IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAZA ALI KHAN

CIVIL PLA No. 171 OF 2025

(On appeal from the judgment of the High Court dated 28 February 2025, passed in Writ Petition No. 181 of 2025)

Muhammad Rafique s/o Muhammad Shafi, r/o Tattapani District Kotli, Azad Jammu and Kashmir.

…Petitioner(s)

VERSUS

Anam Rafique d/o Muhammad Rafique, r/o presently Tehsil & District Muzaffarabad, Azad Jammu and Kashmir & others.

…Respondent(s)

Appearances:

For the Petitioner(s):	Malik Muhammad Naseer Awan, Advocate.
For the Respondent(s):	Mr. Waheed Bashir Awan, Advocate.
Date of hearing:	02.05.2025

ORDER:

Raza Ali Khan, J:- This petition for leave to appeal arises from the judgment of the High Court dated

February 28, 2025, whereby, the writ petition filed by respondent No.1, herein, was accepted.

2. Facts of the case are that respondent No.1 filed a writ petition before the High Court seeking quashment of FIR No. 30/2025 dated January 18, 2025, in the offences under sections 11/16 ZHA, registered at Police Station Kotli. It was stated that she had contracted marriage with respondent No.2, Aamir Shafique, on October 03, 2024, and they are living together as husband and wife. She also got her statement recorded before the High Court on January 21, 2025, and reaffirmed it during the hearing. The learned High Court after hearing the parties, accepted the writ petition and quashed FIR No. 30/2025 along with all proceedings arising therefrom.

3. Malik Muhammad Naseer Awan, the learned Advocate for the petitioner, argued that the learned High Court erroneously assumed the role of an investigating agency, despite the well-established principle that courts should not interfere at the investigation stage. He also pointed out that the offences under Sections 11 and 16 of the Zina (Enforcement of Hudood) Ordinance necessitates proper investigation, which was disregarded. He emphasized that the FIR discloses a cognizable offence, and under provisions of the Cr.P.C., the police have the statutory right and duty to investigate. Citing precedents from this Court, he contended that quashment of an FIR is an extraordinary relief requiring exceptional circumstances, which are not present in the case in hand. He added that the Court below misinterpreted the

petitioner's statement and overlooked key facts, including the cancellation of the Nikah-Nama and the unregistered status of the Nikah Registrar. He further contended that respondent No.1 allegedly submitted forged documents, including a fabricated permission letter from the first wife. He added that the instant petition carries important legal questions of law and issues of public importance justifying grant of leave.

4. Mr. Waheed Bashir Awan, the learned Advocate for the respondents, defended the impugned judgment by stating that the marriage between the respondent No.1 & 2 was lawfully contracted, duly supported by the respondent's consistent statements before the High Court. He contended that no contrary Nikah-nama or valid claim has been produced by the petitioner to challenge the marriage. He further argued that the FIR appears to be a misuse of the legal process, initiated with mala fide intent to harass the parties, and in such circumstances, interference by the High Court was justified to prevent abuse of the court's process.

5. I have heard the learned counsel for the parties and gone through the record of the case made available. In view of the record and statements available, it is evident that respondent No.1 & 2 have lawfully contracted marriage on October 03, 2024, and are residing together as husband and wife. Respondent No.1 has consistently maintained her position before the Court, and no substantive material has been brought on record to dispute the legality of the marriage. In Islam, Nikah is a sacred social contract and one of the most encouraged sunnahs of the Holy Prophet

Muhammad (Peace be upon him). The Holy Quran in Surah Al-Nisa (24:3) emphasizes the institution of marriage as a means of tranquility and protection. A woman of sound mind and sui juris is competent under both Islamic Law and Statutory Law of the state to enter into a valid marriage at her own free will, without requiring the permission of wali (guardian), a view upheld by a number of classical and contemporary Jurists. Jurisprudence from this Court and from Pakistan jurisdiction, especially landmark judgment *"Hafiz Abdul Waheed vs. Mrs. Asma Jehangir & another"* [1] affirms that sui juris Muslim woman has the legal autonomy to contract marriage, and such union cannot be criminalized merely because it contravenes the wishes of family. The offence of Zina, a serious Hadd crime, requires strict proof laid down in the Quran and Sunnah. A decision cannot be made just on suspicion or conjectures. It must be based on solid evidence and proven facts. Even strong suspicion is not enough to replace actual proof. The Holy Quran explicitly warns against false accusation in S urah Al-Noor (24:4) prescribing eighty lashes for those who falsely accuse chaste women without four eyewitnesses. In this case, the existence of a registered marriage ipso facto negates the presumption of illicit relations. The presence of a valid Nikah not only induces doubt but fully negate the possibility of zina, making the prosecution's case entirely devoid of legal merit.

6. The continued prosecution of the petitioner under the impugned F.I.R., despite clear documentary and legal evidence of Nikah, amounts to a travesty of justice. The

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[1] PLD 2004 SC 219

criminal justice system must not be weaponized to settle personal or familial disputes under the garb of morality. It is the duty of the High Court, under section 561-A Cr.P.C. to prevent the abuse of the process of law and to secure the ends of justice. The respondents being husband and wife in the eyes of law and under Islamic Law, are entitled to the full protection of their constitutional rights including liberty, dignity and privacy under Article 3-G of Azad Jammu and Kashmir Interim Constitution, 1974.

7. In light of the above, the learned High Court has rightly appreciated both the facts and the applicable legal principles while considering the voluntary statement of respondent No.1 upon finding no legal justification for continuation of the criminal proceedings, the Court correctly quashed FIR No. 30/2025 along with all proceedings arising therefrom.

Consequently, the writ petition was rightly allowed, and the present petition, devoid of merit, is hereby dismissed.

JUDGE

Muzaffarabad,
02.05.2025