

**HIGH COURT OF MADHYA PRADESH: BENCH AT
INDORE**

**DIVISION BENCH: HON'BLE SHRI JUSTICE VIVEK RUSIA
& HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)**

WRIT PETITION NO.24741/2018 (PIL)

**Aadil s/o Mohd. Arif Palwala
R/o 42, Khizrabad Colony, Khajrana,
Indore (M.P) at present 86/3,
Ranipura, Indore M.P**

.....Petitioner.

Versus

**1. Union of India through
Principal Secretary, Union
Ministry of Law & Justice,
New Delhi.**

**2. Principal Secretary,
Ministry of Law & Justice,
Vallabh Bhawan, State of M.P,
Bhopal.**

**3. State of M.P through Collector,
Indore M.P**

**4. President,
All India Muslim Personal Law Board,
Imarat Shariah Building,
Phulwari Sharif, Patna Bihar.**

**5. General Secretary,
All India Muslim Personal Law Board,
Imarat Shariah Building,
Phulwari Sharif, Patna Bihar.**

**6. Muslim Personal Law Board,
76A/1, Main Market,
Okhla Village, Jamia Nagar,
New Delhi 110025**

**7. Chief Quazi
Darul Kaza Chhawani,
Masjid 22, Chhoti Gwaltoli,
Indore M.P**

**8. Smt.Asma w/o Aadil Palwala
42, Khijrabad Colony, Khajrana,
Indore M.P**

.....Respondents.

12.01.2022: (Indore):

Shri Harish Kumar Sharma, learned counsel for the petitioner.

Shri Aniket Naik, learned counsel for the respondent No.1.

Shri A.M.Mathur, learned Senior Advocate with Shri V.Asawa
for the respondents No.6 & 7.

Shri Vivek Dalal, learned AAG for the respondent/State.

With the consent of parties heard finally through Video Conferencing.

ORDER

Petitioner has filed the present petition under Article 226 of the Constitution of India as a Public Interest Litigation (PIL) alleging that respondents No.4 to 8 are running parallel judicial system against the provisions of the Constitution of India and also against the established system of law and justice in this country. They are running their own courts and passing orders and decrees in personal matters.

2. The petitioner is claiming himself to be a victim of such type of orders passed by respondents No.4 to 6. The petitioner has filed one of the orders passed by respondent No.7 on an application filed by his wife i.e. respondent No.8 for divorce which is called “Khula” by making all sorts of allegations against him. she sought Talaq under the Kanoon-A-Shariat. On an application of respondent No.8, respondent No.7 has called the petitioner to appear to submit a reply. The petitioner has submitted a reply on 13.02.2017 refuting the allegations made against him. According to the petitioner, respondent No.7 has proceeded with the matter and ordered the Talaq (divorce) by way of Khula which is not permissible under the Indian judicial system. The petitioner has alleged that respondent No.7 under the shelter of respondents no.4, 5 & 6 is entertaining such types of disputes and passing the orders in the matter which are liable to be brought before the Court for adjudication. When no action has been taken the petitioner has approached this Court by way of this writ petition(PIL).

3. After notice the respondent No.2 has filed the return raising the issue of maintainability of the petition and availability of alternate remedy to the petitioner as his personal interest is involved in this matter. Respondent No.2 has further submitted that section 4 of the Kazi Act, 1880 does not empower the Kazi to confer any judicial or administrative power.

4. Respondent No.6, All India Muslim Personal Law Board has filed the reply by submitting that the personal law relating to marriage and dissolution of marriage has to be governed by the personal law of Muslims as recognized by them in terms of their religious denominational texts. It is further submitted that clear instructions are given to Kazis who are appointed by the All India Muslim Personal Law Board not to entertain the disputes wherein the parties thereof have already approached the Court of Law or do not consent for an amicable resolution of the dispute. Thus, they are not parallel judicial systems established in derogation of or in conflict with the recognized judicial system in the country. It is further submitted that the petitioner did not agree to the pronouncement of Khula to respondent No.8 in terms of its communication dated 13.2.2017 addressed to respondent No.7 and further considering the fact that respondent no.8 has initiated criminal proceedings against the petitioner. Respondent no.7 ought to have closed the mediation without further proceeding in the matter. The rest of the respondents have not filed the reply despite service.

5. During the course of arguments, Shri Mathur, learned Senior Counsel appearing on behalf of respondents No.6 & 7 has placed reliance over the judgment passed by the Apex Court in the case of **Vishwa Lochan Madan vs. Union of India and others** reported in **(2014) 7 SCC 707** in which the Apex Court has held that fatwa/Darul-Qazas/Nizam-e-Qazas are not a decree and is neither binding on anyone nor enforceable-only an adjudication by a legal authority sanctioned by the law is enforceable and binding- only voluntary submissions/acceptance to fatwa is permissible. It is further held that the establishment of such a court to administer justice to the member

of a particular religion in the name of Dar-ul-Qazas/Nizam-e-Qazas is impermissible and have no legal status.

6. Paras-13 & 14 of the judgment are reproduced below:

13 As it is well settled, the adjudication by a legal authority sanctioned by law is enforceable and binding and meant to be obeyed unless upset by an authority provided by law itself. The power to adjudicate must flow from a validly made law. Person deriving benefit from the adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequences as provided in law is to ensue. These are the fundamentals of any legal judicial system. In our opinion, the decisions of Dar-ul-Qaza or the Fatwa do not satisfy any of these requirements. Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature. Therefore, the opinion or the Fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority 10 Page 11 under a judicial system sanctioned by law. A Qazi or Mufti has no authority or powers to impose his opinion and enforce his Fatwa on any one by any coercive method. In fact, whatever may be the status of Fatwa during Mogul or British Rule, it has no place in independent India under our Constitutional scheme. It has no legal sanction and can not be enforced by any legal process either by the Dar-ul-Qaza issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to impose it, their act would be illegal. Therefore, the grievance of the petitioner that Dar-ul-Qazas and Nizam-e-Qaza are running a parallel judicial system is misconceived.

14. As observed earlier, the Fatwa has no legal status in our Constitutional scheme. Notwithstanding that it is an admitted position that Fatwas have been issued and are being issued. All India Muslim Personal Law Board feels the “necessity of establishment of a network of judicial system throughout the country and Muslims should be made aware that they should get their disputes decided by the Quazis”. According to the All India Muslim Personal Law Board “this establishment may not have the police powers but shall have the book of Allah in hand and sunnat of the Rasool and all decisions should be according to the Book and the Sunnat. This will bring the Muslims to the Muslim Courts. They will get justice”.

7. In view of the aforesaid judgment and the arguments advanced by Shri Mathur, learned Senior Counsel, the order passed by the chief Kazi on an application filed by respondent No.8 has no legal sanctity. Respondent No.7 being a Kazi is only entitled to enter into a negotiation/mediation between the parties in order to settle the dispute. The M.P. State Legal Services Authority is promoting community-based mediation in the State of M.P where the trained mediators of a

particular community can act as a mediator to resolve the dispute between the parties in order to end the litigation at the very inception. The Legal Services Authority, Jabalpur and Indore has trained more than 70 volunteers of different communities and religions to act as mediators to settle the dispute between the members of the community out of Court. If a Kazi entertains a dispute and acts as a mediator to settle the dispute between the members of the community that would be permissible but he cannot adjudicate the dispute like a court and pass an order like a decree. In view of the law laid down by the Apex Court in the case of Vishwa Lochan Madan (supra), such an order has no legal sanctity and can simply be ignored. So far the matrimonial dispute between the petitioner and respondent No.8 is concerning the same is not liable to be examined in this writ petition for which they are free to avail the remedy available under the law. This Court has not expressed any opinion in respect of their matrimonial matter.

8. Accordingly, the present writ petition is disposed of.

(VIVEK RUSIA)
JUDGE

(RAJENDRA KUMAR (VERMA))
JUDGE

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