

31. Learned counsel for the complainant has referred to case of Fatima Bibi[2], Mst. Sughran[3] wherein FIR under Hudood Ordinance was not quashed as marriage was solemnized during Iddat. He has also relied upon case of Mushtaq Ahmad wherein bail was cancelled as Nikah was performed during Iddat. Learned counsel for the

[2] PLD 2005 Lah 126
[3] 2004 YLR 1229.

complainant has referred to case of Ghulam Shabir Shah Versus the State (1983 SCMR 942) wherein conviction under section 10(2) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 was maintained. As per facts of that case one Shaheen Bano was married to Ghulam Shabir Shah whose written divorce on 17.01.1980 to Shaheen Bano was believed. He contracted marriage with Ghazala Qureshi sister of Shaheen Bano on 29.03.1980 during period of Iddat. Similarly learned counsel for the complainant has relied upon case of Mst. Zahida Shaheen and another v. The State (1994 SCMR 2098), Kundan Mai v. The State (PLD 1988 FSC 89), Fatima Bibi v. Station House Officer, Police Station Ichhra, Lahore and 9 others (PLD 2005 Lahore 126), Mst. Sughran v. Station House Officer and 2 others (2004 YLR 1229) and have contended that as per the ratio of these dictums, even if marriage of respondents No.4 and 5 is considered as an irregular marriage, even then they are guilty of offence of Zina as provided under section 4 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. This Court is not oblivious of the fact that this conviction was passed before Women Protection Act, 2006. In definition of Zina before word "Zina" word validly was omitted by way of women protection Act, 2006. In this view of the matter now spouses of irregular marriage cannot be held guilty of offence of Zina while relying upon the above said precedents[4].

32. From perusal of the above mentioned precedents and laws, it follows that drastic change was made in the Hudood laws under woman protection Act 2006. This Court has gone through the STATEMENT OF OBJECTS AND REASONS of The Women Protection Act wherein it is inter alia mentioned that the object of this Act is to bring the laws relating to zina and qazf, in particular, in

[4] 2022 P.Cr.L.J 1188.

conformity with the stated objectives of The Islamic Republic of Pakistan and the constitutional mandate and, in particular, to provide relief and protection to women against misuse and abuse of law. The Zina Ordinance also defines "marriage" as a valid marriage. In rural areas, in particular, Nikahs generally and divorces particularly are not registered. It becomes difficult for a person charged with Zina to establish "valid marriage" as a defence. Non-registration has its civil consequences. These are sufficient. Failure to register a nikah or have a divorce confirmed should not entail penal consequences. This is in consonance with the Islamic norm that Hadd should not be imposed whenever there is any doubt about the commission of the offence. The misuse of the law in such cases has made it an instrument of oppression in the hands of vengeful former husbands and other members of society. A triple talaq is pronounced. The woman returns to her parental home. She goes through her period of iddat. After a while, the family arranges another match and she gets married. The husband then claims that since, the confirmation of divorce has not been done by the local authorities, the marriage is not over and launches a zina prosecution. It is necessary to delete this definition to shut this door.

33. Word "valid" was omitted before the word "marriage" in section 4 of the offence of Zina (Enforcement of Hudood Ordinance), 1979 and section 10 of the Hudood Ordinance was omitted meaning thereby Zina with consent is no more offence under the Hudood law rather it is an offence u/s 496-B PPC. As already stated above, no charge was framed u/s 496-B PPC against both the appellants because there was no evidence of second witness. In these circumstances, it cannot be said that the appellants committed fornication.

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34. The next charge against the appellant is of 496 PPC that they dishonestly or with a fraudulent intention went through the ceremony of the marriage. In this section word "dishonestly" and "fraudulent" has been mentioned. It was held in case of Maj. (Rtd.) JAVED INAYAT KHAN KIYANI Versus THE STATE (P L D 2006 Lahore 752) that:-

> *"In Pakistan Penal Code section 24 reads as under:*
>
> *"Dishonestly.--Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly".*
>
> *7. The language is explicit and conveys that to constitute an act dishonestly, it is important that something should be done with the intention of causing wrongful gain or wrongful loss. This wrongful gain may not be attained by the wrong-doer for himself only. The wrong doer may cause gain or loss to any other person also. "A person can be said to have dishonest intention if in taking property it is his intention to cause gain, by unlawful means of the property to which the person so gaining is not legally entitled or to cause loss by wrongful means of property to which the person so losing is legally entitled. It is further clear from the definition that the gain or loss contemplated need not be a total acquisition or a total deprivation but is enough if it is temporary retention of property by the person wrongfully gaining or temporary `keeping out' of the property from the person legally entitled". (PLD 1957 SC (India) 317 at 324).*
>
> *In another case "dishonestly" was defined as below:--*
>
> *"Word "dishonestly" as defined in section 24, P.P.C. means to do an act with intention of causing wrongful gain to one and wrongful losses to the other." (K. Raza v. State, 1986 MLD 2624)."*
>
> *8. In The Law Laxicon edited by Justice Y.B. Chandrachud, at page 567 "dishonesty" defined as "giving the ordinary meaning the word "dishonestly" means "dishonesty". It further elaborates dishonesty as disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity. Lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness, disposition, to defraud, deceive or astray. Like Pakistan Penal Code, in section 24 of Indian Penal Code "dishonestly" is defined in the similar words:--*
>
> *"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly."*
>
> *Section 24 is further elaborated on the same page as below:--*
>
> *"The word dishonestly in section 24 India Penal Code has a technical*

Muhammad Arif
Add. Sessions Judge

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meaning which is at variance with its popular sense as employing deviation from probity. It is used in connection with property and has nothing to do with probity. If a person causes wrongful gain or wrongful loss by unlawful means in respect of property to which he is not legally entitled, "he acts dishonestly within the meaning of section 24, though he may act from laudable motives. The word dishonestly does not necessarily imply wrongful gain to accused himself."

35. Similarly, it was held in case of AMIR HAYAT Versus The STATE (2023 P Cr. L J 487) that:-

What the words 'fraudulently' and dishonestly connote, are reflected below as per respective sections of P.P.C:-

24. "Dishonestly".

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25. "Fraudulently"

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

Above definition shows that a doer of a dishonest act may not have any interest in causing loss to any rightful claimant yet does the act for his own interest either to usurp the property or to alienate it in consideration of bribe given to him and the consequences of his act cause either wrongful loss or wrongful gain to any party in interest. Whereas fraudulent act contains malice, grudge, deception against a particular person with a targeted mind to ruin him or to deprive him from the property and for that end property is obtained from him through deception under grab or with temptation like increased value of the property".

36. Learned counsel for complainant maintained that a video was put to PW-1 during his cross examination and same has not been proved as per case of "ISHTIAQ AHMED MIRZA and 2 others Versus FEDERATION OF PAKISTAN and others" (P L D 2019 Supreme Court 675). Referred in The STATE through P.G. Sindh and others Versus AHMED OMAR SHEIKH and others (2021 S C M R 873). Suffice it to say that Khawar Farid Manika PW-1 in his cross examination admitted his video so there is no reason to send the video for comparison from the office of

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PFSA. In this video this witness deposed that his ex-wife was poise lady meaning thereby his video statement was after the divorce. In such like situation how this witness can claim that appellant No.2 committed fraud with him.

37. Learned counsel for complainant contends that some portion of evidence of the witnesses have been not cross examined so, statement of the witnesses on those points shall be admitted. It was held in case of **Mst. ASIA BIBI Versus The STATE and others (P L D 2019 Supreme Court 64)** that:-

> *"The argument of the learned counsel for the complainant that some factual assertions made by the prosecution witnesses were deemed to have been admitted by the defence because the prosecution witnesses were not cross-examined regarding those assertions and no suggestion was put to them regarding incorrectness of such assertions has been found by me to be misconceived. In the case of Nadeem Ramzan v. The State (2018 SCMR 149) this Court had clarified while referring to the earlier cases of S. Mahmood Alam Shah v. The State (PLD 1987 SC 250) and State v. Rab Nawaz and another (PLD 1974 SC 87) that "the principle that a fact would be deemed to be proved if the witness stating such fact had not been cross-examined regarding the same was a principle applicable to civil cases and not to criminal cases. It was held that a ciminal case is to be decided on the basis of totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination or otherwise of a witness on a particular fact stated by him."*

38. From perusal of section 496 PPC and the above mentioned esteemed citation, this court is of the view that the appellants have not gone through any marriage ceremony fraudulently or with dishonest intention because none of the parties claim that Nikah was not performed and fraudulently he or she was supposed to believe that marriage ceremony was solemnized. In the instant case, it is case of the complainant that on 01.01.2018 Nikah of the appellants was performed and then second Nikah was performed in February, 2018. In this way, by no stretch of imagination, it was a marriage with dishonest or

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fraudulent intention. In case of Ashwin Nanabhai Vyas vs The State of Maharashtra (AIR 1970 SC 1998, 1970 CRILJ 1668, (1970)3 SCC 95, AIR 1970 SUPREME COURT 1998) one Ashwin and Kusum, from neighboring Brahmin families, developed a close relationship that culminated in a secret marriage in October 1960. They lived openly as husband and wife until tensions arose due to family disputes. Ashwin then began avoiding her and a month later it transpired that he had married one Kiran Patel. On learning about this marriage Kusum and his brother made enquiries from the office of the Registrar of Marriages but were surprised to find that the appellant's marriage with Kusum had not been registered with the Registrar of Marriages. Kusum filed a complaint against Ashwin in November 1963, accusing him of deceitfully inducing her to believe they were lawfully married. The case continued even after Kusum's death, pursued by her mother. Ashwin Nanabhai Vyas was initially acquitted by the Additional Sessions Judge but the High Court convicted Ashwin, considering the sincerity of his affection for Kusum despite her health issues. It sentenced him to one year of rigorous imprisonment, primarily for the offense under Section 496 of the IPC. The Supreme Court upheld Ashwin Nanabhai Vyas's conviction under Section 496 of the IPC but reduced his sentence to the time he had already served, taking into account various mitigating circumstances. If facts of this case are kept in mind that one of the parties to the marriage was deceived about the ceremony of marriage, the he or she can file complainant under section 496 PPC.

39. Learned counsel for the respondent has strenuously argued that the complainant/respondent was deprived from the right of Rajow, so he was defrauded by the appellants. In cross examination the respondent deposed that on the second day of

marriage of the appellants he came to know of their marriage. It is surprising to note that he remained passive for about six year for his right of Rajow which period had already expired before the filing of this private complaint.

40. Resume of the above discussion is that complainant has failed to prove his case against both the appellants. Accordingly, both the appeals filed by appellants No.1 & 2 are accepted, judgment of learned trial court dated 03.02.2024 is set-aside and consequently both the appellants are acquitted of the charge. They are in custody. They are directed to be released forthwith if not required to be detained in any other case. Release robkar be issued in the name of Superintendent Central Jail Adayala, Rawalpindi. Record of learned trial court be sent back along with copy of this judgment whereas record of appeals be consigned to record room.

ANNOUNCED IN OPEN COURT
13.07.2024 at 03:00 p.m.

(Muhammad Afzal Majoka)
Additional Sessions Judge,
Islamabad-West

It is certified that this order consists of twenty eight (28) pages, each of which has been dictated, read and signed by me.

Dated:13.07.2024.

Additional Sessions Judge,
Islamabad-West

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