

IN THE COURT OF SYED ALI JAWAD NAQVI,
JUDICIAL MAGISTRATE 1ST CLASS
DISTRICT COURTS, LAHORE.



**Ayesha Khalil D/o Khalil Ahmad R/o Nadir Bazar
Mandi Faiz Abad, Tehsil and District Nankana Sahib
(presently R/o Meraj Park, Tariq Colony, KPS wala
Bazar, Begum Kot, Lahore) (complainant)**

Vs.

**Shehzada Saqib Suhail S/o Suhail Ahmad R/o Khaki
Dak-khana, Kot Abdul Malik, Tehsil Ferozewala,
Distt. Sheikhupura (respondent/accused).**

**Private Complaint u/s 6(5)
Offence u/s Muslim Family Ordinance 1961.
P.S Shahdara Town, Lahore.**

Date of decision: 31.10.2017

**SYED ALI JAWAD NAQVI
Judicial Magistrate
1st Class, Lahore.**

JUDGMENT

Present:

Accused, Shehzad Saqib Suhail along with learned counsel
Ahmad Aslam Chaudhry, Advocate.
Complainant along with learned counsel Malik Azhar Abbas,
Advocate.

Brief facts as esteemed out from private complaint are that on
06.07.2013 the complainant contracted marriage with the accused in
accordance with Muslim rites. After marriage, the complainant started to
satisfy marital rights and a son was born. In the beginning the behaviour
of accused with the complainant was good but afterwards it became
disgusting. Accused started to beat the complainant violently and also
started least visiting home. Before marriage, accused showed himself as a
bachelor and after the marriage complainant came to know that the
accused had already contracted marriage with Mst. Rubina bibi D/o
Muhammad Iqbal on 14.11.2011. But the accused showed himself as

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bachelor at the time of contracting marriage with the complainant and in Column No.21(ب) of nikah nama written himself as *کنوارہ* (bachelor).

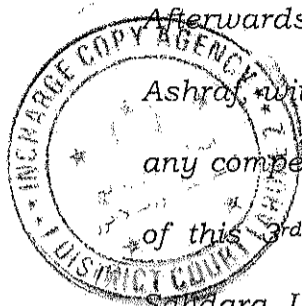
Afterwards, the accused contracted 3rd marriage with Mst. Tehmina Ashraf, without the permission of the complainant or the permission of the any competent authority for the purpose of 3rd marriage. The nikah nama of this 3rd marriage is registered at Union Council No.4, Faisal Park, Sandara, Lahore. Hence, this private complaint.

2. The cursory statement of complainant and two witnesses Khalil Ahmad and Hameed Ahmad were recorded and vide order dated 20.04.2016, the private complaint was admitted for regular hearing. Accused was summoned. The accused namely Shahzada Saqib Suhail appeared before the court on 16.5.2016. The accused was charge sheeted under section 6(5) of Muslim Family Ordinance 1961 on 04.06.2016. Thereafter complainant was directed to produce her evidence.

3. The complainant in order to bring home guilt of the accused, produced following witnesses:-

- i) Ayesha Khalil appeared as PW-1 was a star witness and reiterated the stance taken through her complaint.
- ii) Hameed Ahmad appeared as PW-2 who also support the complainant version.
- iii) Khalil Ahmad father of complainant appeared as PW-3.

4. After the completion of complainant evidence, the statements u/s 342 was recorded and all the incriminating material was put to the accused. While answering the question, "why this case against you and why the PWs deposed against you to the accused Shahzada Saqib Suhail", he replied: "False case was filed against me and witnesses



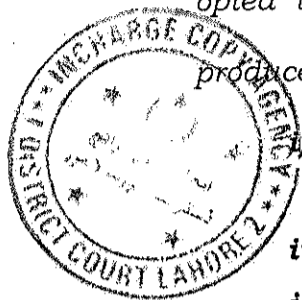
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deposed falsely against me. The case in hand has been maliciously managed against me by the complainant just to harass me".

5. The accused opted to produce defence evidence and also opted to appear as witness under section 340(2) Cr.P.C. The Defence produced following witnesses.



Shehzada Saqib Suhail DW-1 and tendered photocopy of notice Talaq as Mark-C.

- ii) Rubina Saqib appeared as DW-2 first wife of accused.
- iii) Suhail Ahmad father of accused Shahzad Saqib Suhail appeared as DW-3.

Thereafter defence closed its evidence.

FINAL ARGUMENTS:

6. Learned counsel for the complainant Malik Azhar Abbas, Advocate has submitted that complainant has proved her case beyond any shadow of doubt against the accused. Third marriage has been admitted by the accused. No permission has been sought from complainant as well as from Arbitration council for contracting third marriage. The accused is habitual in contracting marriage without seeking permission from the competent authority. Hence prayed for maximum punishment.

7. Learned defence counsel Ahmad Aslam Chaudhry, Advocate argued that complainant has falsely lodged a private complaint with the malicious intent to harass the accused. The complainant was not cooperative with the accused and even was not living with him for one year before contracting third marriage. There are many major contradictions in the statement of complainant and other witnesses.

Hence, prayed for acquittal of the accused.

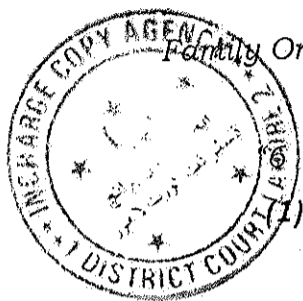
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9. Heard. Perused.

10. Now, I would like to dilate upon the factual position of the case under charge. Accused was charge sheet under section 6(5) under Muslim Family Ordinance. It is necessary to reproduce section 6 of Muslim Family Ordinance as under:-



Polygamy.

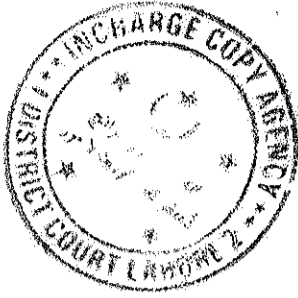
No man, during the substance of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.

- (2) An application for permission under subsection (1) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee and shall state the reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto.
- (3) On receipt of application under subsection (2) the Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant subject to such conditions, if any, as may be deemed fit, the permission applied for.
- (4) In deciding the application the Arbitration Council shall record its reasons for the decision and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, to the collector concerned and his decision shall be final and shall not be called in question in any Court.
- (5) Any man who contracts another marriage without the permission of the Arbitration Council shall:

SYED ALI JAWAD NAQVI
Judicial Magistrate
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Handwritten signature and date:
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- (a) Pay immediately the entire amount of dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid shall be recoverable as arrears of land revenue; and
- (b) On conviction upon complainant be punishable with simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

11. Complainant filed a private complaint with the allegation that the accused has contracted third marriage without her permission and showed himself as bachelor while he was contracting marriage with complainant. Marriage solemnized between complainant and accused on 06.07.2013 and a son namely Muhammad Mutahir Shaaf was born in consequences of this marriage. The accused firstly married on 14.11.2011 with Rubina bibi and showed himself bachelor while contracting marriage with the complainant. Thereafter, the accused contracted third marriage Tehmina Ashraf on 03.04.2015 without seeking permission from her or any concerned quarter. In this way, he has violated the requirement of Muslim Family Ordinance and committed offence which is punishable under this ordinance.

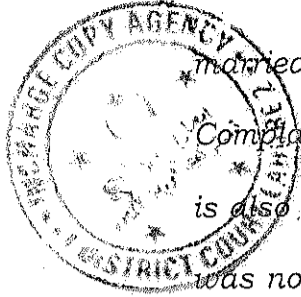
12. Firstly, the complainant was bound to prove that the marriage was in existence while the accused has contracted another marriage and secondly, new marriage was solemnized without her or Arbitration council's permission. In order to prove the charge leveled against the accused, complainant appeared herself and also produced two other witnesses.

13. Admittedly, accused contracted a marriage with the complainant. Admittedly, it was second marriage and admittedly, accused

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married with Tehmina Ashraf who was third wife of the accused. Complainant relation with the accused is admitted fact and third marriage is also admitted point. The accused had taken a defence that complainant was not living with him for one year and during the "panchait" she called him as his brother but this point cannot authorize the accused to contract third marriage without the permission of complainant. Admittedly, marriage is not in existence between complainant and the accused at this time but the law is very much clear that at the time of third marriage if the relationship with the previous wife is in existence then permission to seek another marriage is necessary and mandatory upon the husband. The document Mark-C presented by accused in his defence shows that the second notice of Talaq was issued on 26.01.2016 and date of first notice was mentioned in that notice as 14.12.2014 but the third marriage was consummated on 03.04.2015, eight month prior to dissolution of marriage.

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Judicial Magistrate
Lahore

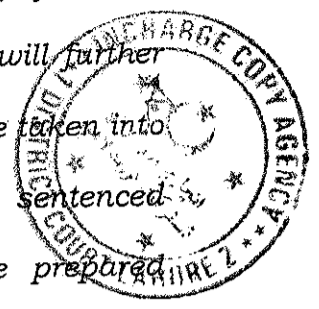
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14. Although, accused produced his first wife namely Rubina bibi as defence witness and she admitted that she had allow her husband to contract another marriage but the right of second wife cannot be ignored in presence of permission of first wife. The foremost aggrieved party from the third marriage is second wife who is a complainant of this case. Keeping in view the principle that admitted facts need not to be proved, the complainant has successfully established the guilt of the accused for contracting third marriage without her permission.

15. So, what have been discussed above, I hold that the accused solemnized third marriage during the existence of marriage with the complainant and therefore accused namely Shahzada Saqib Suhail is convicted u/s 6(5) of Muslim Family Ordinance. Now the question of sentence is concerned, he is sentenced with six months simple

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imprisonment alongwith fine of Rs.2,00,000/- under section 6(5) of Muslim Family Ordinance. In case of default of payment of fine, he will further undergo simple imprisonment of four month. He is directed to be taken into custody and be sent to judicial lock up to undergo the sentenced punishment. The warrant commitment u/s 245 Cr.P.C be prepared accordingly. Copy of judgment be handed over to the accused free of cost. The surety is discharged from his liabilities. Ahlmad of this court namely Muhammad Usman is directed to consign the file to the record room after its due completion.



Announced:
31.10.2017.

[Signature]
JUDGE SYED ALI JAWAD NAQVI,
Magistrate 1st Class
Lahore

Certified that this judgment consists of seven (07) pages, each page has been dictated, read over, corrected and signed by me.

Announced:
31.10.2017.

[Signature]
JUDGE SYED ALI JAWAD NAQVI,
Magistrate 1st Class
Lahore

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