

HCJD/C-121  
**JUDGMENT SHEET**

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**CIVIL REVISION NO.06/2011**

**MALIK MUHAMMAD RAFIQUE**  
*VERSUS*  
**MST. TANVEER JAHAN & ANOTHER**

Petitioner by : **Mr. Muhammad Siddique Awan Advocate.**  
Respondents by : **Mr. Yasir Hanif Satti Advocate.**  
Date of Decision : **26-12-2014.**

**ATHAR MINALLAH, J.-** The petitioner is the real brother of Professor Dr. Khalid Alvi, who passed away on 18-11-2008. The respondent No.1 is the widow, while the respondent No.2 is the son of the deceased. After the death of Professor Dr. Khalid Alvi, the respondent No.1 filed proceedings in the Court of Senior Civil Judge, Islamabad, for obtaining a succession certificate. The learned Civil Court, vide order dated 16-04-2009, granted the succession certificate. The Petitioner, through an application dated 29-04-2009, challenged the grant of the succession certificate on the ground that the respondent No.2 was alleged to have been adopted by the deceased and, therefore, not entitled to the grant of the succession certificate. The petitioner filed an application dated 12-10-2009, praying for conducting a DNA test and other medical tests, so as to ascertain whether the respondent No.2 is the son of the deceased. The learned Civil Judge, Islamabad, vide order dated 20-03-2010, dismissed the applications. The petitioner assailed the order by

preferring an appeal and the same was dismissed by the learned District Judge, Islamabad, vide order dated 20-10-2010.

2. The learned counsel for the petitioner contends that; the impugned orders/judgments passed by the Courts below are against the law and facts of the case; the orders/judgments have been passed in a mechanical manner, without applying judicial mind and based on misreading and non-reading of record; the Courts below have acted illegally and committed material irregularity by dismissing the application for subjecting the respondents to a DNA test; it is necessary to carryout the DNA and other medical tests, so as to resolve the dispute; the Courts, having inherent powers, are expected to dispense justice, rather than non-suited the parties on technical grounds. The learned counsel placed reliance on the case of '*Anwar Khan Vs. Fazal Manan*' [2010 SCMR 973] in support of the contention that the object of legal formalities and procedural provisions is to safeguard the interest of justice rather than to defeat the ends of justice; he has also placed reliance on the case of '*Sikandar Ali Vs. Robina Kousar*' [2006 CLC 1475], '*Mst. Akhtar Begum Vs. Muslim Commercial Bank Ltd.*' [2009 SCMR 264], '*Shamsher Ali Khan Vs. Major-General Sher Ali Khan and 14 others*' [PLD 1988 Lahore 588], '*Mst. Shamshad Bibi Vs. Bushra Bibi and 3 others*' [PLD 2009 Islamabad 11], '*Tariq Masih Vs. Station House Officer, Police Station Nishtar Colony, Lahore and 2 others*' [2006 PCrLJ 13], '*Mst. Suri Vs. Home Secretary District Gilgit*' [2011 PCrLJ 1287], '*Bashir Ahmed Khan Vs. Qaiser Ali Khan and 2 others*' [PLD 1973 SC 507], '*Messrs National Security Insurance Company Limited and others Vs. Messrs Hoechst Pakistan Limited and*

*others'* [1992 SCMR 718], *'Allah Bakhsh and 3 others Vs. Muhammad Abdullah and 10 others'* [1995 CLC 331], *'Muhammad Saleem Ullah and others Vs. Additional District Judge, Gujranwala and others'* [PLD 2005 SC 511]. The learned counsel has stressed that as Islamic law entitles the petitioner to a right in the inheritance, therefore, the same has been denied by the Courts below by passing the orders in a mechanical manner.

3. On the other hand, the learned counsel for the respondents contends that; the petitioner has made false allegations without any evidence, merely to harass the respondents; the orders/judgments of the Courts below are well reasoned and in accordance with the law; there is no material irregularity or illegality, so as to warrant any interference by this Court; it is settled law that any person, in the facts and circumstances of the present case, cannot be subjected to a DNA test without consent; the parties i.e. the petitioner and the respondents, have filed respective suits relating to the same question which are pending; the revisional jurisdiction of the High Court under Section 115 has a narrow scope, and concurrent findings of the Courts below were not open to interference in the present circumstances. The learned counsel relies on the case of *'Mst. Zaitoon Begum Vs. Nazar Hussain and another'* [2014 SCMR 1469], *'Salman Akram Raja and another Vs. Government of Punjab through Chief Secretary, Civil Secretariat, Lahore and others'* [PLJ 2013 SC 107].

4. The learned counsels have been heard and record perused.

5. It is an admitted fact that during the lifetime of the deceased, the paternity of respondent No.2 was never disputed. The dispute for the first time was raised by the petitioner, after the succession certificate was granted in favour of the respondents. The petitioner is the real brother of the deceased and after the succession certificate was granted, he challenged the paternity of the respondent No.2 and consequently his status as a legal heir. The application filed by the petitioner merely made an allegation without providing any material which would, *prima facie*, make out a case in favour of the petitioner. It is settled law that in such matters, the Courts do not lightly entertain attempts of persons who may appear to be on a fishing expedition. Entertaining applications for DNA tests under such circumstances would open the flood gates, allowing relatives to carry out roving enquiries in the hope that they may find a share in the property of the deceased. In the present case the petitioner, despite claiming to be the real brother of the deceased, has failed to place on record any material which could have supported his contention, let alone discharging the onus of proving the same. Admittedly, the petitioner and the respondents have filed respective suits, seeking a declaration regarding the status of the respondent No.2 as a legal heir of the deceased. The respective suits are pending. It is noted that proceedings under the Succession Act, 1925, are of summary nature and such intricate questions cannot be resolved in such proceedings.

6. The law relating to obtaining blood samples and conducting a DNA test is well settled. The august Supreme Court in the case of

'Salman Akram Raja and another Vs. Government of Punjab through Chief Secretary, Civil Secretariat, Lahore and others'[PLJ 2013 SC 107] has held as follows.-

*"It is well settled that the consent of victim is necessary and she/he cannot be subjected to DNA or other medical test forcibly for prosecution purposes because that would amount to infringement of personal liberty of such persons. Reference may be made to the cases of Bipinchandra Shantilal Bhatt vs. Madhuriben Bhatt (AIR 1963 Guj 250), Polavarapu Venkatswarlu v. Polavarapu Subbayya (AIR 1951 Mad 910), Sabbayya Gounder v. Bhoopala Subramanian (AIR 1959 Mad 396), Venkateswarulu v. Subbayya (AIR 1951 Mad 910), Goutam Kundu v. State of West Bengal (AIR 1993 SC 2295), Ms. X v. Mr. Z And Anr. [96 (2002) DLT 354], Syed Mohd. Ghouse v. Noorunnisa Begum (2001 CR.L.J. 2028) and Haribhai Chanabhai Vora v. Keshubhai Haribhai Vora (AIR 2005 Guj 157). In Syed Mohd. Ghouse's case (supra), the Andhra Pradesh High Court relying upon the case of Gautam Kandu (supra), quashed and set aside the order for conduction DNA test by observing that before ordering the blood test, either for DNA or other test, the Court has to consider the facts and circumstances of the given case and the ramifications of such an order. But the Court cannot compel a person to give the sample of blood. In Haribhai Chanabhai Vora's case (supra) the Gujrat High Court has held that when the petitioner (therein) had not given consent, he could not be compelled to submit himself for DNA test as it would be interfering with the personal liberty, and at the most, adverse inference can be drawn at the final conclusion. Thus,*

*it is held that the Court has power to order for DNA or any blood test in order to ascertain the truthfulness of the allegation levelled by the victim but such order must be with the consent of victim. However, this benefit cannot be extended to the accused. Reference in this behalf may be made to Solaimuthu's case (ibid), wherein the Madras High Court held that DNA test did not offend Article 20(3) of the Indian Constitution."*

7. In the above judgment, the Supreme Court has referred to a judgment of the Supreme Court of India with approval i.e. '*Goutam Kundu, Appellant V. State of West Bengal and another*' [AIR 1993 Supreme Court 2295]. According to the facts of the latter case, the paternity had been challenged and after examining the precedent law, the Court summarized the principles as follows.-

*"(1) that courts in India cannot order blood test as a matter of course;*

*(2) Wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.*

*(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under section 112 of the Evidence Act.*

*(4) The Court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding*

*a child as a bastard and the mother as an unchaste woman.*

*(5) No one can be compelled to give sample of blood for analysis."*

8. In cases where the challenge is to the paternity of a person, passing an order in routine, compelling a person to undergo a DNA test can have serious consequences, besides interference with personal liberty. It is the duty of a court to safeguard and protect the personal liberty of every person and, therefore, it seldom interferes by ordering a DNA test, except under exceptional circumstances. It is also significant to note that it is not enough to simply make out a case, rather a strong *prima facie* case must be established before a Court would exercise its powers having the effect of interfering with personal liberty. Allowing an opportunity to fish for a cause to create doubts regarding the paternity of a person can neither be encouraged nor taken lightly. The above quoted principles are a guide and shows the extent of the burden to be discharged by a person in establishing a strong *prima facie* case for persuading a court to order a DNA test in cases where paternity is challenged.

9. It is obvious, therefore, that neither can blood samples be taken nor a DNA test be conducted in routine, unless the person whose paternity has been challenged expressly gives his/her consent. Moreover, sufficient material has to be placed on record to make out a 'strong' *prima facie* case for conducting a D.N.A. test. In the present case the petitioner has not been able to make out a strong *prima facie* case, nor was consent

given by the respondent No.2 at any stage, so as to compel the respondent to give a sample of blood for conducting the D.N.A. test.

10. The learned counsel for the petitioner, during the course of his arguments, made a statement that it was his 'personal' case. It is not appropriate for such senior counsels to disclose their interest in a litigation being argued before a Court. A counsel cannot expect a favour from the Court by disclosing his or her interest in a case. Moreover, such disclosures are not in consonance with the code of conduct of a counsel. Such conduct has always been deprecated.

11. For what has been stated above, the petition is without merits. This Court is not persuaded to interfere with the impugned orders, as the learned counsel has not been able to show any material irregularity or illegality. The petition is, therefore, dismissed.

12. A cost of Rs.25,000/- (Rupees Twenty Five Thousand only) is also imposed on the petitioner for dragging the respondents into such frivolous litigation.

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**(ATHAR MINALLAH)**  
**JUDGE**

**Approved for reporting.**

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**JUDGE**