

## **JUDGMENT SHEET**

### **IN THE LAHORE HIGH COURT LAHORE JUDICIAL DEPARTMENT**

*Writ Petition No.206739 of 2018*

*(Muhammad Yaseen   versus   Additional Sessions Judge & others)*

#### **JUDGMENT**

Date of hearing	25-06-2018
Petitioner by	<i>Mr. Adnan Afzal, Advocate.</i>
State by	<i>Mr. Muhammad Hamam Khan Rai, Assistant Advocate General.</i>
Respondent No.4 by	<i>Mr. Muhammad Arsahd Bhatti, Advocate.</i>

**MUHAMMAD QASIM KHAN, J:-** Petitioner seeks setting aside of order dated 18-04-2018 passed by learned Additional Sessions Judge, Gojra, whereby revision petition filed by Liaqat Ali/respondent No.4 was accepted and order dated 24-11-2017 passed by Magistrate 1<sup>st</sup> Class, Gojra, through which application filed by respondent No.4 for disinterment of dead body of his son Muhammad Imran was dismissed.

2. Briefly the facts of the case are that Muhammad Imran son of Liaqat Ali/respondent No.4 died of a fire arm injury; after completion of formalities by the police the dead

headquarters and DSP Circle Gojra was constituted by District Police officer, Toba Tek Singh. The committee submitted its report to the effect that Muhammad Imran (deceased) had committed suicide and application filed by Liaqat Ali was meant to counter an application under section 22-A(6) Cr.P.C. filed by Mst. Salma Bibi against him and some others. Thereafter, Liaqat Ali filed an application to the Ilaqa Magistrate for exhumation of dead body of his son, alleging that on 20.06.2017 at about 2.00 p.m. in broad daylight, Rana Saeed Rehman SHO along with other police officials and some private persons had committed the murder of his son Muhammad Imran; local police joined hands with the medical officer and got conducted post mortem of Muhammad Imran in his absence and thus obtained a fake and fictitious post mortem report. The learned Ilaqa Magistrate however, dismissed the said application vide order dated 24.11.2017, where-after, Liaqat Ali preferred a criminal revision which was allowed vide order dated 18.04.2018 passed by learned Additional Sessions Judge, Gojra, which order is under challenge through the instant writ petition.

3. It is argued by learned counsel for the petitioner that Liaqat Ali/respondent No.4 had changed his stance because Mst. Salma Bibi (relative of one of the nominated accused in the application of Liaqat Ali) had moved application for registration of case against Liaqat Ali and some others, otherwise, there was application of Liaqat Ali was totally a cock and bull story with no truth in it. Further argued that firstly a committee of two DSP and then the learned Ilaqa Magistrate had declared the application of

4. Learned counsel appearing for respondent No.4, however, opposed the contentions of learned counsel for the petitioner and defended the impugned order by arguing that Liaqat Ali/respondent No.4 being the real father of Muhammad Imran deceased had every right to know about the cause of his death, therefore, the impugned order is perfectly in accordance with law.

5. The learned law officer argued that procedure provided under section 176 Cr.P.C., can only be activated to ascertain the cause of death. According to the learned law officer the cause of death had already been specified in the post mortem report already conducted, therefore, disinterment of dead body was not required. However, on legal ground he urged that revisional order cannot be challenged in writ jurisdiction, in the light of case "BADARUDDIN Versus Mehr AHMAD RAZA, ADDITIONAL SESSIONS JUDGE, JHANG and 6 others" (PLD 1993 Supreme Court 399).

6. Heard. Record perused.

7. Firstly, I will take up the legal objection with regard to maintainability of writ petition against an order passed on a criminal revision. In the case of "BADARUDDIN Versus Mehr AHMAD RAZA, ADDITIONAL SESSIONS JUDGE, JHANG and 6 others" (PLD 1993 Supreme Court 399) the Hon'ble Supreme Court of Pakistan has held that after the decision by a revisional court said order attained finality and could not be assailed in writ jurisdiction. The relevant portion of the judgment is reproduced hereunder: -

are wider in scope than powers in the writ jurisdiction. By amendment in the law now Sessions Court and High Court have concurrent revisional jurisdiction which is allowed in the normal course to be exercised first by lower forum but that does not decrease the scope of jurisdiction as mentioned above. In such circumstances, it is said that if there is finding by the Court of competent jurisdiction on the revisional side then it has attained finality. On the same question writ petition would be non-maintainable because otherwise it would amount to allowing question finally decided in one set of forums to be agitated afresh in another set of forums and that way there will be no end to the finality."

This issue was again raised before the Hon'ble Supreme Court of Pakistan and while deciding it, in the case of "MUHAMMAD ASHRAF BUTT and others versus MUHAMMAD ASIF BHATTI and others" (PLD 2011 Supreme Court 905), the Hon'ble Apex Court has held as under:-

*"Lastly, attending to the plea propounded by the learned counsel for the appellants that the constitutional jurisdiction could not be exercised by the learned High Court for interfering in the revisional order of the Addl. District and Sessions Judge. Suffice it to say that on account of the provisions of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, it is an alienable right of every citizen to enjoy the equal protection of law and to be treated in accordance with law, therefore, if a revisional Court has passed an order which does not qualify the test of Article 4 ibid and suffer from a patent error, of fact, such as non-reading/misreading of the facts on the record or has committed a grave illegality in applying the correct law, such as the error of misapplication and non application of correct law, thus being an illegality of a sheer nature can always be rectified by the High Court while exercising its*

The same principle was followed in “MUHAMMAD ANWAR and others versus Mst. ILYAS BEGUM and others” (PLD 2013 Supreme Court 255). By examining the above two judgments, it becomes clear that “BADARUDDIN Versus Mehr AHMAD RAZA, ADDITIONAL SESSIONS JUDGE, JHANG and 6 others” (PLD 1993 Supreme Court 399) is the basic rule that where an order passed by a revisional court does not violate any law and no illegality is found to have been committed therein, then the same cannot be disturbed in constitutional jurisdiction, but when an order suffers from a patent error or grave illegality has been committed in applying the correct law and further the order passed by the revisional court does not qualify the test of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, then the same can be rectified in exercise of constitutional jurisdiction. For the reasons to be recorded in the preceding paragraphs, this court is convinced that as the order impugned herein does not stand the test of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, hence the instant writ petition is fully competent and maintainable.

8. Now coming to legal position with regard to Section 176 Cr.P.C., there is hardly any doubt that basic and sole purpose to invoke section 176 Cr.P.C. is to know about the “cause of death” of a person who dies in the custody of the police. In this case it is correct that Muhammad Imran son of Liaqat Ali/ respondent No.4 died when police was also present, it is also admitted position by all that Muhammad Imran died of a fire arm injury which figured on his head. Furthermore, the post mortem of the deceased was got

head of the deceased stands already established, rather by the respective stance of the parties, as also by the post mortem report itself. Therefore, on the face of it there existed no justifiable reason to have recourse to disinterment of the dead body by invoking the process provided in Section 176 Cr.P.C., because otherwise assessment or determination of facts that as to why and in what manner the incident took place is clearly a circumstance beyond the mandate of section 176 Cr.P.C.

9. In continuation to the above, the court while dealing with an application under section 176 Cr.P.C. must bear in mind that although different religions/customs in different parts of the world may treat the dead bodies towards their destiny according to their customs or faith, but respect and honor to the dead body is almost common amongst all. Particularly, Islam upkeeps the dignity and honor of a human-being not only in his life but even afterwards by giving him final bath, prayers for the departed soul and then respectful burial to earth; our faith does not at any stage allow desecration to a dead body, irrespective of faith the dead may carry. In this context, a quotation is referred:-

حدیث نمبر: 2225

حدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا خُنَدَرٌ، عَنْ شُعْبَةَ. حَوْلَدَتْنَا مُحَمَّدُ بْنُ النَّخْشَى، وَابْنُ بَنَّاً، قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، حَدَّثَنَا شُعْبَةُ، عَنْ عَمْرِ بْنِ مُرَّةَ، عَنْ ابْنِ أَبِي لَيْلَى، أَنَّ قَيْسَ قَبْنَ سَعْدٍ، وَسَهْلَ بْنَ حُنَيْفَ كَاتِبَ الْقَادِسِيَّةِ، فَرَأَى جَنَازَةَ فَقَامَ، فَقَيْلَ لَهُمَا: إِنَّهَا مِنْ أَهْلِ الْأَرْضِ، فَقَالَا: إِنْ دَسْوَنَ اللَّوْصَلِيُّ الَّذِي عَلَيْهِ وَسَلَّمَ رَمَثَ بِهِ جَنَازَةَ فَقَامَ، فَقَيْلَ: إِنَّهُ يَهُودِيٌّ، فَقَالَ: "أَلَيْسَتْ نَفْسًا؟" ابن ابی لیلی نے کہا کہ قیس بن سعد اور سبل بن حنیف دونوں قاسیہ میں تھے اور ایک جنازہ مگزا۔ اور وہ کھڑے ہوئے۔ سوانسے کہا گیا کہ وہ اس زمین کے لوگوں میں سے ہے (یعنی کفار میں سے) ان دونوں نے کہا کہ رسول اللہ صلی اللہ علیہ وسلم کے پاس سے ایک جنازہ گیا

Another quote by Hazrat Muhammad ﷺ also carries significance, which is referred below:-

*"O people! I charge you with ten rules; learn them well...for your guidance in the battlefield! Do not commit treachery, or deviate from the right path. **You must not mutilate dead bodies.** Neither kill a child, nor a woman, nor an aged man. Bring no harm to the trees, nor burn them with fire, especially those which are fruitful. Slay not any of the enemy's flock, save for your food. You are likely to pass by people who have devoted their lives to monastic services; leave them alone."*

There may be so many other references from Holy Prophet Muhammad ﷺ laying unmatched humanitarian standards for living as well as the dead, but in order to remain within the context of the case in hand, it may not be required to quote them all.

10. In view of above discussion since it remains an established fact that respect, dignity and the honor required to a dead body must be protected, therefore, while dealing with an application for disinterment of dead body, the courts shall see that only in cases of real genuineness and as a last resort such an order shall be issued and the applications filed merely on the basis of apprehensions must not be acceded to. As discussed above post mortem of the deceased was conducted and cause of death has been ascertained by way of conduct of post mortem examination of the deceased and place of injury

11. For what has been discussed above, the order passed by learned Additional Sessions Judge not only suffers from illegality, patent error and grave illegality in applying the correct law; even the order impugned herein is against the Statute, it also does not stand the test of morality. Consequently, this writ petition is allowed, the impugned order dated 18.04.2018 passed by learned Additional Sessions Judge is hereby set-aside.

(MUHAMMAD QASIM KHAN)  
JUDGE.

**APPROVED FOR REPORTING.**

*Javed/Rao Azmat\**