

1991 Law Notes (S. C.) (885)

Present : Muhammad Afzal Zullah C.J, Saad Saood Jan, J

FAHEEMUDDIN Vs. SABEEHA BEGUM

Criminal Appeal No. 128 of 1989 decided on 10-6-1991

(On appeal from the judgment dated 3-10-1991 of the Lahore High Court, Lahore, in Crl. Misc. No. 223/Q of 1989).

Muslim Family Laws Ordinance (1961)—S. 6 read with R. 21 of the Rules under the Ordinance as amended for Punjab—Second wife is an aggrieved person within the meaning of the Section 6 and has locus standi to file a complaint for alleged offence of polygamy under the said section.

Paras 6, 7

Ch. Mushtaq Ahmad Khan, ASC S. Abul Aasim Jaferi, AOR for the appellant.

Ch. Khalilur Rehman, Sr. ASC Sh. Salahuddin, AOR for respondent No. 1.

Ch. M. Anwar Ghumman, ASC for respondent No. 2.

JUDGMENT

Muhammad Afzal Zullah, C J.—This appeal through leave of the Court is directed against the judgment of the Lahore High Court; whereby the appellant's Petition under section 561-A of the Code of Criminal Procedure was dismissed.

2. The appellant who was already married during the subsistence of the first marriage, solemnised another marriage without obtaining the permission of the arbitration Council, under the Muslim Family Laws Ordinance, 1961. The respondent No. 1 who is the second wife filed the complaint under section 6 of the Family Laws Ordinance before a Magistrate for prosecution and punishment of the appellant on the charge of having committed offence of marrying another wife during subsistence of the first marriage without the permission of the arbitration council. The trial Court found, prima-facie, enough substance in the complaint and the appellant was summoned to stand trial. Instead of facing the trial the appellant filed a direct petition in the High Court under section 561-A Cr.P.C. for quashment of the proceedings before the Magistrate on the ground that the said proceedings amounted to abuse of process of law. The High Court dismissed the petition.

3. Leave to appeal was granted to examine: whether the second wife "has no locus standi to file a complaint for the alleged offence by the husband of polygamy as she is not an aggrieved person within the meaning of Section 6 of the Muslim Family Laws Ordinance because the said provision is intended for the protection of the rights of the first wife rather than that of the subsequent wife".

Section 6 reads as follows:—

6. (1) No man, during the subsistence 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 Sub-section (1) shall be submitted to the Chairman in the prescribed manner together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto

(3) On receipt of the application under Sub-section (2), 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, any on

payment of the prescribed fee, prefer an application for revision, in the case of West Pakistan to the Collector and, in the case of East Pakistan, to the Sub-Divisional Officer 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 ;

- (a) pay immediately the entire amount of the 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 complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Rules have been framed regarding the procedural aspects relating to prosecution, Rule 21 reads as follows :—(as amended for Punjab)

"21. No Court shall take cognizance of any offence under the Ordinance or these rules save on a complaint in writing by the aggrieved party, stating the facts constituting the offence."

4. Learned counsel has raised two contentions in support of this appeal. One, that the respondent's second wife was not an aggrieved person. And secondly, that any and every person who felt "aggrieved" could not file a complaint, only a "party" could file a complaint.

5. Dealing with the question of the grievance in this case we do agree with the learned counsel that when originally enacting, in all probability, the statutory protection was intended to be given to the first wife. But there is nothing in the language used in Section 6 which could be interpreted as having carried out such a limited intent. On the contrary the subject matter in Section 6 is treated in such a manner that any person could also in addition to the first wife make a grievance. And looking at the Schedule of the Criminal Procedure Code particularly the items relating to the offences created under Special Laws, the offence created by Section 6 could as well have been treated as a cognizable offence. If it would have been a cognizable offence the question of the condition regarding an aggrieved person filing a complaint would not have arisen. It appears, in Punjab the procedural restriction has been placed so as to avoid further complications in matrimonial matters. Whether or not such a restriction could be imposed under the authority of the Statute itself, the question has not been raised from the respondent's side and obviously the appellant would not be interested in raising it. We, therefore, leave it at that.

6 Coming back to the question: whether or not the respondent's second wife was aggrieved by omission of the appellant in not obtaining the requisite sanction under section 6, it will have to be kept in mind that the recent trend of authority by this Court is towards expansion of the connotation of the

word "aggrieved" rather than restricting it. Indeed, this also appears to be the trend in many other civilised systems.

Apart from the foregoing general consideration, we do not agree with the learned counsel that a second wife cannot be an aggrieved person if there is no permission under section 6. Firstly, as has been alleged from the respondent's side in this case the appellant had made misrepresentation about his first marriage. This would shatter the faith of a loving wife in her husband, this esteem may dwindle considerably in her view. This besides causing unhappiness to the husband would also cause serious grievance to the second wife whose expectations of a harmonious married life would suffer. Secondly, as a corollary from the foregoing, the act or omission of husband in such a case in her view would amount to an offence as it is punishable as an offence. A respectable lady might feel a shock that she had been married to a criminal. Thirdly, and this is more important if the husband would have obtained requisite permission there can be visualised a possibility that she might have married him notwithstanding there being a first wife. But without such a permission she might not have married him for an obvious common place reason that she might also be treated as a criminal - atleast by extending of vicarious liability as an accessory in a crime through abetment or otherwise. And lastly there is possibility that of would be second wife, deciding not to marry a man who is not only already married; but has also, declined or failed to obtain permission to marry, for the second time. In our society marriage by young un-married girls with widowers or with man having another wife under a subsisting marriage, to a considerable extent carries a stigma also for the second wife. It is so important in our society that some social workers and organizations try to influence and prevail upon the second would-be wives not to go through such a marriage as according to them it might prove harmful for both the wives or one of them on account of the nature of a husband in not being observant of limits of God in doing justice between them in accordance with Islamic principles. And above all the ladies before solemnizing the contract of marriage do look at the qualification of the would-be husband and amongst which an important one is that he should be bachelor and unattached.

In the light of the foregoing we find no force in the arguments that the respondent, the second wife was not an aggrieved person.

7. The second argument that the respondent was not a "party" is too technical to be given any importance. Word "party" in the Rule has been used in a general sense, meaning another person who feels aggrieved and has a direct connection with the marriage in question. The word "party" here is not confined only to the party before the Arbitration Council. This is so because in many cases and the present one is one of them the husband may not approach the Arbitration Council at all. Therefore, there will be no question of any person being aggrieved in the sense that the person should be a party to any previous proceedings. In so far as the complaint itself is concerned, before the filing of the complaint it cannot be imagined that the parties in that context would exist without the proceedings. Therefore, although the complainant would be a party to the criminal proceedings, prior thereto she would not be a party. Thus the word "party" is given extended meaning.

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We, therefore, hold that the second wife amongst others is definitely a party and being an aggrieved person as also party, the respondent had lawfully instituted the proceedings before the Criminal Court. This appeal, accordingly, fails and is dismissed.

Z.M.A.

Appeal dismissed