

## FOREWORD



**“IN THE NAME OF ALLAH, THE MOST GRACIOUS, THE MOST MERCIFUL”**

It gives me immense inclination to issue the Bulletin of High Court of AJ&K. The purpose of issuing this Bulletin is to publish the summarized report of newsworthy judgments (sent for reporting) of Hon’ble Chief Justice and Judges of the High Court of AJ&K on Web portal of this Court for instant proclamation to the public considering the factum of important New Law points.

This Bulletin is the unwavering endeavors of the team of whole Research Wing which includes Research and Reference Officer, Senior Librarian, Librarian and Assistant Librarians who has functioned hard towards overarching professional aptitude. The entire Research Wing has acutely aware how their work interplays with the work of other Wings of this Court.

Publication of the Bulletin will help specially the lawyer’s fraternity and particularly the Subordinate Judiciary of Azad Jammu & Kashmir to showcase how challenges can be addressed, how they can learn from each other's experiences, and how the rule of law can be further strengthened in full respect of AJ&K Interim Constitution, 1974.

May Allah Almighty help and support us in execution of our persistent duties. (AMEEN).

**JUSTICE AZHAR SALEEM BABAR  
ACTING CHIEF JUSTICE  
HIGH COURT OF AZAD JAMMU & KASHMIR**

## **Case No.1 of November 2020**

**Writ Petition No. 580/2018**

**Title:** Fayyaz Ahmed Janjua and others

*Versus*

Legislative Assembly of Azad Jammu & Kashmir through Secretary and others

**Date of Decision:** 05-11-2020

Before: **Justice Sadaqat Hussain Raja, J.**

### **Facts:**

The petitioners have sought abrogation and invalidation of the (Act XXXVIII of 2017) dated 13.09.2017 namely State Judicial Policy Making Committee Act, 2017 (SJPMC) being contempt of Constitutional provisions of the Azad Jammu & Kashmir Interim Constitution, 1974.

### **Issues:**

Whether the (Act XXXVIII of 2017) dated 13.09.2017 namely State Judicial Policy Making Committee Act, 2017 (SJPMC) is against the Constitutional provisions of the Azad Jammu & Kashmir Interim Constitution, 1974.

### **Analysis:**

Following analytical observations were instigated:

#### ***(a) Superintendent Control and Superintendence***

Under Article 46 (1) of the Interim Constitution, 1974, High Court of AJ&K is only and lonely superintendent and has control on all other subordinate courts. (Para 02, Page No. 4)

#### ***“Superintendence”***

*The word seems probably to imply the exercise of some authority or control over the person or thing subjected to oversight. (Para 16, Page No. 22)*

**(b) *Constitutional principles of Policy***

The Spirit of Constitutional principles of Policy ensuring the inexpensive and expeditious justice. (Para 05, Page No. 07)

**(c) *Amicus Curiae***

The learned Amicus Curiae barrister Humayun Nawaz khan envisage regarding the fact that as per Article 46 (1) of the Interim Constitution, 1974, there is no need of State Judicial Policy Making Committee nor such a committee can be constituted. He placed reliance following case law in this regard. 1999 SCR 01 and PLD 2013 HC (AJ&K) 34 (Para 07, Page No. 13)

**(d) *Principle of Laches***

Nothing is available on record to show that the court was not justified to apply the principle of laches. Mere delay in filing the writ petition does not justify to stay hands from going into merits of the petition and decide the same on merit. So writ petition cannot be dismissed on the sole ground of principle of laches reliance in this regard can be placed on 2020 CLC 210. (Para 10, Page No. 15)

**(e) *Locus Standi***

Question of *locus standi* or aggrieved person implied in section 44(2)(C) is *sin-quo-non* for invoking extraordinary jurisdiction of this Court but in appropriate cases when petition is filled in the larger interest of the society by a lawyer or a State Subject in which violation of the fundamental right is pointed out, then, the question of *locus standi* can be construed liberally but subject to law laid down by the superior courts in various pronouncement. Reliance in this regard can be placed on PLD 2013 HC (AJ&K) 34 (Para 13, Page No. 19)

**(f) *Article 46 of the Interim Constitution, 1974***

High Court to superintend and control all courts subordinate to it etc. (1) The High Court shall superintend and control all other courts that subordinate to it..... (Para 18, Page No. 25)

***(g) Article 203 of Constitution of Pakistan***

Article 203 of Constitution of Pakistan empowers the High Court to supervise and control all subordinate courts to it. The power is meant to enable the High Court to discharge its duties as a superior court towards fair and proper administration of justice. (Para 21, Page No. 28)

***(h) Authority of High Court***

The High Court has the authority to check and prevent dereliction of duty and to stop as well as correct violations of law. (Para 21, Page No. 28)

**Final Crux**

The Hon'ble single Bench of this Court held as under:

**Article 46** of the Azad Jammu & Kashmir Interim Constitution, 1974 empowers the High Court with two pivotal types of **Supervisory Jurisdiction** i.e. Judicial and Administrative, which clearly envisage and embark on the point that High Court in the State of Azad Jammu & Kashmir is unabridgedly responsible and endowed for making rules for service of Subordinate Judiciary but according to **Section 4** of the State Judicial Policy Making Committee Act, 2017 (SJPMC) clearly enunciate that Constitutional role of High Court has been assigned and dispersed to the State Judicial Policy Making Committee which manifestly snatches the Constitutional powers and role of High Court in executing its supervisory jurisdiction. The functions entrusted in SJPMC are entirely the functions of High Court and snatching these functions through **Section 4** of the State Judicial Policy Making Committee Act, 2017 (SJPMC) are undeniably violative and not sustainable under Azad Jammu & Kashmir Interim Constitution, 1974.

**Conclusion:**

Petition has been accepted by the single bench and impugned Act known as (Act XXXVIII of 2017) dated 13.09.2017 namely State Judicial Policy Making Committee Act, 2017 (SJPMC) being contrary to Constitutional provisions of the Azad Jammu & Kashmir Interim Constitution, 1974 was set aside. The actions and exertions commenced in the progression of the supra Act stands conserved and validated.

## Case No.1 of January 2021

**Writ Petition No.** 1088-D/2020

**Title:** Shoukat Hussain S/o Ghulam Hussain Davelian/Arliayan Tehsil  
Naseerabad District Muzaffarabad

*Versus*

S.H.O. Police Station Kahori Naseerabad, District Muzaffarabad and others

**Date of Decision:** 28-01-2021

Before: **JUSTICE SADAQAT HUSSAIN RAJA, J.**

### **Facts:**

The petitioners have sought Quashment of FIR number 98/20 dated 26.08.2020 registered at Police Station Kahori in the Offence of 10 ZA and 494 APC with the direction to initiate proceeding against respondents No. 1,3 and 4 by the competent authority for illegal, unlawful and baseless impugned FIR.

### **Issues:**

Whether the FIR number 98/20 registered at Police Station Kahori in the Offence of 10 ZA and 494 APC was valid and legal?

### **Analysis:**

Following analytical observations were instigated:

#### ***(i) Khula***

Decree for dissolution of marriage on basis of “Khula” cannot be effected upon until the “Khula” amount is not paid to husband ... (Para 06, Page No.04)

#### ***(j) S. 561-A Cr.P.C. 1898,... Quashment of FIR..... Extraordinary Power of the High Court***

High Court under section 561-A Cr.P.C has extra ordinary power to quash the proceedings where any abuse of process of law is shown. (Para 08, Page No.04)

**(k) Complaint**

High Court has power to quash the criminal proceedings if satisfied that a false complaint has been brought on record as it is necessary to prevent abuse of process of the Court. (Para 8, Page No.04)

**(l) Exercise of powers under extraordinary writ jurisdiction**

*Exercise of powers under extraordinary writ jurisdiction are very limited and can be exercised only in extraordinary circumstances where there is violation of law or principal of law are found.* (Para 10, Page No.04)

**(m) Section 4 of the Offence of Zina (Enforcement of Hudood) Act, 1985**

*Section 4 of the Offence of Zina (Enforcement of Hudood) Act, 1985, Zina is when A man and Woman are said to commit Zina if they willfully have sexual intercourse without being validly married to each other.* (Para 11, Page No.07)

**(n) Shariah Fatwa**

A Shari Fatwa should always be based upon Quran Hadiths and Fiqa or any other relevant source. (Para 12, Page No. 7)

**(o) Department of Ammer Bil Maroof-Wa-Nahi-Anil-Munkar**

It is necessary to mention here that according to schedule II of Rules of Business 1985, department of Ammer ***Bil Maroof-Wa-Nahi-Anil-Munkar*** is competent to issue Fatwas and at the same time it is the duty of department to regularize the matters of Nikkah Khawani. (Para 12, Page No. 9)

**(p) Duty of Tehsil Mufti under AJK Rules of Business 1985**

In the light of Rules of Business 1985, it was the duty of the learned Tehsil Mufti to cancel the registration of Nikah if it was the injunction of Islam. (Para 12, Page No. 9)

**(q) Presumption of valid marriage per Muhammadan Law**

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. (Para 15, Page No. 11)

**(r) Article 3(G) of AJ&K Interim Constitution, 1974**

The marriage has been protected by the Interim Constitution 1974, in this regard Article 3(G) of the constitution is relevant. (Para 15, Page No. 11)

**(s) Duty of the courts**

Courts are bound to protect the Family life of State Subjects. It is the duty of the court to protect the family life in genuine cases. Reliance in this regard can be placed upon **PLJ 2017 SCAJ&K 84**. (Para 16, Page No. 12)

**Final Crux**

The Hon'ble single Bench of this Court held as under:

The criminal proceedings cannot be initiated against the proforma respondents Nos. 6 and 7. In circumstances, the offences as alleged in the FIR were not made out, continuance of further proceedings against the spouses would amount to unnecessary harassment and the continuation of proceeding in the FIR in question would be a futile exercise and liable to be quashed.

**Conclusion:**

Constitutional Petition was accepted by the single bench and impugned FIR No. 98/2020 registered at police station, Kahori on 26.08.2020 in the offences under sections 10 of the Offence of Zina (Enforcement of Hadd) Act, 1985 and 495 of Penal Code was quashed.