

## IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

*Cr. Revision Application No.S-64 of 2024*

Applicants: Mst. Kalsoom and Sikandar Ali, *through* Mr. Nadir Ali Chachar, Advocate

Respondent No.1: Abdul Qayoom *through* M/s Ashique Illahi N. Sundrani and Bashir Ahmed Malano, Advocates

The State: *Through* Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General

Date of hearing: 26.6.2025

Date of decision: 26.6.2025

### **ORDER**

**Ali Haider 'Ada',J:-** Through the instant Criminal Revision application, the applicants, Mst. Kalsoom and Sikandar Ali (wife and husband), have challenged the order dated 12.08.2024 passed by the learned Additional Sessions Judge-II, Mirpur Mathelo, in Direct Complaint No.18 of 2024 filed by Respondent No.1 namely Abdul Qayoom. Through the said order, the learned trial Court took cognizance of offences under Sections 494, 495, 496 and 496-B of the Pakistan Penal Code against the applicants, brought the direct complaint on the regular file, and issuedailable warrants for their arrest.

2. The brief facts as stated in the complaint are that respondent No.1, Abdul Qayoom, claimed to be the first husband of applicant No.1, Mst. Kalsoom. He alleged that they were married on 03.03.2014, and from the said wedlock, a son named Arslan and a daughter named Zoya were born. He further stated that on 14.02.2024, Mst. Kalsoom, along with baby Zoya, left the house in the company of applicant No.2, Sikandar Ali, taking with her some gold and cash. This information was conveyed to him by his brother, Abdul Qadeer. He claimed that Mst. Kalsoom subsequently contracted marriage with applicant No.2, Sikandar Ali, despite her existing nikah with him (respondent No.1), thereby committing an offence under Section 494 PPC. He prayed for their punishment in accordance with the law.

3. Upon filing of the complaint, a preliminary enquiry was conducted, during which statements of respondent No.1 Abdul Qayoom under Section 200 Cr.P.C and those of Abdul Qadeer and Nadeem under Section 202 Cr.P.C were recorded by the learned Judicial Magistrate, Ghotki. However, after examining the record, the learned trial Court passed the order.

4. Learned counsel for the applicants argued that an earlier FIR No.66/2024 had been registered by Abdul Muneem (father of respondent No.1) under Sections 452, 365-B, 363, 337-H(ii), 147, 148, and 149 PPC, wherein a different version was narrated, alleging that applicant No.2 Sikandar Ali had abducted Mst. Kalsoom. In that case, Mst. Kalsoom recorded her statement under Section 164 Cr.P.C, stating that she had been divorced by respondent No.1 two years ago and had been residing with her parents. She further claimed that the FIR was falsely lodged. Consequently, the Investigating Officer recommended disposal of the FIR under cancel class, which was duly approved by the competent Magistrate. Learned Counsel further argued that if respondent No.1 was aggrieved by the second marriage of Mst. Kalsoom, the appropriate forum would have been the Family or Civil Court to challenge the validity of the marriage. No such action was initiated. He contended that the trial court erred in taking cognizance and that the impugned order was not sustainable in law. He relied on case law reported as *Bibi Feroza vs Abdul Hadi* (2014 CLC 60).

5. Conversely, learned counsel for respondent No.1 submitted that the earlier FIR pertained to different sections of the law, while the grievance of respondent No.1 was specifically regarding the performance of a second nikah by Mst. Kalsoom with applicant No.2 Sikandar Ali, while her first nikah with respondent No.1 remained valid. He further referred to the statement dated 19.05.2025 filed by counsel for the applicants, which included affidavits from Mst. Nazeeran (mother of Mst. Kalsoom), Abdul Qadeer, Nadeem, and Abdul Qayoom. Among these, the affidavit of Mst. Nazeeran carried significant weight as she affirmed that respondent No.1 had not divorced Mst. Kalsoom, neither orally nor in writing. Based on this, the learned counsel argued that a prima facie case was made out. He further submitted that Mst. Kalsoom, an literate woman, had sworn a free-will affidavit dated 14.02.2024 (available at page 61), claiming she was divorced. However, this must be proved by her, as otherwise, the offence under Section 494 PPC stands established. Additionally, her Section 164 Cr.P.C statement recorded on 08.03.2024 contradicts her free-

will affidavit. In support of his submissions, he relied upon case law reported as *Haji Jamil Hussain vs Illaqa Magistrate* (2012 P.Cr.L.J 159) and *Muhammad farooq vs Ahmed Nawaz Jagirani* (PLD 2016 SC 55).

6. The learned Additional Prosecutor General submitted that at this stage, the version of the respondent cannot be discarded solely based on the defense put forward by the applicants. He argued that the defense has appropriate legal remedies available to be availed in due course. He maintained that the trial court rightly observed that a prima facie case had been established. He also pointed out that this Court, on 02.06.2025, had summoned the parents of Mst. Kalsoom, but the applicants failed to produce her mother, which they were obligated to do to substantiate their stance. He thus supported the impugned order.

7. Heard learned counsel for the respective parties and perused the record.

8. Upon perusal of the material available on record, it appears that Respondent No.1, being the complainant, initiated legal proceedings through a Direct Complaint against Mst. Kalsoom and Sikandar Ali under Sections 494, 495, 496 and 496-B of the Pakistan Penal Code. For reference, the contents of the said complaint are reproduced as under:

**494. Marrying again during lifetime of husband or wife.** *Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

**Exception.** *This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,*

*nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.*

**495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted:** *Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with*

*imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

**496. Marriage ceremony fraudulently gone through without lawful marriage:** *Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.*

**496-B. Fornication:** *(1) A man and a woman not married to each other are said to commit fornication if they willfully have sexual intercourse with one another. (2) Whoever commits fornication shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.*

9. As per the foregoing circumstances, it is observed that respondent No.1 (the first husband) has consistently maintained that his marriage with Mst. Kalsoom remains intact. He has supported this claim with substantial evidence. Furthermore, the mother of Mst. Kalsoom has categorically denied that any divorce, oral or written was ever given by respondent No.1 to her daughter.

10. On the other hand, Mst. Kalsoom, in her statement recorded under Section 164 Cr.P.C., stated that she had been divorced and was residing with her parents. However, in her earlier free-will affidavit, she asserted that she had left her parents house with only three sets of clothes due to certain apprehensions. These two statements are contradictory in nature, her statement recorded under section 164 Cr.P.C. pointed out that she was living with her parents, while the free-will affidavit indicated that she had left them under duress or fear. This contradiction between the two statements raises serious questions regarding the veracity of her claim. Tentatively, it appears that there are material factual controversies that require adjudication based on evidence. Therefore, at this stage, it is imperative that evidence be recorded to ascertain the truth of the matter, particularly with respect to the subsistence, which directly affects the applicability of the alleged offences under Sections 494, 495, 496 and 496-B PPC.

11. So, far as the offences under Sections 494, 495, 496, and 496-B of the Pakistan Penal Code are concerned, the matter involves disputed questions of fact which cannot be resolved without recording evidence. Therefore, a

full-dressed trial is required, wherein both parties shall have the opportunity to produce their version to establish or rebut the charges.

12. It is a settled principle under criminal jurisprudence that when a direct complaint is filed, the initial order passed by the trial Court does not amount to a judgment. The grounds for acquittal are entirely distinct from the grounds on which tentative or interlocutory orders, such as entertaining a direct complaint are to be challenged. As per law, the matter is to be assessed after recording the complainant's statement under Section 200 Cr.P.C., the statements of witnesses under Section 202 Cr.P.C., and, where necessary, conducting a preliminary enquiry and collecting supporting material. Only after such procedural steps, the Court to pass an order regarding cognizance. An order passed under Section 204 Cr.P.C. merely empowers the Court to proceed with the trial and cannot be treated as a judgment or a final order. In contrast, a judgment denotes a final adjudication rendered by a competent Court after the complete trial proceedings have been concluded. Reliance in this regard is placed on the case of *Iqbal Hussain Shah and another v. The State and 3 others* (2012 P.Cr.L.J. 848).

13. As far as the defense version is concerned, it cannot be considered at this preliminary stage. The appropriate stages for considering the defense are either through an application for acquittal under the relevant provisions of Cr.P.C. or at the time of recording the statement of the accused under Section 342 Cr.P.C., during the course of a full-dressed trial. Reliance is placed upon the case of *Muhammad farooq vs Ahmed Nawaz Jagirani* (PLD 2016 SC 55).

14. The record reveals that Mst. Kalsoom is the central figure in the case, upon whose role the entire prosecution hinges. However, when a prima facie case indicates that her version is inconsistent and rests on differing claims, the contents of the complaint require proper affirmation through the recording of evidence during trial.

15. In relation to, the FIR is concerned; it pertains primarily to the offence under Section 365-B PPC. However, in the direct complaint, respondent No.1, despite claiming to be the husband of Mst. Kalsoom, he confined his complaint to the allegations under Section 494 PPC. Nevertheless, the implications of fornication or other related offences under the law cannot be overlooked and require careful examination during trial.

16. In view of the above discussion and legal analysis, it is evident that the allegations raised in the direct complaint require proper adjudication through a full-dressed trial and after careful examination of the material available on record. Accordingly, the impugned order dated 12.08.2024, passed by the learned Additional Sessions Judge-II, Mirpur Mathelo, requires no interference. Consequently, this Criminal Revision Application is devoid of merit and is hereby dismissed.

*JUDGE*

SulemenKhan/PA