

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C. J.

Raja Saeed Akram Khan, J.

Criminal Appeal No.18 of 2015

(Filed on 22.09.2015)

Muhammad Rafique s/o Muhammad Jamshed r/o Sanghot, Tehsil and District, Mirpur.

....APPELLANT

VERSUS

1. Shahzad Hussain s/o Mahboob Hussain r/o Jada Sector A/3, Mirpur, A.K.
2. Farzana Hussain d/o Qazi Mumtaz Ahmed,
3. Hafeez Begum w/o Qazi Mumtaz Ahmed r/o Mian Muhammad Town Mirpur.
4. Muhammad Ahsan Raza s/o Muhammad Iqbal r/o Sector F/1, Mipur.
5. Qurban Hussain s/o Ghulam Nabi,
6. Muhammad Rafique s/o Dil Muhammad,
7. Fazal Hussain s/o Said Muhammad,
8. Haseeb Alam s/o Abdul Rasheed, all r/o Sector Jada A/3, Mirpur.

..... RESPONDENTS

9. State of AJ&K through Additional Advocate-General, Mirpur, A.K.

..... PROFORMA-RESPONDENT

(On appeal from the order of the Shariat Court dated 10.09.2015 in Criminal Appeal No.46 of 2014)

FOR THE APPELLANT: Mr. Javaid Najam-us-Saqib, Advocate.

FOR THE RESPONDENTS: Respondents No.2 & 3, in person.

Date of hearing: 23.05.2016.

Judgment:

Raja Saeed Akram Khan, J.— The supra tiled appeal has been filed against the order of the Shariat Court dated 10th September, 2015, whereby, the application filed by respondents No.2 and 3 for exemption from personal appearance has been accepted.

2. The facts in brief are that a case under sections 10 and 19, of the offence of Zina (Enforcement of Hadood) Act, 1985, was registered

at Police Station City Mirpur on the complaint of Muhammad Rafique, complainant-appellant, vide F.I.R. No.313/2008. After completion of investigation, the *challan* was submitted before the Additional Tehsil Criminal Court, Mirpur. The Trial Court after recording evidence and hearing the parties, acquitted the accused-respondents of the alleged charges vide order dated 01.03.2014. The complainant-appellant challenged the legality and correctness of the order passed by the Additional Tehsil Criminal Court, Mirpur, by way of appeal before the Shariat Court. During pendency of appeal before the Shariat Court, respondents No.2 & 3, herein, filed an application for exemption from personal appearance. The learned Shariat Court, after necessary proceedings, accepted the application filed by the said respondents while exempting them from personal appearance, hence, this appeal.

3. Mr. Javaid Najam-us-Saqib, Advocate, the learned counsel for the complainant-appellant,

straight away drawn the attention of this Court towards the document i.e. copy of the visiting card attached with the concise statement while arguing that sole ground on which respondents No.2 and 3 sought exemption from personal appearance, was that, being *Pardanashin* women, they cannot appear before the Court. He submitted that the learned Shariat Court while accepting the application has exempted respondents No.2 & 3 from personal appearance mainly on the ground that they are *pardahnashin* women. He added that the learned Shariat Court while exempting them from personal appearance on this ground has not adhered to the document i.e. visiting card issued by Pakistan Peoples Party Women Wing, Mirpur City, which shows that respondent No.2 is an active member of a political party who being Deputy General Secretary of the party participates and addresses the public meetings/gatherings. He further submitted that this fact has been concealed by respondents No.2 and 3, from the Court below while seeking the exemption order. However, he

has submitted that after conclusion of the trial in the case, registered under F.I.R. No.313/2008, the respondents were acquitted of the charges under sections 10 and 19, ZHA.

4. Respondents No.2 and 3 appeared in person before the Court. Respondent No.2 has stated that neither she is office bearer of any political party nor participating in any political or public meetings. She frankly submitted that earlier, she was Deputy General Secretary of Pakistan Peoples Party, Women Wing, Mirpur City, but now she has relinquished this assignment. Moreover, she has been acquitted of the alleged charges by the trial Court while extending the benefit of doubt.

5. We have heard the arguments of the learned counsel for the complainant-appellant as well as respondents No.2 and 3 who appeared in person. From the record it appears that a case under sections 10 and 19, ZHA, was registered at Police Station City Mirpur, vide F.I.R. No.313/2008. After recording the evidence and other necessary

proceedings, respondents were acquitted of the alleged charges by the Additional Tehsil Criminal Court, Mirpur, while extending benefit of doubt, vide order dated 01.03.2014. The acquittal order is impugned in appeal before the Shariat Court. During the proceedings in the Shariat Court, an application seeking exemption from personal appearance being *pardanashin* women was moved by respondents No.2 and 3, which has been allowed through the impugned order.

6. We have examined the record in the light of submissions made by the learned counsel for the appellant and respondents No.2 & 3 who appeared personally, before the Court. Respondent No.3 appears to be of old age, whereas, respondent No.2, Mst. Farzana Begum, has categorically stated that she is no more office bearer of any political party and she is not participating in any political activities. This fact has not been rebutted by the other side. It is also evident from the record that respondent No.2 has been acquitted of the alleged

charges by the Court of competent jurisdiction. However, it is yet to be decided by the Shariat Court in appeal; whether the judgment passed by the trial Court is perverse, arbitrary or shocking in nature or not. According to the principle of criminal jurisprudence, the Court is fully empowered to grant exemption from personal appearance, if sufficient reasons are assigned. Even otherwise, under the provisions of law as well as principle enunciated by the Courts, exemption from personal appearance cannot be refused to the accused woman merely on the ground that she is not *pardanashin*. Over this view finds support from a case reported as *The State vs. Victor Henry and 2 others* [PLD 1973 Karachi 273], wherein, it has been observed that:-

“..... It has become a general practice of Courts by now that in cases where accused are *pardanashin* women their personal appearance at the hearings is dispensed with and they are allowed to appear by a pleader until such time when their attendance becomes necessary. But such an order need not be refused merely because a

lady accused is not *pardanashin* woman, as this is not a condition laid down under section 205, Cr.P.C. Under this section in the commentary in the Code of Criminal Procedure by V. V. Chitaley (5th Edition (1956) it has been observed at page 1038 as under:-

'The Court will extend the privilege of *pardah* to women who, though not strictly observing *pardah*, are yet not accustomed generally to appear before the public.' "

7. It may be observed here that the appellant has failed to bring on record anything in rebuttal of the stance taken by respondent No.2 that she is no more office bearer of any political party and is not participating in public gatherings. In this state of affairs, we are of the view that the order impugned before this Court has been passed in accordance with law and no illegality has been committed by the learned Shariat Court while accepting the application of respondents No.2 and 3 for exemption from personal appearance. However, we deem it proper to mention here that the Shariat Court is fully empowered to summon respondents

No.2 and 3 whenever their personal appearance is required.

What has been discussed above, this appeal, having no force, is hereby dismissed.

Mirpur.

.05.2016.

JUDGE

CHIEF JUSTICE