

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C. J.

Raja Saeed Akram Khan, J.

1. Criminal Appeal No.20 of 2015
(Filed on 21.11.2015)

Saeed Ahmed Abbasi s/o Asghar Khan Abbasi r/o
Dachhor Miran, Tehsil & District Muzaffarabad.

....APPELLANT

VERSUS

1. State through Advocate-General, Azad Jammu & Kashmir, Muzaffarabad.
2. DSP Headquarters, Azad Jammu and Kashmir, Muzaffarabad.
3. SHO, Police Station, Garhi Dopatta, Tehsil & District Muzaffarabad.
4. Imran Khan Abbasi s/o Muhammad Ayub Khan Abbasi r/o Pota Dachhor Miran, Tehsil & District Muzaffarabad.
5. Tahira Bibi w/o Saeed Ahmed Abbasi d/o Sharif Abbasi, Dachoor Miran, Tehsil & District Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the Shariat Court
dated 22.10.2015 in Family Appeal No.38 & 92 of
2014)

FOR THE APPELLANT: Kh. Muhammad Maqbool
War, Advocate.

FOR RESPONDENT NO.4: Mr. Abdullah Shah
Masoodi, Advocate.

FOR THE STATE: Mr. Raza Ali Khan,
Advocate-General.

2. Civil Appeal No.52 of 2016
(PLA filed on 21.11.2015)

Muhammad Saeed Abbasi s/o Asghar Khan Abbasi r/o
Dachhor Miran, Tehsil & District Muzaffarabad.

....APPELLANT

VERSUS

1. Imran Khan Abbasi s/o Muhammad Ayub Khan
Abbasi r/o Pota Dachhor Miran, Tehsil & District
Muzaffarabad.
2. Tahira Bibi w/o Saeed Ahmed Abbasi d/o Sharif
Abbasi,
3. Gulab Khan Abbasi s/o Hidayatullah,
4. Saleem Abbasi s/o Kaloo, caste Abbasi, r/o Dachor
Miran, Tehsil & District Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the Shariat Court
dated 22.10.2015 in Family Appeal No.38 & 92 of
2014)

FOR THE APPELLANT: Kh. Muhammad Maqbool
War, Advocate.

FOR RESPONDENT NO.1: Mr. Abdullah Shah
Masoodi, Advocate.

Date of hearing: 6.10.2016.

JUDGMENT:

Raja Saeed Akram Khan, J.— Both the above captioned appeals have been directed against the common judgment of the Shariat Court passed on 22.10.2015 whereby the appeals filed by the appellant, herein, have been dismissed. As common questions of law and facts are involved in both these appeals, therefore, these are being disposed of through this single judgment.

2. The facts as emerged from these appeals are that the marriage between *Mst. Tahira Bibi*, respondent and the appellant was solemnized on 15.9.2011, at *Dachhor Miran*. *Mst. Tahira Bibi* after her marriage remained populated with her husband and performed her marital obligations. On 18.11.2013, the appellant was out of the city, when one, *Imran Khan Abbasi* and his companions abducted his

wife forcibly for committing zina. A '*Jirga*' of the notables of the area was convened in which *Imran Khan Abbasi* promised to handover the custody of *Mst. Tahira Bibi* to the appellant, but later on, he refused to fulfil his commitment. The appellant moved an application at the concerned Police Station on 8.1.2014 and before the Senior Superintendent of Police, Muzaffarabad on 9.1.2014 and 16.1.2014, respectively. A case in the offences under sections 10,16 and 19 ZHA and 14, EHA was registered at the Police Station Garhi Dopatta, however, the Police agency prepared '*Ikhtitami*' report No. 2/2014 dated 10.2.2014 and presented the same in the Additional Court of Criminal Jurisdiction No.I, Muzaffarabad. The Court concurred with the report of the police agency and disposed of the case accordingly vide order dated 22.5.2014. Feeling aggrieved, the appellant filed a revision petition/appeals

before the Shariat Court. A suit was also filed by the appellant for restitution of conjugal rights in the Court of Judge Family Court, Muzaffarabad. After hearing the parties the said Court dismissed the suit filed by the appellant vide judgment and decree dated 28.4.2014. The appellant also challenged the judgment and decree before the Shariat Court. The learned Shariat Court vide consolidated judgment dated 22.10.2015 dismissed the revision/appeals which is the subject-matter of these appeals.

3. Kh. Muhammad Maqbool War, Advocate, the learned counsel for the appellant, (in both appeals), submitted that the judgment passed by the learned Shariat Court is against law and the facts of the case, which is not sustainable in the eye of law. He argued that the order dated 22.5.2014 passed by the Additional Tehsil Criminal Court, Muzaffarabad is not speaking and no reason has been assigned while

dismissing the case. He further submitted that two independent matters, i.e., a criminal and a civil, were consolidated by the learned Shariat Court and the same have been dismissed through a single judgment which is against law. He argued that the learned Shariat Court fell in error while not taking into account that both the matters were required to be decided through separate judgments. In this way, the impugned judgment passed by the learned Shariat Court is nullity in the eye of law and liable to be set aside on this sole point. He contended that the learned Shariat Court was not justified to dismiss the revision arising out of the order passed by the Additional Tehsil Criminal Court without taking into account that *Mst. Tahira Bibi*, was abducted when she was in the '*Nikah*' of the appellant, therefore, in absence of any divorce-deed, the so-called second marriage is against law and *Shariah*. The learned Shariat Court has

not appreciated the material available on record in its true perspective and decided the case in a hasty manner. The Courts below have not given any weight to the grievance of the appellant who is lawful husband of *Mst. Tahira Bibi*. He submitted that the appellant had been pursuing the matter pillar to post to get the justice but remained unsuccessful. He further submitted that during the pendency of the suit filed by Imran Khan Abbasi, respondent No. 4, herein, *Mst. Tahira Bibi* filed a cognovit without getting the divorce from the appellant. The learned trial Court without discussing the evidence and assigning any reasons accepted the report submitted by the police but the learned Shariat Court has not taken the notice of this illegality. He argued that in presence of a valid *Nikah*, the second *Nikah* is unwarranted without getting the divorce at first. The appellant failed to substantiate any evidence that *Mst. Tahira Bibi*

contracted second marriage with the respondent after getting the divorce from the appellant.

4. On the other hand, Mr. Abdullah Shah Masoodi, Advocate, the learned counsel for *Imran Khan Abbasi*, respondent, strongly opposed the arguments addressed by the learned counsel for the appellant. He submitted that the judgment passed by the learned Shariat Court is perfect and in accordance with law which has been passed after due application of judicial mind. He argued that the appellant failed to prove the case against the respondent, therefore, the Shariat Court has rightly decided the matter under law. He further argued that the learned trial Court has rightly agreed with the police report and the order of the trial Court has been upheld by the Shariat Court. He contended that the learned Shariat Court while consolidating both the cases arising out of the same facts and matters, has rightly decided the

same through a single judgment, therefore, the learned Shariat Court has not committed any illegality.

5. Mr. Raza Ali Khan, the learned Advocate-General, who appeared on behalf of the State, has submitted that the judgment passed by the Shariat Court is not speaking one as no reason whatsoever has been assigned while dismissing the same. He argued that as both the matters before the learned Shariat Court were offshoots of the different/independent proceedings, therefore, it was incumbent upon the Shariat Court to decide the same through separate judgments while exercising the civil and criminal jurisdiction.

6. We have heard the arguments of the learned counsel for the parties and gone through the record made available. While attending the first argument raised by the learned counsel for the appellant that the learned Shariat Court was

not justified to consolidate the different matters; one arising out of the criminal and the other from civil jurisdiction. It may be stated that both the matters are offshoots depending on each other, therefore, the proper course was to decide the same through a common judgment to avoid any conflict judgment. Therefore, we are not convinced by the arguments advanced by the learned counsel for the appellant and the same is hereby repelled.

7. The next argument of the learned counsel for the appellant that the order dated 22.5.2014 passed by the Additional Tehsil Criminal Court, Muzaffarabad is not speaking one, has force. It would be appropriate to reproduce here the same, which reads as under:—

After going through the above, we agree with the contention of the learned counsel for the appellant that the order passed by the Additional Tehsil Criminal Court, Muzaffarabad does not come within the purview of speaking order. During the course of arguments, the learned Advocate-General, also very fairly supported the contention raised by the learned counsel for the appellant. Although, we are convinced that the order referred to hereinabove is not speaking one as the same has been passed without discussing the evidence and assigning cogent reasons, however, the learned Shariat Court while passing the impugned judgment has taken into consideration all the aspects of the case and decided the same in a legal manner.

8. The case has been established by the appellant that *Mst. Tahira Bibi* and he are lawfully wedded husband and wife. The appellant never divorced her wife and she failed

to produce any divorce-deed in support of his contention. We have examined the material minutely in this regard. It appears from the record that the notables who participated in *Jirga* when the divorce was announced by the appellant to *Mst. Tahira Bibi* fully supported the version of *Mst. Tahira Bibi* by filing affidavits. We have also examined the statements of the witnesses produced by *Mst. Tahira Bibi*, respondent. It would be appropriate to reproduce the relevant portion of some of the statements of the witnesses. Khalid Manzoor Awan son of Manzoor Awan, a witness, deposed as under:—

Muhammad Aslam son of Muhammad Ashraf Abbasi, stated as under:—

Another witness, Muhammad Khalil Abbasi son of Sain Khan deposed as under:—

After going through the above referred statements, we are of the view that there was no need to bring on record any divorced-deed in shape of written form. During the pendency of the suit filed by *Imran Khan Abbasi*, he has taken the stance that the marriage between the appellant and *Mst. Tahira Bibi* was solemnized on 27.6.2013 in lieu of dower amounting to Rs. 50,000/-. *Mst. Tahira Bibi* submitted cognovit while affirming the stance taken by *Imran Khan Abbasi*. On the strength of the cognovit, filed by *Mst. Tahira Bibi*, respondent, the decree for

restitution of conjugal rights has been passed by the trial Court in favour of *Imran Khan Abbasi*, respondent, herein. In presence of the decree, the proceedings in the FIR lodged by the appellant were not justified. The contention of the appellant that the suit for restitution of conjugal rights filed by *Imran Khan Abbasi* was liable to be dismissed on the ground that the father of *Mst. Tahira Bibi* was not arrayed as party in the line of the respondents is also ill-founded as the father of *Mst. Tahira Bibi* was not a necessary party. After filing the cognovit by *Mst. Tahira Bibi*, it would be immaterial whether her father was a necessary party or not. In this situation, we fully endorse the findings recorded by the learned Shariat Court as the same are based on solid reasons. The learned counsel for the appellant failed to point out any illegality in the judgment passed by the learned Shariat Court.

Resultantly, the titled appeals have no force, the same are hereby dismissed.

Muzaffarabad.

.11.2016

JUDGE

CHIEF JUSTICE

The controversy involved in the matter is that the appellant and Mst. Tahira Bibi were lawfully wedded husband and wife. The wife of the appellant was abducted by the respondents and without getting the divorce she contracted a second marriage. In this regard, the appellant has produced the evidence which have not been appreciated by the Courts below.

7. In the criminal matter, we have examined the order of the trial Court which reads as under:—

.....

After going through the above said order, which was challenged before the learned Shariat Court appears that the same cannot be come within the purview of speaking order as no such reason has been assigned while agreeing with the police report. Mere the word evidence has been

mentioned but nothing has been mentioned that which evidence has been discussed and with the other lines the order has been passed which cannot be said to be a legal order. The learned Shariat Court also has not taken into account this important aspect of the case that it was enjoined upon the trial Court to discuss all the piece of evidence produced before the investigating officer while agreeing with the report. Moreover, admittedly, the two different matters arise out of from the different jurisdictions came before the Hon'ble learned Shariat Court. One is revision filed against theand second is appeal arise out of from the criminal jurisdiction. It appears from the impugned judgment that both have been treating as appeals and consolidated the same and decided the same without realizing that the property demands the same should be death with independently and disposed of the same by

separate judgments. In this way, the learned Shariat Court failed to discharge its legal duty which is open for interference by this Court. We are of the view that in a criminal matter the trial Court has not passed the speaking order.

Resultantly, the case back to the trial Court to decide afresh after providing a fair opportunity of both the parties.

Muzaffarabad.
9.11.2016

JUDGE

CHIEF JUSTICE