

IN THE HIGH COURT OF SINDH AT KARACHI**Criminal Acq. Appeal No. 591 of 2022**

Appellant : Anum Thanvi
through Mr. Raj Ali Wahid Kunwar, Advocate.

Respondent : The State
through Mr. Talib Ali Memon, A.P.G.
a/w Mr. Samiullah, Advocate for respondent
No.3

Date of Order : 3rd October, 2023

ORDER

Omar Sial, J.: The relevant background to this case is as follows:

- (i) Anum Thanvi (**Anum**) and Munir Sharif (**Munir**) were married on 20.12.2015. On 08.04.2019, Anum filed a complaint in the Boat Basin police station alleging domestic abuse. The complaint was received by the police on 10.04.2019. On 18.01.2020, a direct complaint under section 7 of the Domestic Violence (Prevention and Protection) Act 2013 (from which the present appeal arises) was filed by Anum against Munir. Munir divorced Anum on 28.01.2020.

(ii) A charge was framed against Munir by the learned 7th Judicial Magistrate, Karachi South, on 15.07.2021. The charge reflects that Munir was accused of offences under (i) section 352 P.P.C. (Punishment for assault or criminal force otherwise than on grave provocation), (ii) section 504 P.P.C. (Intentional insult with intent to provoke breach of the peace), (iii) section 506 P.P.C. (Punishment for criminal intimidation) and 509 P.P.C. (Insulting modesty or causing sexual harassment) and (iv) section 6(ii) of the Domestic Violence (Prevention and Protection) Act 2013.

(iii) After a trial, the learned 7th Judicial Magistrate, Karachi South, acquitted Munir vide judgment dated 03.10.2022. The reasons for the learned judge to acquit, broadly, were as follows:

- (a) Alleged abuse was not witnessed.
- (b) Anum failed to show precisely what objectionable words were used against her, and even if she had revealed the words, a conviction could not be meted out as the alleged words did not cause a breach of peace in the vicinity.
- (c) Anum filed the petition under the Act of 2013 after her divorce from Munir.

2. I have heard the learned counsels for the parties. My observations and findings are as follows.

3. The Act of 2013 was enacted to institutionalise measures which prevent and protect women, children and any vulnerable person from domestic violence and for matters connected therewith or incidental. Anum's grievance against Munir, prima facie, fell within the ambit of section 5(f) of the Act, which defines "emotional, psychological and verbal abuse".

4. It is no secret that domestic violence generally occurs behind closed doors, making it a hidden and private affair. It is a continuous state of affairs and rarely restricted to one episode. Yet, it can be challenging for a victim to seek help or for others to detect it. To ask a survivor to prove that the domestic violence they complain of created a breach of peace in the vicinity is not appropriate, nor was it the intent of the domestic violence legislation. The two have absolutely no correlation. It would not be necessary to show a breach of peace in the community as a condition precedent for an offence under the domestic violence legislation to occur. No doubt, as mentioned above, to prove domestic violence is a challenging task. Yet, the learned trial court should have given its analysis of the witness's testimony (which, like in rape cases) should be given

weight. The electronic messages produced by Anum should also have been taken into consideration. If the learned trial court believed that the entire message trial should be discarded, it should have given its reasons to conclude so. The learned trial court should have considered other pieces of evidence in its analysis. It seems that the learned trial court has analysed the allegations from a Pakistan Penal Code lens exclusively, without also seeing it from the gender and domestic violence perspective.

5. The evidence produced at trial also appears to reflect prima facie that the learned trial court erred in holding that Anum made the complaint regarding domestic violence after her divorce.

6. I have kept my observations to the minimum so that the case of either party is not prejudiced. My comments are with the intent of guidance for the learned trial court. It appears to me, however, that the impugned judgment does suffer from misreading and non-reading of evidence. The judgment is, therefore, set aside, and the case is remanded back to the learned trial court for a limited purpose. The learned trial court shall re-hear the arguments of both the learned counsels and render a fresh judgment after that. It is clarified that the learned trial court is at complete liberty to reach any decision that it views as just and fair after reevaluating the evidence that was led at trial; however, it must give its reasons. This remand back order is also with the intent that although this Court, too, could decide the issues raised, it would not be appropriate to do so as either party may then lose a forum of appeal.

JUDGE