

Stereo.HCJDA 38.
JUDGMENT SHEET.

LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI.
JUDICIAL DEPARTMENT

W.P.No.3868 of 2022

SUFI ABDUL QADEER, ETC.

Versus.

LEARNED ADDL. DISTRICT JUDGE, ETC.

JUDGMENT.

Date of hearing: **31.05.2023**

Petitioners by: *Malik Ghulam Sabir, Advocate.*

Respondent No.2 Malik Itaat Hussain Awan, Advocate.
by:

Respondent No.3 Malik Shehriyar Qamar Afzal, Advocate.
by:

Mirza Viqas Rauf, J. *This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 stems from the judgment dated 26th November, 2022, whereby the learned Additional District Judge, Rawalpindi, while allowing the revision petition filed by respondent No.2 (hereinafter referred to as “respondent”) set aside the order dated 8th October, 2022 passed by the learned Civil Judge, Rawalpindi.*

2. *Facts in brief necessary for adjudication of instant petition are that the petitioners instituted a suit for declaration, separate possession through partition, recovery of mesne profit and injunction against respondent No.3. During the proceedings, the petitioners moved an application for summoning of record from the Inland Revenue Department, which was allowed by way of order dated 6th February, 2021. On receipt of summons, an application was moved by the “respondent” claiming privilege under section 216 of the Income Tax Ordinance, 2001 (hereinafter referred to as “Ordinance”) for production of record. The application was, however, dismissed by way of order dated 8th October,*

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2022 against which the “respondent” filed a revision petition under section 115 of the Code of Civil Procedure (V of 1908), which was accepted by the learned Additional District Judge, Rawalpindi through impugned judgment.

3. Learned counsel for the petitioners contended that bar in terms of section 216(2) of the “Ordinance” is not absolute. While making reference to subsection 4, learned counsel emphasized that in terms thereof, trial Court was right in its approach to summon the official witness alongwith record. Learned counsel submitted that the revisional Court has erred in law while setting at naught the well-reasoned order passed by the learned Civil Judge. He added that the impugned judgment is not tenable.

4. Conversely, learned counsel representing the “respondent” submitted that in terms of section 216 of the “Ordinance”, a public servant is precluded to disclose any information even before the Court. He added that subsection 4 cannot be read in isolation with subsection 3 of section 216 of the “Ordinance”. It is argued with vehemence that the revisional Court was justified to pass the impugned judgment, which is unexceptionable. In order to supplement his contentions, learned counsel placed reliance on Mrs. KHALIDA AZHAR v. VIQAR RUSTAM BAKHSHI and others (2009 PTD 1694).

5. On the other hand, learned counsel representing the respondent No.3 adopted the arguments of learned counsel for the “respondent” department.

6. Heard. Record perused.

7. Suit was admittedly interse private parties. The “respondent” was not party to the suit. During the proceedings, an application was moved by the petitioners for summoning of record from Inland Revenue Department, which was allowed in routine by way of order dated 6th February, 2021. On receipt of summons, the “respondent” moved an application under section 216 of the “Ordinance” seeking immunity from production of the record before the Court. The application was initially

accepted, however, revisional Court set aside the order through the judgment, which is now impugned herein.

8. *In order to properly comprehend the matter in issue, it would be advantageous to go through section 216 of the “Ordinance”, which reads as under: -*

216. Disclosure of information by a public servant.- (1) All particulars contained in –

- (a) any statement made, return furnished, or accounts or documents produced under the provisions of this Ordinance;
- (b) any evidence given, or affidavit or deposition made, in the course of any proceedings under this Ordinance, other than proceedings under Part XI of Chapter X; or
- (c) any record of any assessment proceedings or any proceeding relating to the recovery of a demand,

shall be confidential and no public servant save as provided in this Ordinance may disclose any such particulars.

(2) Notwithstanding anything contained in the Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1984), the National Accountability Ordinance, 1999 (XVIII of 1999), the Federal Investigation Agency Act, 1974 (VIII of 1975) and the Right of Access to Information Act, 2017 (XXXIV of 2017), or any other law for the time being in force, no court or any other authority shall, save as provided in the Ordinance, require any public servant to produce before it any return, accounts, or documents contained in, or forming a part of the records relating to any proceedings under the Ordinance, or declarations made under the Voluntary Declaration of Domestic Assets Act, 2018, the Foreign Assets (Declaration and Repatriation) Act, 2018 or the Assets Declaration Act, 2019 or any records of the Income Tax Department generally, or any part thereof, or to give evidence before it in respect thereof;

(3) Nothing contained in sub-section (1) shall preclude the disclosure of any such particulars –

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g) ...
- (h) ...

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(i) ...

(j) ...

(k) ...

(ka) ...

(kb) ...

(l) ...

(m) to a Civil Court in any suit or proceeding to which the Federal Government or any income tax authority is a party which relates to any matter arising out of any proceedings under this Ordinance;

(n) ...

(o) ...

(p) ...

(q) ...

(r) ...

(s) ...

(4) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration, or affidavit filed or the giving of evidence by a public servant in respect thereof.

(5) ...

(6) ...

(6A) ...

(6B) ...

(6C) ...

(7) ...

(8) ...

(underlining supplied for emphasis)

From the bare reading of the above referred provision of law, it is manifestly clear that in terms of sub-section 2, a bar is imposed upon the powers of the Court or other authority to require any public servant to produce before it any return, accounts, or documents contained in , or forming a part of the records relating to any proceedings under the “Ordinance” or declarations made under the Voluntary Declaration of

Domestic Assets Act, 2018, the Foreign Assets (Declaration and Repatriation) Act, 2018 or the Assets Declaration Act, 2019 or any records of the Income Tax Department generally, or any part thereof, or to give evidence before it in respect thereof except in the manner provided in the “Ordinance”. Subsection 3, however, ordains that nothing contained in subsection (1) shall preclude the disclosure of any such particulars to a Civil Court in any suit or proceedings to which the Federal Government or any income tax authority is a party which relates to any matter arising out of any proceedings under the “Ordinance”. Though in terms of sub-section 4, it is stated that nothing in section 216 shall apply to the production by public servant before a Court of any document, declaration, or affidavit filed or the giving of evidence by a public servant in respect thereof but said provision cannot be read in isolation to sub-section 3.

9. *The question of interpretation of section 216 previously came under discussion in the case of Mrs. KHALIDA AZHAR v. VIQAR RUSTAM BAKHSHI and others (2009 PTD 1694) before Islamabad High Court and it was held as under: -*

“2. The subject under discussion was dealt with by section 150 of the Income Tax Ordinance, 1979 which was repealed by the present Income Tax Ordinance. Subsection (4) of section 150 of 1979 Ordinance which was pari materia with subsection (4) of section 216 of Income Tax Ordinance, 2001 read as under:

"Nothing in this section shall apply to the production by a public servant before a Court of any documents, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 68 or section 75 or the giving of evidence by a public servant in respect thereof.

Under subsection (4) of section 150 of the Income Tax Ordinance, 1979, it was permissible for any public servant to produce before a Court any document, declaration or affidavit filed or the record of any statement or deposition made in a proceeding under section 68 or section 75 and there was no bar for the giving of evidence by a public servant in respect thereof. Thus, permission was very limited. Section 68 deals with the registration of firms and section 75 was with regard to partition of a Hindu undivided family. In Income Tax Ordinance, 1992, section 54 covers the subject. Subsection 4 of section 4 of Income Tax Ordinance, 1992 read as under:

"Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed or the record of any statement or deposition

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made in a proceeding under (section 25A or) section 26A, or to the giving of evidence by a public servant in respect thereof."

Section 25-A deals with partition of a Hindu undivided family and section 26-A deals with registration of firms. To me it appears that subsection (4) section 150 of the Income Tax Ordinance, 1979 was taken from the 1979 Ordinance and was enacted as subsection (4) of section 216 by inadvertence. No other explanation is possible because as otherwise subsection (4) of section 216 would nullify the whole of the provisions of subsections (1) and (2) of section 216.

3. In view of what has been discussed above, the application filed by the applicant is liable to be dismissed and same is hereby dismissed. A copy of this judgment shall be sent to the Ministry of Law, Ministry of Parliamentary Affairs and the Federal Board of Revenue, Islamabad to examine subsection (4) of section 216 of the Income Tax Ordinance, 2001 and to consider appropriate amendments in this subsection."

Though subsection (4) is still part of statute but no other interpretation is possible in the circumstances.

10. *From the above discussion, it can safely be held that the trial Court before passing an order for the production of documents should have resorted to the provisions of the "Ordinance", in absence whereof it was precluded to pass such order. The revisional Court was, thus, justified to exercise its jurisdiction and set aside the order of the trial Court.*

11. *For the foregoing reasons, this petition is devoid of any merits. Resultantly it is dismissed with no order as to costs.*

(MIRZA VIQAS RAUF)
JUDGE

Approved for reporting.

JUDGE