

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Orgl. No.79-W /2016

Zahid Hussain Shah

Vs

Muhammad Naseer etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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03.03.2020

Mr. Muhammad Wajid Hussain
Mughal, Advocate for the petitioner.
Mr. Amanullah Kayani, Advocate
for respondents No.1 & 2.
Mr. Tariq Mahmood Jahangiri,
Advocate for respondent No.3.

Through the instant petition the
petitioner alleges contempt of Court on part
of the respondents for misleading the Court
and making false statement.

2. The facts, in brief, are that a writ
petition (W.P. No.4021/2014) was filed on
behalf of one Dr. Zafar Altaf in which the
petitioner as well as respondents were party
to the proceedings. This Court, in the said
writ petition, had granted a *status-quo* order
in favour of the petitioner. During the course
of proceedings an application was filed on
behalf of some of the respondents (C.M.
No.4688/2015). In the said application it was
alleged that the parties i.e. the petitioner and
the applicants have reached a settlement by

virtue of which the petitioner has no objection to the natural flow of *Nullah*. This Court took up the application on 14.12.2015 and on the basis of what was stated in the application as well as the statement of learned counsel for the petitioner disposed of the *lis*. The instant criminal original was filed by one of the respondents in the writ petition on the ground that the Court was misled and wrong statement was made.

3. Learned counsel for the petitioner, *inter alia*, contended that on the date when the application was filed the petitioner had already expired. In this behalf it was submitted that it is an admitted position that the petitioner died somewhere in early December 2015 so could not have conceded to the statement. It was also submitted that by virtue of the disposal of the matter the flow of *Nullah* is towards the property of the petitioner and immense loss has been caused. In support of his contentions, learned counsel placed reliance on the case titled **Matjhabeng Local Municipality and others v. Eskom Holdings Limited and others** (2018 SCMR

100).

4. Learned counsel for respondent No.3, *inter alia*, contended that no violation of any kind is made out; that the petitioner has not agitated the matter in any Court; that no misstatement of any kind was made before the Court. Reliance was placed on *Muhammad Nazeer v. Lahore Development Authority through Director General and 3 others* (2007 YLR 3009), *Mian Maroof Ashraf v. Shagufta Parveen and others* (2007 MLD 248) and *Sikandar Hameed v.. Muhammad Aslam Kamboh and others* (PLD 2020 Lahore 38).

5. Learned counsel for respondents No.1 and 2 adopted the arguments of learned counsel for respondent No.3.

6. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

7. It is an admitted position that the petitioner has not agitated the matter before any Court regarding flow of *Nullah* on his land. The application was made on

12.12.2015 which resulted in disposal of the abovementioned writ petition. In the referred writ petition the learned counsel for the petitioner Dr. Zafar Altaf appeared and conceded to the position. The concession or submission of the learned counsel was never challenged by the legal heirs of Dr. Zafar Altaf. The mere fact that the petitioner had passed away does not show that any concealment or misstatement was made as there is no signatures of Dr. Zafar Altaf. It is a possibility that the said person settled the matter out of Court before passing away. Learned counsel for the petitioner Dr. Zafar Altaf also did not make any statement to the effect rather it is only when he conceded the position the matter was disposed of.

8. In view of above position of fact, no contempt of Court, as alleged by the petitioner, is made out against the respondents. For what has been stated above, the instant petition is without any merit and is accordingly dismissed.

(AAMER FAROO)
JUDGE