

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE YAHYA AFRIDI, CJ
JUSTICE SHAHID BILAL HASSAN
JUSTICE SHAKEEL AHMAD

C.P.L.A. No. 5626/2024

[Against order dated 26.11.2024 passed in W.P.No.9142 of 2023 by Lahore High Court, Multan Bench, Multan]

Muhammad Shahzad

...Petitioner(s)

Versus

Mst. Ayesha Noor & others

...Respondent(s)

For the Petitioner(s) : Mr. Abdul Rehman Khan Laskani, ASC
Mr. Khalid Ibn-i-Aziz, ASC

For Respondent(s) : Nemo

Date of Hearing : 08.01.2026

ORDER

SHAHID BILAL HASSAN-J: The present Civil Petition for Leave to Appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") has been filed against the judgment dated 26.11.2024 passed by the Lahore High Court, Multan Bench, whereby the constitutional petition filed by the petitioner was dismissed and the concurrent judgments and decrees dated 17.04.2023 passed by the learned Family Court and 29.05.2023 passed by the learned Appellate Court were maintained.

2. Briefly stated, respondent No.1 instituted a suit for jactitation of marriage, whereas the petitioner instituted a connected suit for restitution of conjugal rights, asserting that a Sharia Nikah had been solemnized between the parties on 03.04.2020. Both suits were consolidated and decided through a consolidated judgment dated 17.04.2023, whereby the suit for jactitation of marriage was decreed and the petitioner's suit for restitution of conjugal rights was dismissed. The appeal preferred by the petitioner was also dismissed through judgment dated 29.05.2023.

3. The controversy, in essence, revolved around whether any valid Nikah had in fact been solemnized between the parties and whether the petitioner could establish such marriage through legally admissible and confidence-inspiring evidence. The learned High Court, while exercising constitutional jurisdiction, examined the record and maintained the concurrent findings, thereby dismissing the petitioner's petition.

4. Heard. Record Perused.

5. It is pertinent to observe that the factual matrix of the case, as borne out from the record and concurrently found by the learned Family Court, the learned Appellate Court and the learned High Court, is not only unusual but deeply disturbing. The respondent/plaintiff is a young woman who alleged that the petitioner is her paternal uncle (**Phupha**) and that, taking advantage of the relationship of trust, proximity and dominance, he subjected her to sexual assault. It further transpired from the record that the petitioner is a married person having children, yet he attempted to project himself as the lawful husband of the respondent by setting up a plea of an alleged Sharia Nikah dated 03.04.2020. Significantly, it has also come on record that the petitioner's lawful wife is the paternal aunt (**Phupho**) of the respondent, and therefore, even on the petitioner's own showing, the alleged marriage would attract the doctrine of prohibited degree and would not be permissible during the subsistence of the earlier marriage. In order to overcome this inherent legal impediment, the petitioner appears to have set up a wholly unsubstantiated plea of divorce against his lawful wife, which, rather than strengthening his case, further reflects an attempt to tailor facts and manufacture a narrative to lend colour of legality to an otherwise unlawful and coercive relationship.

6. The courts below, after evaluating the evidence, have returned a categorical finding that the alleged Nikah was not established through any reliable or legally admissible evidence. No credible explanation was offered as to why the alleged Nikah was never registered despite the prevailing legal requirements, nor was the alleged Nikahnama proved in accordance with law through trustworthy evidence. Under Section 5 of the Muslim Family Laws

Ordinance, 1961, every marriage solemnized under Muslim law must be registered with the Nikah Registrar, and failure to register carries legal consequences. A registered Nikahnama is a public record and carries probative value in court. The petitioner's failure to have the alleged Nikah so registered weakens the legal basis of his claim.

7. A suit for jactitation of marriage is a civil remedy available where there is a persistent and false claim of marriage. Its object is to obtain a declaration that no valid marriage exists and to secure a decree of perpetual silence against the wrongful assertion. The conduct of the petitioner, as reflected from the record, prima facie shows an attempt to fabricate an impression of legality to his inhumane acts, therefore, the Courts below have aptly dealt with the matter germane to the granting of jactitation of marriage, which calls for no interference by this Court.

8. It is clarified, at the outset, that any criminal liability arising from the allegations made by the respondent is a matter to be adjudicated by the competent criminal court strictly in accordance with law, and nothing observed herein shall prejudice such proceedings.

9. Nonetheless, for the purposes of the present proceedings, it is evident from the record that the petitioner was declared to be the biological father of a minor child born to the respondent. In any event, even if the petitioner's version of marriage is discarded, as it has been concurrently by the courts below, the petitioner cannot be permitted to evade the consequences of his own conduct. The minor child is an innocent life and cannot be left unprotected. The law does not permit that a child be deprived of sustenance, dignity and lawful support merely because the relationship between the parents is disputed, unlawful, or the subject matter of criminal proceedings.

10. It is a settled principle of law that the right of maintenance is vested in the child and is founded upon considerations of welfare, justice and equity.¹ Once biological paternity stands established,

¹ Qudrat Ullah Vs. Additional District Judge, Renala Khurd District Okara and others (PLD 2024 Supreme Court 581)

the corresponding obligation to maintain follows as a necessary legal consequence. A biological father cannot be allowed to deny responsibility or seek refuge behind technical pleas of legitimacy, nor can this Court lend its discretionary jurisdiction to a litigant who attempts to convert an unlawful or coercive act into a civil entitlement. In this regard, it is important to note that the law draws a distinction between a “legitimate child” and a “biological child”. A biological child is one who is genetically related to the parent, whereas legitimacy pertains to the legal status of birth within a lawful marriage. Such distinction has been lucidly articulated by the Lahore High Court in *Muhammad Afzal v. Judge Family Court, etc.* (2025 LHC 495), wherein it was held that where maintenance is claimed against an alleged biological father who disputes paternity, the burden lies upon the claimant to establish biological paternity through legally admissible and trustworthy evidence; and once paternity is established, the biological father is under a legal as well as moral obligation to maintain the child.

11. Furthermore, the petitioner, despite having availed the entire hierarchy of forums, has remained unable to establish any lawful basis to claim the relief sought. It is well-settled that this Court, while exercising jurisdiction under Article 185(3) of the Constitution, does not sit as a Court of further appeal to re-appraise evidence or substitute its own conclusions for those concurrently recorded by the courts below. Interference in such matters is warranted only where the findings are shown to be perverse, arbitrary, based on misreading or non-reading of material evidence, suffering from jurisdictional defect, or resulting in a manifest miscarriage of justice². In such circumstances, no equitable or discretionary relief can be extended, and the petitioner does not deserve any indulgence from this Court in exercise of its discretionary jurisdiction under Article 185(3) of the Constitution.

12. The impugned judgment, therefore, does not suffer from any jurisdictional defect, legal infirmity or patent illegality, nor does it

² Saleh Muhammad and another Vs. Mst. Mehnaz Begum and others – (PLD 2025 Supreme Court 1039); Allah Bakhsh deceased through L.Rs and others Vs. Muhammad Riaz and other (PLD 2025 Supreme Court 63); Muhammad Ain-UI-Haq Vs. Abdul Ali and another – (2024 SCMR 1767)

reflect arbitrary or capricious exercise of discretion by the High Court. The petitioner has failed to point out any substantial question of law or any exceptional circumstance requiring interference. The entire edifice of the petitioner's arguments rests upon seeking re-assessment and re-appraisal of evidence and a substitution of concurrent factual findings recorded by the courts below, which is clearly impermissible in the jurisdiction invoked.

13. For the foregoing reasons, this petition is found to be devoid of any merit. Leave to appeal is refused and the petition is dismissed.

14. Before parting with the matter, it is necessary to record that the present litigation discloses a sorrowful pattern whereby the petitioner, despite having failed to establish the alleged Nikah before three forums, has persisted in invoking the process of law to pressurize and morally intimidate the respondent. The record reflects that the respondent, a young woman, has been compelled to undergo repeated, invasive and demeaning scrutiny through a defence which has been concurrently found to be unsubstantiated. Such use of judicial proceedings as an instrument of coercion and harassment is wholly impermissible. In order to mark the Court's strong disapproval, to compensate the respondent for the needless hardship caused, and to deter repetition of such frivolous and vexatious litigation, this petition is dismissed with **exemplary costs of Rs.1,000,000/- (Rupees One Million only)**, payable by the petitioner to respondent No.1 within thirty (30) days from the date of pronouncement of this judgment, failing which the same shall be recoverable as arrears of land revenue. The power of Courts to impose costs has been discussed by this Court in Zakir Mehmood Vs. Secretary, Ministry Of Defence (D.P), Pakistan Secretariat, Rawalpindi and others (2023 SCMR 960) in the followings words which need to be reproduced:

"9. Before parting with the order, we find it necessary to emphasis that it is high time that courts and tribunals should regularly exercise their powers to impose reasonable costs to curb the practice of instituting frivolous and vexatious cases by unscrupulous litigants, which has unduly burdened their dockets with a heavy pendency of cases, thereby clogging the whole justice system. The possibility of being made liable to pay costs is a sufficient deterrence to make a litigant think twice before putting forth a false or vexatious claim or defence

before court. The imposition of these costs plays a crucial role in promoting fairness, deterring frivolous lawsuits, encouraging settlement, and fostering efficient use of resources: (i) promoting fairness: imposing costs in litigation helps to create a level playing field for both plaintiffs and defendants. By requiring both parties to bear the financial burden of litigation, the system encourages parties to consider the merits of their case before initiating legal action. This helps to ensure that only those with legitimate grievances pursue legal recourse, reducing the possibility of abuse; (ii) deterring frivolous lawsuits: imposing costs can discourage parties from filing baseless or frivolous claims, as the risk of incurring significant financial losses may outweigh any potential gains. This helps to protect defendants from having to defend themselves against meritless claims, reducing strain on the court system and preserving judicial resources; (iii) encouraging settlement: when parties are aware of the potential costs associated with litigation, they may be more inclined to engage in settlement negotiations or alternative dispute resolution methods. This can result in more efficient resolution of disputes, lower costs for all involved, and a reduced burden on the court system; (iv) fostering efficient use of resources: imposing costs in litigation incentivizes parties to focus on the most relevant and important aspects of their case, as both parties will want to minimize their expenses. This can lead to more efficient use of legal resources, including court time and the expertise of legal professionals, and may result in more focused and streamlined proceedings. The practice of imposing costs would thus cleanse the court dockets of frivolous and vexatious litigation, encourage expeditious dispensation of justice, and promote a smart legal system that enhances access to justice by taking up and deciding genuine cases in the shortest possible timeframe."

15. It must also be emphasized that the dignity of a person is inviolable and enjoys constitutional protection under Article 14 of the Constitution. Courts cannot be passive venues for perpetuation of social prejudice, nor can they permit their process to become a means of inflicting secondary victimization upon women who approach courts for vindication of their lawful rights. Frivolous allegations and contrived pleas, particularly those aimed at undermining the identity, character and dignity of a woman, cannot be countenanced in any civilized system of justice. Furthermore, in all matters concerning children, the paramount consideration remains the welfare and best interests of the child. This approach is also consistent with Pakistan's constitutional obligations under Articles 9, 14, 25 and 35 of the Constitution, as well as Pakistan's international commitments under the Convention on the Rights of the Child (CRC), which mandate protection of children without discrimination.

16. Equally, it needs to be reiterated that the welfare and rights of a minor child cannot be made hostage to the unlawful conduct, disputes or defences of adults. Even where the child is alleged to have been born outside wedlock, the law does not permit such child to be treated as a person without entitlement. The right to maintenance and protection is a right vested in the child, and once biological paternity is established in accordance with law, the corresponding obligation of maintenance follows as a legal and moral consequence. The stigma of illegitimacy cannot be permitted to become a shield for a biological father to evade responsibility, nor can it justify deprivation of an innocent child.

CHIEF JUSTICE

JUDGE

JUDGE

Announced in open Court on _____.

JUDGE

Islamabad the
'APPROVED FOR REPORTING'
M.A. Hassan