

# HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.1622/2020.

Date of Institution 21.11.2020.

Date of Decision 02.12.2021.

1. Misbah w/o Tanzeel Hussain shah.
2. Tanzeel Hussain Shah s/o Syed Bashir Hussain Shah, R/O Larri, Police Station Kahori, Tehsil Naseerabad, District Muzaffarabad.

Petitioners.

## VERSUS

To be reported.

**-Sd-  
CHIEF JUSTICE**

1. Senior Superintendent of Police District Muzaffarabad having his office at New District Complex Muzaffarabad.
2. Deputy Superintendent of Police Muzaffarabad.
3. Station House Officer Police Station Kahori, Tehsil & District Muzaffarabad.
4. Chowki Police Naseerabad Pat'hikka, Tehsil Naseerabad, District Muzaffarabad.
5. Syed Muhammad Ali Shah s/o Syed Ali Shah, Caste Syed, R/O Larri, Police Station Kahori, Tehsil Naseerabad, District Muzaffarabad.

Respondents.

**WRIT PETITION UNDER ARTICLE 44 OF THE AZAD  
JAMMU AND KASHMIR INTERIM CONSTITUTION, 1974,  
READ WITH SECTION 561-A, CR.P.C FOR QUASHMENT OF  
F.I.R. NO.123/2020, DATED 09.11.2020**

**BEFORE:- Justice Sadaqat Hussain Raja, C.J.**

### **PRESENT:**

Muhammad Pervaiz Mughal, Advocate, for  
Petitioners.

AAG for Respondents Nos.1 to 4.

Ch. A. Naeem, Advocate, for Respondent  
No.5.

### **ORDER:-**

The captioned Writ Petition has  
been addressed under Article 44 of the

Azad Jammu and Kashmir Interim Constitution, 1974, read with Section 561-A, Cr.P.C for quashment of **F.I.R. No.123/2020**, registered against petitioners at Police Station, Kahori, on 09.11.2020, in offences under sections 11, 16, 19, ZHA, 468 & 471, APC.

2. The precise facts culminating into filing of the instant Writ Petition are that petitioners are 1<sup>st</sup> Class State subjects of AJ&K and petitioner No.1, being an adult and sui-juris lady, contracted 'Nikah', as per her free consent, with petitioner No.2 on 12.10.2020 through registered 'Nikahnama' Annexure-PC dated 12.10.2020, but respondent No.5 got registered F.I.R No.123/2020 against them at Police Station Kahori Naseerabad on 09.11.2020, in offences under sections 11, 16, 19, ZHA, 468 & 471, APC. It is further averred that under the provision of law as well as Shariat, petitioners have legal right to contract

marriage with their free will, but non-petitioners with malafide intention registered the impugned F.I.R have created obstacles and hardships in their matrimonial life; therefore, by accepting the instant writ petition, the aforesaid impugned F.I.R may be quashed.

3. Upon the aforesaid writ petition, comments were summoned from respondents, who filed the same and negated the contents of writ petition as well as 'Nikahnama' and deposed that petitioner No.1 was kidnapped by petitioner No.2 with the connivance of others and they also prepared forged and fake document of 'Nikahnama'; hence, writ petition is not maintainable.

4. I have heard the learned Counsel for parties as well as the learned State Counsel and gone through record of the case with utmost care.

5. At the very outset, it is significant to observe here that this Court in exercise of writ jurisdiction is not competent to assume role of investigating agency or the trial Court to give verdict as to whether an accused-person has committed an offence or not. The aforesaid view finds support from a case reported as ***Khadim Hussain v. Abdul Basit and 6 others*** [2001 SCR 447], wherein, it was held by the Apex Court as under:-

*"Irrespective of the view taken by the High Court in the aforesaid case, we are of the view that the High Court has no jurisdiction to quash criminal proceedings at the stage of investigation or thereafter as has been held in number of cases, referred to above, by the Supreme Court of Pakistan. It may be further pointed out here that the High Court in exercise of writ jurisdiction is not competent to assume the role of investigating agency or the trial Court to give verdict as to whether an accused person has committed an offence or not. It is for the ordinary Court to decide*

*the matter under the relevant law."*

The Apex Court in a case reported as **Shan Muhammad V. Muhammad Younis & 4 others [2014 SCR 183]**, laid down that:-

*"The High Court/Shariat Court while acting under section 561-A Cr.P.C. has no power to take the role of investigating agency and declare that the F.I.R. was not correctly registered. It has powers to interfere under Section 561-A Cr.P.C. for implementation of order of the Court and to secure the ends of justice."*

Thus, this Court while acting under section 561-A Cr.P.C. has no power to take the role of investigating agency and declare that the F.I.R. was not correctly registered; however, it has powers to interfere under the aforesaid Section for implementation of order of the Court and **to secure the ends of justice.**

6. It is, now, settled law that the inherent jurisdiction of this Court under section 561-A, Cr.P.C is neither alternative nor additional in its

character and is to be rarely invoked only in the interest of justice so as to seek redressal of grievance for which no other procedure is available and that the provision should not be used to obstruct or divert the ordinary course of criminal procedure. This section confers inherent powers upon this Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. These powers are very wide and can be exercised by this Court at any time.

7. Coming to the instant case, petitioner No.1 is a sui juris lady who contracted Nikah with petitioner No.2 on her own accord. She also filed a complaint under section 107 & 151, Cr.P.C in the Court of Judicial Magistrate Muzaffarabad on 12.10.2020 stating therein that she as per her free consent wants to marry with petitioner No.2 and

she is getting record her statement without any duress, whereas her parents wants to marry her with a proclaim offender. It is pertinent to mention here that according to the injunctions of Islam, the consent of adult sane couple is sufficient for proving a valid Nikah. According to 'Nikahnama' Annexure-PC, petitioners Nos.1&2 being sui juris have lawfully married to each other and in these circumstances the offences alleged in the F.I.R are not made out against them, and continuance of investigation by the police would be a futile exercise, which may amount unnecessary harassment to the petitioners. My this view finds support from an unreported judgment of Hon'ble Supreme Court of Azad Jammu and Kashmir titled **Syed Azad Hussain Shah V. Syeda Saba Asghar & others** (Civil PLA No.86 of 2012 decided on 19.06.2012), wherein it was observed as under;-

*"Moreover, the statement of Mst. Saba Asghar, respondent*

No. 1, which is a most relevant evidence in this Court, have categorically stated that she entered into Nikah with the deceased on her own will and no one has abducted her. In the presence of the said statement, no further evidence is required in this Court. The marriage is a civil contract and every Muslim of sound mind, who has attained puberty, can enter into contract of marriage and it is void only when it is solemnized without his/her consent. According to principle of Muhammadan Law the presumption of valid marriage can be ascertained from the fact of acknowledgement by a man or woman as husband and wife".

8. It is relevant to observe here that normally F.I.Rs are not quashed; however, in the cases where it is found that a sui juris lady contracted 'Nikah' with her free consent and F.I.R has been registered against such couple on account of revenge, then such like F.I.Rs ought to be quashed in order to secure the ends of justice because marriage is a civil contract and every Muslim of sound mind, who has attained puberty, can enter into



contract of marriage and according to the injunctions of Islam, the consent of adult sane couple is sufficient for proving a valid Nikah and according to principle of Muhammadan Law the presumption of valid marriage can be ascertained from the fact of acknowledgement by a man or a woman as husband and wife; however, it is void only when it is solemnized without his/her consent. In the case in hand, according to assertion of petitioners as well as contents of 'Nikahnama' Annexure-PC, petitioners Nos.1&2 being sui juris have lawfully married to each other and in these circumstances the offences alleged in the impugned F.I.R are not made out against them and continuance of investigation by the police and dragging petitioners in the Court would be a futile exercise, which may amount unnecessary harassment to the petitioners; therefore, I arrived at the

conclusion that the impugned F.I.R is liable to be quashed.

9. Consequently, the instant writ petition is admitted and accepted; therefore, it ordered that the impugned **F.I.R. No.123/2020**, registered against petitioners at Police Station, Kahori, on 09.11.2020, in offences under sections 11, 16, 19, ZHA and 468 & 471, APC etc is hereby quashed. The copies of the instant order shall be sent to official respondents for compliance.

Muzaffarabad;  
02.12.2021.(RAH) .

**-Sd-  
CHIEF JUSTICE**