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JUDGMENT SHEET
LAHORE HIGH COURT, MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

Writ Petition No. 9075/2023

Bilqees Begum

Vs.

District Police Officer and others

JUDGMENT

Date of hearing:	11.7.2023
For the Petitioner:	Malik Kashif Hussain, Advocate.
For Respondent Nos.1 & 2:	Mr Sanam Fareed Khan Baloch, Assistant Advocate General, with Khurram/SHO.
For Respondent No.3:	Mr Asif Ali Chaudhary, Advocate.

Tariq Saleem Sheikh, J. – Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”), the Petitioner sought recovery of her mentally disordered brother, Syed Qadeer Abbas, from the alleged illegal custody of Respondents No.3 to 8. She alleged that they wanted to grab his 19 kanals 09 marlas land in Chak No.543/E.B. This Court issued notice to Respondents No.3 to 8 and directed the SHO, Police Station Machiwal, District Vehari, to produce Qadeer Abbas before it.

2. The SHO has reported that Qadeer Abbas lived in Chak No.543/E.B. and has been missing for 4/5 years. In May 2022, the Petitioner applied to the Secretary Union Council No.16, Vehari, for the issuance of his death certificate stating that he died of natural causes at his home on 15.05.2022, and was buried the same day. On 25.05.2022, the Secretary issued his computerized death certificate. On 14.06.2022, the Petitioner obtained the inheritance mutation regarding Qadeer Abbas’s estate, according to which he had left behind a sister (the Petitioner) and a brother, Murtaza Shah, among his legal heirs. As a result, out of the aforementioned land, 06 kanals 9-1/3 marlas fell in her share, while Murtaza Shah received the remainder. Two days later, on 16.06.2022, the Petitioner sold the

property so acquired to Waseem Ikram and two others for Rs.2,250,000/-. The SHO has further stated that Respondent No.4 opposes these transactions. He claims that on 05.10.2016 Qadeer Abbas executed a sale agreement with him about the land, so the Petitioner could not sell any portion of it to Waseem Ikram etc. Due to this conflict, he also lodged FIR No.185/2023 dated 25.02.2023. Respondent No.4 challenged the aforementioned death certificate before the Assistant Director, Local Government & Community Development, Tehsil Vehari, who conducted an inquiry and found that it was fraudulent. Consequent thereupon, he ordered its cancellation. The SHO has opined that the Petitioner had filed the instant petition with ulterior motives to pressurize Respondents No.3 to 8 to withdraw from criminal litigation. He has submitted supporting documentation for his report.

3. I have confronted the Petitioner's counsel with the SHO's report and the documents appended therewith, particularly the death certificate of Qadeer Abbas dated 25.05.2022, which was issued on the Petitioner's application, but he could not refute them.

4. The Petitioner has filed this constitutional petition on fallacious and misleading assertions and submitted a false affidavit to support it. She has thus rendered herself to criminal prosecution. A false statement under oath is an offence under section 181 PPC while furnishing incorrect information with the intent to cause a public servant to use his lawful power to the detriment of another person is punishable under section 182 PPC. In addition, she is liable to legal action under the Contempt of Court Ordinance 2003. The Supreme Court of India penalized a husband for contempt of court in **Chandra Shashi v. Anil Kumar Verma** [(1995) 1 SCC 421] for filing a forged document to oppose his wife's motion for transfer of matrimonial proceedings. The Supreme Court ruled that anyone who commits fraud to deflect the course of legal proceedings or acts with an ulterior motive should be appropriately punished because he obstructs the administration of justice. This would deter others from engaging in similar practices that undermine public confidence in the legal system. The Supreme Court further stated:

“7. ... Contempt jurisdiction has been conferred on superior courts not only to preserve the majesty of law by taking appropriate action against one howsoever high he may be, if he violates court’s order, but also to keep the stream of justice clear and pure (which was highlighted more than two and half centuries ago by Lord Hardwicke, L.C. in *St. James’s Evening Post* case) so that the parties who approach the courts to receive justice do not have to wade through dirty and polluted water before entering their temples ...

“8. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that (truth alone triumphs) is an achievable aim there, or (it is a virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts.”

5. In *Dhananjay Sharma v. State of Haryana* [(1995) 3 SCC 757], filing a false affidavit was the basis for initiating action in contempt jurisdiction and punishing the persons concerned. In *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees Association and others* [(2006) 11 SCC 731], the Supreme Court held that if a party to a *lis* willfully makes a false or misleading statement to secure a favourable order, it interferes with the due course of judicial proceeding and thus commits contempt of court. The Indian Supreme Court reaffirmed the above principles in *K.D. Sharma v. Steel Authority of India Limited and others* [(2008) 12 SCC 481], *Kanwar Singh Saini v. High Court of Delhi* [(2012) 4 SCC 307], and *ABCD v. Union of India and others* [(2020) 2 SCC 52].

6. Sections 35 and 35A of the Code of Civil Procedure, 1908 (“CPC”), respectively, provide for the imposition of costs and compensatory costs in respect of false or vexatious claims or defences.¹ Part E, Chapter 11-E of Volume I of the Lahore High Court Rules and Orders supplement these provisions. In *Mehr Ashraf and other v. Station House Officer and others* (PLD 2022 Lahore 328), this Court observed:

“Section 35 deals with *actual costs* while section 35A with *compensatory costs*. Actual costs reimburse the expenses incurred by the successful litigant in asserting his rights/claim, but the court’s discretion in awarding them is subject to the conditions and limitations stipulated in Order IX, Rule 3, Order XIII, Rules 2 and 4, Order XIX, Rule 3(2), Order XXI, Rule 72(3), Order XXIII, Rule 1(3), Order XXIV Rule 4, Order XXXII, Rules 4(4) and 5(2), Order XXXIII, Rules 10, 11 and 16, Order XXXIV, Rule 10 and Order XXXV Rule 3 CPC. [See: *Kawas B. Aga and another v. City District Government, Karachi (CDGK)* (PLD 2010 Karachi 182)].

¹ Parliament has enacted Cost of Litigation Act, 2017, but it is applicable to the Federal Capital Territory only.

Inasmuch as section 35 aims to reimburse reasonable litigation expenses to the successful party, the costs awarded under this section should be realistic. In contrast, the compensatory costs envisaged by section 35A CPC are compensation for false and vexatious claims and defences and are in addition to the actual costs. In awarding them, the court does not consider the actual injury to the person or property of a party, which can be claimed in a separate suit for damages. However, the aforesaid costs are taken into account in that suit.”²

7. Recently, in **Qazi Naveed ul Islam v. District Judge, Gujrat, etc.** (PLD 2023 SC 298), the Supreme Court of Pakistan held that the purpose of awarding costs at one level is to compensate the successful party for the expenses incurred, and at another level, it is an effective instrument for ridding the legal system of frivolous, vexatious and speculative claims and defences. It encourages alternative dispute resolution, settlements between the parties and reduces the burden of the courts, allowing them to focus on genuine claims. “Costs are a weapon of offence for the plaintiff with a just claim to present and a shield to the defendant who has been unfairly brought into court.”

8. The courts dealing with civil suits are bound by the provisions of the Code of Civil Procedure and must award costs in accordance with them. These provisions circumscribe their discretion. However, while exercising constitutional jurisdiction, the High Court may invoke its inherent powers to impose special/exemplary costs over and above the amount stipulated in section 35A CPC.³ In **Inayatullah v. Sh. Muhammad Yousaf and others** (1997 SCMR 1020), the Supreme Court ruled:

“We are unable to accept the contention of the learned counsel for the petitioner that special costs could only be awarded in terms of section 35A, C.P.C. The learned Judges in the case came to a definite conclusion that the proceedings initiated against respondent No. 1 at the instance of petitioner were *mala fide* and that the petitioner had no reasonable ground to prosecute the same. In fact, respondent No. 1 was sentenced to one year R.I. in the proceedings of the case initiated by the petitioner, which were ultimately found to be *coram non judice*. In these circumstances, the High Court was fully competent in the exercise of its inherent power to grant appropriate compensation to the respondents. There being no positive prohibition on the power of the High Court, while exercising jurisdiction under Article 199 of the Constitution, to award costs to compensate a party made to suffer unnecessarily through frivolous litigation. The High Court, in appropriate cases, in the exercise of its inherent power, may award adequate costs by way of compensation to a party made to suffer on account of such litigation.”

² In this context, the Judge referred to the Supreme Court’s observations in *Muhammad Akram v. Mst. Farman Bi* (PLD 1990 SC 28).

³ *Mehr Ashraf and other v. Station House Officer and others* (PLD 2022 Lahore 328).

Further reference may be made to *The Postmaster-General, Northern Punjab and AJ&K, Rawalpindi v. Muhammad Bashir and others* (1998 SCMR 2386); *Mst. Asma Begum and others v. The Commissioner, Karachi Division, Karachi and others* (PLD 1997 Karachi 13); *M.D. Tahir, Advocate v. Federal Government and others* (PLD 1999 Lahore 409); *Kawas B. Aga and another v. City District Government, Karachi (CDGK)* (PLD 2010 Karachi 182); and *Azhar Iqbal and others v. Government of Pakistan and others* (PLD 2015 Islamabad 140).

9. There is a misconception that the courts cannot impose costs in criminal matters. In *Deen Muhammad and Others v. Assistant Commissioner and S. D. M., Shahdadpur and others* (1984 SCMR 455), the petitioners filed two applications in the Sindh High Court. One was under section 561-A Cr.P.C. regarding a proceeding which, according to the petitioners, was pending before the Assistant Commissioner, Shahdadpur, under section 145 Cr.P.C. Based on that assertion, they also got an injunction from the High Court which stayed the proceeding. Subsequently, it turned out that no such proceeding under section 145 Cr.P.C. was pending before the Assistant Commissioner. The High Court dismissed the petitioners' application under section 561-A Cr.P.C. with costs of Rs.2,000/-. The second application sought action against the Assistant Commissioner under the erstwhile Contempt of Court Act, 1976. The learned Judge determined that it also lacked merit for the above-mentioned reason and dismissed it with the costs of Rs.500/- payable to the Mukhtiarkar and the Supervising Tapedar each. The Supreme Court refused to grant leave against the High Court's order imposing costs. It stated:

“The contention is that there is no provision of law in the Criminal Procedure Code under which costs can be awarded. The award of costs is not alien to the criminal jurisprudence. There are situations where costs are awarded, such as under section 148(3) Cr.P.C. The High Court can also impose costs under section 491(2) Cr.P.C. as provided under rule 17 (previously rule 10) of the High Court Rules and Orders, Chapter 4-F, Volume V, which reads:

‘In disposing of any such rule the Court may in its discretion make an order for the payment by one side or the other of the costs of the rule.’

“Section 547 Cr.P.C. deals with the recovery of moneys other than fine.”

The Supreme Court also observed that the petitioners' first application before the High Court was under section 561-A Cr.P.C. The said

provision empowers the court “to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice.” Since the High Court had determined that the petitioners’ applications were based on misrepresentation, they secured a stay order, and the concerned officials had been summoned, it was justified in concluding that they were guilty of abuse of the process of the court. It follows that in appropriate cases, the High Court may also invoke section 561-A Cr.P.C. to impose costs.

10. Recently, in ***Oazi Naveed-ul-Islam v. District Judge, Gujrat, etc.*** (PLD 2023 SC 298), the Supreme Court imposed costs of Rs.100,000/- under Order 28 Rule 3 of the Supreme Court Rules 1980 while refusing leave to appeal to the petitioner whose application under section 476 Cr.P.C. was dismissed by all the courts below.

11. Section 491(2) Cr.P.C. empowers the High Court to frame rules to regulate the procedure in *habeas corpus* petitions. Volume V, Chapter 4, Part F of the Lahore High Court Rules & Orders contains the rules framed in the exercise of that power. Rule 16 stipulates that to check the tendency to file vexatious *habeas corpus* petitions, the court may, at its discretion, require the party concerned to deposit in advance an amount as fixed by the court directing the issuance of rule *nisi* to be paid to the detenus as compensation if the petition is found to be frivolous or vexatious. Rule 17 provides that in disposing of such rule *nisi* the court may, at its discretion, make an order for the payment by one side or the other of the costs of the rule. The courts use these provisions quite frequently.

12. The present case is a classic example of abuse of the process of the court. Accordingly, this petition is dismissed with costs of Rs.10,000/-. The Petitioner has incurred criminal liability and has also rendered herself liable for contempt of court for which separate proceedings shall be initiated.

(Tariq Saleem Sheikh)
Judge

Approved for reporting

Judge