IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Miscellaneous Application No.S-177 of 2022

Dates of hearing: 02.09.2022, 09.09.2022 & 16.09.2022.

Date of decision: 30.09.2022.

Raja Hans Raj Naurang advocate for applicant along with applicant.

Mr. Mehfooz Ali Laghari advocates for respondent No.3 & 4 along with respondent No.3 & 4.
Mst. Murk produced from Darul Amann.

Mrs. Razia Ali Zaman Khan, Mr. Ishrat Ali Lohar, Muhammad Jamil Ahmed and Mr. Sajjad Ahmed Chandio, amicus curie.

Mr. Shahzado Saleem Nahiyoon, Additional P.G.

ORDER

Muhammad Iqbal Kalhoro, J: Finding it hard to retrieve his wife and 4 minor children, alleged detainees, from custody of respondents 3 and 4, the abductors, petitioner by means of this petition, filed on 17.03.2022, is seeking issuance of Rule Nisi, directing police officials concerned, for their recovery. After notice, when the detainees and their alleged abductors were produced in the court on 28.03.2022, resp. 4 made a statement that his son, resp. 3, had married with Shrimiti Nagaina, wife of the petitioner, after she had embraced Islam and was named as Mst. Murk. The court, because of her silence during the hearing, assumed her to be under some kind of duress and sent her to Darul Amann, and meanwhile handed over custody of minors to the petitioner, their father. But when she appeared on subsequent dates of hearing denied her abduction and disclosed that she had accepted Islam and married with resp.3 out of her free will and choice. And that she was not happy with the petitioner and therefore had left him, and was not willing to go back to him or previous life. The petitioner, au contraire, pleaded for her restoration to him.

2. Ensuing discussion centered around the question about status of such marriage in Islam and what is the right procedure to be followed in such circumstances. For assistance, Ms. Razia Ali Zaman Khan, Mr. Ishrat Ali Lohar and Mr. Sajad Ali Chandio advocates were appointed as amicus curiae. With their valuable assistance, for which I am really thankful to them, I was able to lay hands on following case law in which similar situation, more or

less, was before the court and dealt with accordingly. **PLD 1988 SC 713, PLD 1988 FSC 78, NLR 1989 SD 640, 1997 MLD 158 and PLD 2020 Lahore 489.**

3. Of them, the case reported as **Mst. SAFIA BIBI Vs. MUHAMMAD ARIF, A.S.I. and 3 others [1997 M L D 158 Lahore]** deserves a special mention. In this case, same controversy, being attempted here, has been decided. Facts of this case are that one Mst. Safia Bibi, born Christian by faith, was married in 1989 to a Christian named Nazir and had a female child Maria from him. She embraced Islam on 7-10-1994, certified by a Madersa as voluntary, and then on 16-10-1994 entered into Nikah with a Muslim man namely Abdul Rehman, assuming that on accepting Islam, her marriage with her previous husband, who did not embrace Islam, had stood dissolved. This position was challenged by her previous husband in a petition filed by her seeking protection against harassment being caused to her in the form of FIR No.233/94 registered by him against her u/s, amongst others, 16 of the Offence of Zina (Enforcement of Hudood) Ordinance 1979 narrating her abduction and his vain efforts to recover her. Learned Lahore High Court after hearing the parties framed the two questions for resolving the matter: (i) whether the marriage of a Christian woman who embraces Islam would *ipso facto* stand dissolved, and (ii) whether in such circumstances the woman is not required to observe Iddat and can re-marry without observing Iddat period?

4. Noting that the same questions had also come under discussion in three other Writ Petitions Nos.4110/95, 3885/95 and 15214/94, and were of public importance, learned Lahore High Court decided to seek an opinion from Maulana Abdul Qadir Azad, Raees-ul -Tabligh Auqaf Department, Mr. Muhammad Ismail Qureshi and Mr. Abid Hassan Minto, Advocates. Their detailed replies, incorporated in the judgment, are quoted herein under as well for guidance.

Maulana Abdul Qadir Azad: (i) the woman who converts to Islam must inform her husband regarding her conversion, and must offer the faith to her husband. If the husband refuses to embrace Islam then the marriage would be dissolved;

(ii) thereafter the woman must pass 90 days' period of Iddat whereafter she could enter into a fresh marriage. However, if she enters into fresh marriage before the expiry of the Iddat period, her Nikah will be *Fasid*

(irregular) and not *Batil* (void). However, she would need to enter into fresh Nikah after expiry of Iddat period in order to regularize the marriage.

Muhammad Ismail Qureshi Advocate: (i) the marriage of a Christian woman who converts to Islam would *ipso facto* stand dissolved. Since the Holy Qur'an explicitly prohibits marriage with disbelievers;

(ii) a woman must observe Iddat after her marriage is dissolved in any manner including through conversion. However, if she gets married during Iddat period such marriage would be *Fasid* (irregular) and not *Batil* (void). However, an irregular marriage could be regularized by fresh Nikah after the period of Iddat.

Mr. Abid Hassan Minto, Advocate: (i) the marriage of a non-Muslim woman who embraces Islam would not *ipso facto* stand dissolved. If the conversion takes place in Darul-Islam, such as Pakistan two steps are necessary to be taken before the non-Muslim marriage is brought to an end i.e. (a) the convert wife shall offer Islam to her non-Muslim husband and if he does not accept the offer then (b) the matter shall be placed before a Judge with jurisdiction who shall pronounce dissolution of the marriage. (ref. (i) Muhammadan Law by Syed Amir Ali, Vol.II, p. 346 (7th Edn.); (11) Outlines of Muhammadan Law by A.A. Fyzee pp.173-176);

(ii) Iddat is compulsory after dissolution of marriage of any character. The Iddat is imposed to ascertain whether the woman is pregnant by earlier husband so as to avoid confusion of parentage. However, marriage contracted during Iddat is merely *Fasid* (irregular) and not *Batil* (void). It appears doubtful that any criminal liability will arise out of *Fasid* marriage (ref. (i) Fyzee, pp.106-108, (ii) Mullah Section 264 and 267, (iii) Amir Ali Vol II pp.300-304. The change in religion has to be genuine and that is why that matter should be referred to the competent Court for dissolving the marriage. The Court has to determine on evidence in each case, whether the conversion is *prima facie* genuine or only a pretext. In the first case findings shall operate as a defence against criminal prosecution and in the other it shall make the perpetrator of the act offenders of law.

5. While acknowledging such invaluable opinions, learned Lahore High Court has proceeded to refer to consensus among the Muslim Jurists of all Schools of Thought that the marriage of a non-Muslim woman who embraces Islam while her husband remains a

disbeliever must be dissolved, since the Holy Qur'an explicitly prohibits Muslim women from marrying disbelievers. But at the same time it has noted that there is no consensus among them regarding the procedure to be followed for dissolving the marriage in such situation. Then, a reference has been made to the view, along with supporting cases, of author of a book "Outlines of Muhammadan Law" by Asaf A.A. Fyzee (Oxford University Press, 1964 p.169, 173) that as per general principles of Muhammadan Law, a person who embraces Islam is immediately governed by Islamic Law, and that the conversion of a non-Muslim wife to Islam does not *ipso facto* dissolve her marriage with her husband: (1948) 2 Cal. 119, Rakeya Bibi v. Aneel Kumar Mukar Jee, (1942) 2 Cal. 165 (Noor Jehan v. Euqene Tischenko), (1949) 2 CWN 745 (Sayenda Khatoon v. M. Obadiah, and (1946) 48 Bom. LR 864 (Robaba Khanum v. Khodadad Bomanji Irani). Then, learned Lahore High Court has quoted a different view expressed in the case of Faiz Ali Shah v. Ghulam Akbar Shah (PLD 1952 Azad J&K 32) that the marriage of a Hindu woman who converts to Islam is automatically dissolved.

6. Next, observation of Syed Ameer Ali, cited in his book titled Muhammadan Law (PLD Publishers, 1965, Vol. II, page 346), has been quoted that when the adoption of Islam takes place in a country where the laws of Islam are not in force, the dissolution of a marriage is suspended until the wife has completed three of her 'terms' whether co-habitation had taken place or not, and on the completion of three terms' the marriage is definitely dissolved and she can marry again. However, if the conversion takes place in a country subject to the laws of Islam, the faith will be offered for acceptance to the husband, and on his refusal the Judge will make a decree of separation or cancellation of the marriage. Then, S.8 (4) (1)A in Mulla's Principles of Muhammadan Law, 1984 Edition, p. 7, S. 7) has been cited which states that in a country subject to Muslim Law, when one spouse of a non-Muslim marriage embraces Islam, he or she should offer Islam to the other spouse and if the latter refuses the marriage can be dissolved.

7. Thereafter, two very important cases on the point have been quoted: Mst. Naziran v. State, decided on 25-6-1986, in which the Federal Shariat Court has upheld conviction of Mst. Niziran, appellant, under section 10(2) of the Zina Ordinance, 1979 and section

494, CrPC observing that she had entered into marriage with a Muslim man after conversion to Islam without having offered Islam to her Christian husband Bahadur Masih; and PLD 1988 FSC 78 (Sardar Masih v. Haider Masih) laying down that if a non-Muslim wife embraced Islam and her non-Muslim husband did not embrace Islam within Iddat period despite his knowledge that his wife had become Muslim, the marriage would *ipso facto* stand dissolved. However if the Christian husband embraced Islam within the period of Iddat the previous marriage would remain intact.

8. The Hon'ble Supreme Court of Pakistan, where Mst. Niziran challenged judgment of the Federal Shariat Court, while setting aside her conviction has opined (PLD 1988 SC 713) that if a Christian woman embraces Islam and after Iddat period marries a Muslim man, she will not be liable to Zina. If the Christian husband embraces Islam after completion of Iddat period of his wife despite his knowledge that she had embraced Islam and after Iddat period had married a Muslim man, she will not be liable to Zina. Because, in such situation, on completion of Iddat period, her marriage had already stood dissolved with him (non-Muslim husband). It is further held in the said judgment that in a Muslim country such as Pakistan when a non-Muslim woman embraces Islam, the law/procedure should be that the convert to Islam should file a suit for dissolution of marriage in Court and the Court should offer the non-Muslim husband the option to embrace Islam. If he embraces Islam the marriage will continue to subsist between the parties. But if he refuses to embrace Islam the marriage would stand dissolved. However, since currently there is no procedure laid down as to how the marriage between a non-Muslim and a woman, converted to Islam, would be dissolved, it is desirable for the woman to offer Islam to her husband, but it is not mandatory for her to do so and her marriage would automatically stand dissolved after expiry of period of Iddat, if her husband has failed to embrace Islam. At page 713, incident of Abadah bin Nauman married to a woman of the Banu Tamim Tribe is quoted. She converted to Islam and appeared before the Caliph Umar, who informed Abada that he should embrace Islam else his wife would be taken away from him. Abada refused to embrace Islam upon which Hazrat Umar dissolved the marriage between them. It is held that in the light of this decision of Caliph Umar, the law should be laid down in Pakistan that

when a married non-Muslim woman embraces Islam, she must approach a Court with an application for dissolution of her marriage. The Court should summon her husband and offer him the option to embrace Islam. If he embraces Islam, the Court shall declare the earlier marriage to be subsisting, and if he refuses to embrace Islam, the marriage should be declared to be dissolved. My own search on this point has led me to page 683 of following book, reproduced herein below, where the same point has been discussed. The findings entirely ally with and are in synchronization to what has been stated above. That there would be Iddat period for a wife to observe after her conversion to Islame and during that period if husband also embraces Islam the marriage would continue, and if not, the marriage would be dissolved. And, if husband or wife accepts Islam, the other one would be offered to follow suit if he or she wishes to continue with marriage, if not then after Iddat period the marriage would be dissolved.



دوسرا مسئلہ: زوجین میں سے کوئی پہلے اسلام قبول کرلے

زوجین میں سے کوئی ایک پہلے مسلمان ہو جائے اور دوسرا بعد میں اسلام قبول کرے تو اس میں علما کا اختلاف ہے۔ امام مالک، امام ابوحنیفہ اور امام شافعی کہتے ہیں کہ اگر بیوی پہلے مسلمان ہو تو شوہر اگر دوران عدت میں مسلمان ہو جائے تو وہی اس کا زیادہ حقدار ہے اور اگر مرد مسلمان ہو اور بیوی کتابیہ ہے تو نکاح باقی رہے گا کیوں کہ حدیث صفوان بن امیہ سے یہ ثابت ہے۔ ان کی بیوی عاتکہ بنت الولید بن المغیرہ نے ان سے پہلے اسلام قبول کیا پھر شوہر مسلمان ہوئے تو اللہ کے رسول ﷺ نے ان کا نکاح باقی رکھا۔

فقہا کہتے ہیں کہ صفوان اور ان کی بیوی کے اسلام قبول کرنے کے درمیان ایک ماہ کا وقفہ تھا۔ ابن شہاب کہتے ہیں کہ ہمیں نہیں معلوم کہ کسی عورت نے رسول اللہ صلی اللہ علیہ وسلم کی طرف ہجرت کی ہو اور اس کا شوہر کافر ہو اور دار کفر میں مقیم اور ہجرت کی وجہ سے دونوں کے درمیان تفریق نہ ہوگئی ہو الا یہ کہ بیوی کی عدت ختم ہونے سے پہلے شوہر نے بھی ہجرت کر لی ہو۔

بیوی سے پہلے شوہر مسلمان ہو جائے تو اس میں علما کا اختلاف ہے۔ امام مالک کہتے ہیں کہ ایسی صورت میں بیوی کے سامنے اسلام پیش کیا جائے اور وہ مسلمان ہونے سے انکار کر دے تو دونوں میں تفریق ہو جائے گی۔ امام شافعی کہتے ہیں کہ خواہ شوہر پہلے مسلمان ہو یا بیوی اگر بعد میں اسلام قبول کرنے کا عمل دوران عدت ہو تو نکاح باقی رہے گا۔

اختلاف کا سبب حدیث کے عموم اور قیاس میں تعارض ہے کیوں کہ آیت

وَلَا تُمْسِكُوا بِعِصَمِ الْكَوَافِرِ (الممتحنہ)

(اور کافر عورتوں کو اپنی زوجیت میں نہ روکے رکھو۔)

کا تقاضا ہے کہ جدائی فی الفور عمل میں آئے۔ اس عموم کے برخلاف حدیث یہ ہے کہ ابوسفیان بن حرب نے اپنی بیوی ہند بنت عتبہ سے پہلے اسلام قبول کیا۔ ان کے قبول اسلام کا واقعہ مرالظہران میں پیش آیا تھا۔ وہ مکہ لوٹے تو ہند حالت کفر میں تھیں۔ انہوں نے شوہر کی داڑھی پکڑ لی اور چیخ اٹھیں اس گمراہ بوڑھے کو قتل کر دو۔ اس کے کچھ دنوں بعد وہ مسلمان ہو گئیں اور دونوں کا نکاح باقی رہا۔ قیاس حدیث کے خلاف اس وجہ سے ہے کہ شوہر پہلے مسلمان ہو یا بیوی اس سے کوئی فرق واقع نہیں ہوتا۔ اگر عورت کے پہلے مسلمان ہونے میں عدت ہی معتبر تھی تو شوہر کے پہلے مسلمان ہونے میں بھی اسی کا اعتبار کیا جاتا ہے۔

9. The learned Lahore High Court, in the end, while summing up discussion, mostly based on the opinion of earlier jurists as well as the learned amicus curiae, and keeping in view the case of Mst. Naziran (PLD 1988 SC 713), has laid down following principles: (i) if a married non-Muslim woman embraces Islam she must inform her husband of the conversion; (ii) the husband either embraces Islam within the period of Iddat in which case the marriage continues, or he remains a non-Muslim even after expiry of Iddat period, in which case the marriage would stand dissolved; (iii) Iddat is compulsory after dissolution of marriage of any character. The Iddat is imposed in order to provide opportunity to the non-Muslim husband to consider whether he wishes to embrace Islam and also as a matter of public policy in order to ascertain whether the woman is pregnant by earlier husband so as to avoid confusion of parentage; and (iv) Specific procedure needs to be laid down as to how a marriage is to be

dissolved in case the husband does not convert to Islam during the period of iddat.

10. Facts of this case, as they stand, reveal that wife of petitioner had left his house on 15.01.2022. And she, as per her own affidavit, embraced Islam and married with resp.3 on17.01.2022, just after two days. There is no evidence to show that before leaving the house she had informed the petitioner of her intention to accept Islam, and offered him to follow her if he wanted to continue as her husband, and only on his refusal had left him. Nonetheless, clause 5 of her affidavit discloses that she had done so-- offered Islam to the petitioner-- but he had refused to oblige and hence she had left him. But one thing is striking, this affidavit is written in English whereas both petitioner and her are illiterate and cannot write in and/or read even any vernaculars. Language of the affidavit and its style betray it to be a prototype document used generally in all such cases without distinction, and more so she executed it after she had already left house of the petitioner. Thereafter, there is no evidence, nor any claim is made, that she ever happened to meet with the petitioner and made him her offer. She, when asked in the court, did not seem to know contents of her affidavit except that it was a testament of her conversion to Islam. Neither had she any idea, or the petitioner, of any offer made by her to him to abjure his religion and accept Islam, nor did she allude to any such assertion by her in the hearings.

11. The position now is that Mst. Murk is Muslim, was Hindu earlier, married with petitioner and bore 4 four children from him. Before her conversion to Islam, she did not inform petitioner of her intention, and after conversion she did not observe Iddat before marrying resp.3. The principles highlighted above stipulate that in a Muslim country like Pakistan, a married non-Muslim woman who has embraced Islam shall inform her husband of her conversion and offer him to accept her new religion. If husband agrees within the period of Iddat, the marriage continues, otherwise, after expiry of Iddat period, the marriage would be dissolved. It bears reiterating that Iddat is compulsory firstly in order to provide an opportunity to a non-Muslim husband to consider whether he wishes to embrace Islam, and secondly, as a matter of public policy, to ascertain whether the woman is pregnant by earlier husband so as to avoid confusion of parentage. It is the same scheme which learned Lahore High Court has finally declared in its order. However, for getting

confirmation of dissolution of marriage, it has laid down that the woman can apply to the Family Court where she resides, for dissolution of marriage on the ground of her conversion. The Court must summon her husband, inform him that his wife has embraced Islam and offer him to do so. And if he does not accept the offer within the period of Iddat the Court shall declare the marriage as dissolved. The woman would then be entitled to enter into second marriage with a Muslim man. It is further held that this procedure must be adopted in order to preclude the possibility of exploitation of religion merely for the purpose of satisfying sexual desires without any regard for one's family responsibilities.

12. Notwithstanding such declaration, having perennial effects on the subject, it is not clear as to what is to be done with a lady who neither suggests to her husband to accept Islam on her conversion, nor does she observe Iddat before marrying a Muslim man like Mst. Murk, and more importantly what would be the status of such marriage in such situation. Opinion of **Maulana Abdul Qadir Azad** quoted above apparently offers some solution in this respect. He is of the view that if she enters into fresh marriage before expiry of the Iddat period, her Nikah will be *Fasid* (irregular) and not *Batil* (void). And she would need to enter into fresh Nikah after expiry of Iddat period in order to regularize the marriage. His opinion has been endorsed by **Muhammad Ismail Qureshi Advicate** in the words that if she gets married during Iddat period, such marriage would be *Fasid* (irregular) and not *Batil* (void). And that an irregular marriage could be regularized by fresh Nikah after the period of Iddat. **Mr. Abid Hassan Minto, Advocate** in his opinion does not seem to differ with such exposition when he quotes that marriage contracted during Iddat is merely *Fasid* (irregular) and not *Batil* (void). It appears doubtful that any criminal liability will arise out of Fasid marriage (ref.: (i) Fyzee, pp.106-108 (ii) Mullah Section 264 and 267 (iii) Amir Ali Vol II pp.300-304.

13. Perhaps, keeping in view such obvious scheme of the religion on the subject, the Honorable Supreme Court in the case reported as PLD 1988 SC 713, and learned Lahore High Court in the case as 1997 MLD 158 have desired for a legislation providing a procedure facilitating a fresh convert to apply to the Family Court where she resides for dissolution of marriage. Which shall set in motion a course entailing summoning of her husband by the court to offer him Islam if he wishes to continue

with the marriage, and if he does not do so within the period of Iddat, declare the marriage as dissolved. It may be clarified that necessity to approach the court for dissolution of marriage has been emphasized because it has genesis in the precedent of a woman of the Banu Tamim tribe who after conversion to Islam had approached Hizrat Umar. He had sent for her husband Abada and offered to him embrace Islam, and when he refused, Hazrat Umar dissolved the marriage between them.

14. Unfortunately, the recommendations of the Apex Courts have fallen on deaf ears and so far no legislation on such lines has ever been considered. Absence of such law, however, is not fault of, or attributable to, Mst. Murk, who, for record, has not accepted Islam under any coercion or chicanery but on her own free will and choice, and therefore she is not liable to any action under a criminal law. Nevertheless, it bears mentioning that the province of Sindh has made an enactment called the Sindh Hindu Marriage (Amendment) Act, 2018 to create a uniform law to protect rights of Hindu marriages and for matters, incidental or ancillary thereto, which attempts to puzzle out the relevant issues confronted by the said community to a considerable extent. Nonetheless, it appears to be merely a first step in this direction. In terms of section 11, on the grounds enumerated therein, a party in Hindu marriage, on a petition filed in the court, can seek decree of termination of his or her marriage. One of the grounds available for this purpose is that he or she has ceased to be Hindu by conversion to another religion. For a ready reference the said provision of law is reproduced herein under.

> **11. Any Hindu marriage solemnized whether before or after commencement of this Act may, on a petition presented to the Court by either a husband or a wife, be terminated by decree of termination of marriage on the ground:-**
>
> **(a) That the other party:-**
>
> **(i) has, after the solemnization of the marriage, treat the petitioner with cruelty, or**
>
> **(ii) has deserted the petitioner, for a continuous period of not less than two years immediately preceding the presentation of the petition or**
>
> **Explanation- In this clause, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and**

includes the willful neglect of the petitioner by the other party to the marriage: or

(iii) has ceased to be Hindu by conversion to another religion, or

(iv) ---------
(v) ---------
(vi) ---------
(vii) ---------
(b) ---------
(2) --------
(a) ---------
(b) ---------
(c) ---------
(d) ---------

15. A reading of this provision indicates that a party seeking termination of his or her marriage is bound to file a petition in the family court on any one or more of the grounds cited therein. Against some of the grounds an explanation to induce/institute a necessary clarification has been provided, but insofar as the ground— ceased to be Hindu by conversation to another religion— is concerned, no further details are set out. Such as whether such petition has to be filed immediately after one has ceased to be Hindu or that a wife has a room to file such petition at any time during her Iddat period (three months, essentially) or even after Iddat period, if yes, then exactly within how much period. And, then, is it necessary for the court to ask her husband, on his appearance, whether he is ready to accept her new religion (Islam, here) before issuing a decree of termination of marriage. And what if the husband accepts the offer and converts to Islam, whether the marriage would in such a case be deemed to continue or can still be declared as terminated. And if the husband refuses to accept Islam whether the family court shall wait and ask him finally at the expiry of the Iddat period of his decision about embracing new religion of his wife before announcing termination of marriage between them. What if the wife, who has ceased to be Hindu, contracts marriage with a Muslim man next day of her conversion, without either informing her husband of such fact and without observing Iddat period? What is the procedure of termination or dissolution of a forced marriage of an underage girl under this law? These and other questions ancillary and relevant to them have not been attended to at all while legislating on the subject through 2018, Act.

16. Notwithstanding the aforesaid questions wanting answers, section 14 of *ibid* law prescribes a period of six months for a

party to remarry after his/her marriage has been annulled or terminated by a decree of nullity or decree of termination and after the time for appeal has expired or an appeal preferred but has been dismissed. The six months' time without any specified stipulation, irrespective of its legality being a mandate of the law, provided to a party for a fresh marriage is conspicuously not what Islam has ordained, discussed above, in this respect. More so, it also conveniently ignores a very important point: who is responsible for providing sustenance / maintenance, for such period, to the wife. A Hindu married girl converting to Islam would not be welcome even by her own relatives, let alone relatives of her previous husband. She for 6 months is not permitted to contract a fresh marriage. In such situation, it is necessary upon the State to devise some formula to sustain her for such period. There is none in 2018 Act, nor any consequence to follow, except section 20 (i) which stipulates that the person who contravenes provisions of this Act or rules made there under shall go though simple imprisonment extending to three months or with fine upto one thousand rupees or with both.

17. Mst. Murk, ex-wife of petitioner had embraced Islam and married with resp.3 just after two days of leaving the house of the petitioner. She in the court has affirmed these facts in no unambiguous words, and has reiterated that her marriage with resp.3 was with her free will and choice and that she was not coerced into such union. Her being Muslim, by her own choice, is undisputed and thus an irreversible fact from the point of view of our religion. The only irregularity, which can be highlighted, in her second marriage, however, is that she did it without observing Iddat period on her conversion and her failure to offer Islam to the petitioner. The latter irregularity— failure to offer Islam to her husband on her conversion-- has become inconsequential in consequence of former irregularity-- marrying without observing Iddat period. But, such marriage, it must be borne in in mind, is not considered as *Batil* (void): a marriage performed in violation of perpetual and absolute impediments and is therefore null and void *ab initio* and no legal consequence flows from it, but *Fasid* (irregular): a marriage that involves temporary impediments or prohibitions and can be rectified or cured to become valid by removing such prohibitions. Therefore, notwithstanding the consequences of her act— marrying without observing Iddat period on her conversion, or failure to file a petition for this purpose in the court and waiting for six months after final decision-

- amenable it might be to 2018 Act that petitioner may pursue if he so wishes, such irregularity here can be cured by Mst. Murk by entering into a fresh Nikah with resp.3 since the period of her Iddat period has already expired by now. There is no room, either in law or in religion to restore her to the petitioner, who up-till now is a non-Muslim, or push her back to previous life of a non-Muslim after her conversion to Islam. Further, she, in the light of judgments, and the opinions of renowned jurists of their time quoted above, is not liable to a chargeable offence, for such irregularity.

18. For foregoing discussion, the petition is dismissed. Mst. Murk is ordered to be released from Darul Amann forthwith. It is further declared that her marriage with resp.3 contracted during Iddat period is *Fasid* (irregular) and not *Batil* (void), she shall enter into Nikah with him afresh, if she so wishes. However, for future, the principles, already laid by Lahore High Court, are reiterated herein below, with some improvement, for strict compliance.

a. If a married non-Muslim woman embraces Islam she must file a petition in the family court for termination/dissolution of marriage. The family court shall summon her husband, inform him of her conversion and offer him to accept Islam. The court then shall wait till expiry of her Iddat period for reply/decision of her husband.

b. If the husband in response to offer embraces Islam within the period of Iddat, the marriage shall continue, but if he remains non-Muslim even after expiry of Iddat period, the court may pass a decree of termination/dissolution of marriage. The woman thereafter would be free to marry a Muslim man, if she so wishes.

c. Iddat is compulsory after dissolution of marriage of any character. The Iddat is imposed in order to provide an opportunity to the non-Muslim husband to consider

whether he wishes to embrace Islam and also as a matter of public policy in order to ascertain whether the woman is pregnant by earlier husband so as to avoid confusion of parentage.

d. The family court, in case any such petition is filed by a woman, fresh convert to Islam, [or a petition is filed by parents or any guardian pleading forced marriage of their underage (below 18 years) daughter] shall proceed to determine on evidence in each case, whether the conversion (or marriage) is *prima facie* genuine (and is not forced), or only a pretext and decide accordingly. In the first case, findings shall operate as a defense against criminal prosecution and in the latter it shall make the perpetrator of the act, offenders of law.

19. The petition is disposed of accordingly. Let a copy of this judgment be distributed through the Registrar of this court among all Sessions and District judges of this province as well as all Civil/Family judges working under them for a perusal and compliance. The Registrar shall also ensure that a copy of this judgment is sent to the Secretary, Sindh Assembly for placing it before the worthy Sindh Cabinet for consideration and making necessary legislation/amendment providing a necessary explanation setting out a comprehensive procedure in, but not limited to, section 11 (iii) of the Sindh Hindu Marriage (Amendment) Act, 2018 [termination of marriage on a petition by either party in the wedlock who has ceased to be Hindu by conversion to another religion].

JUDGE