

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 4206 of 2013

Kaiser Ali Shah

Vs

The State, etc

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

18-09-2020 Mr MNA Rehan, Advocate for the petitioner.
Mr Khurram Mahmood Qureshi, Mr Abdul Rauf
Qureshi, Advocates for respondent no.3.
Mr Sadaqat Ali Jahangir, State Counsel.
Mr Ibrar Hussain, Inspector/I.O, P.S Aabpara.

Through this petition, the petitioner has assailed orders, dated 24.5.2013 and 14.09.2013, passed by the learned Judicial Magistrate 1st Class-West, Islamabad and the learned Sessions Judge-West, Islamabad, respectively.

2. The learned counsel for the petitioner, at the very outset, has stated that respondent no.2 during his lifetime was proceeded ex-parte. The latter passed away while his application for setting aside the ex-parte order was pending before the competent court. The learned counsel has further pointed out that respondent no.3 is not a party to the proceedings relating to the two suits filed by respective parties.

3. The learned counsel for respondents no.2 and 3, on the other hand, has stated that; reliance is placed on the law enunciated by the august Supreme Court in the case titled "*Muhammad Akbar vs. (1) The State and (2) Maulvi Muhammad Yasin Khan*, **PLD 1968 Supreme Court 281**; the impugned orders do not suffer from any legal infirmity; the dispute is regarding sale and purchase of the property and, therefore, the learned trial court had rightly stayed the criminal proceedings; the civil court, where the two suits are pending had sine die adjourned the proceedings.

4. The learned counsels have been heard and the record perused with their able assistance.

5. It appears that the learned revisional court did not take into consideration the fact that respondent no.3 was not a party to the proceedings relating to the two suits, which are pending adjudication before a competent court. Whether or not this factor has relevance in the context of the law enunciated by the august Supreme Court in the case titled "*Muhammad Akbar vs. (1) The State and (2) Maulvi Muhammad Yasin Khan*, **PLD 1968 Supreme Court 281**, ought to have been considered while staying the criminal trial.

Moreover, the developments that have taken place after passing of the impugned orders may also be relevant for the purposes of staying criminal proceedings. This Court would not like to comment on the merits of the case lest it may prejudice the interests of the parties.

6. This petition is, therefore, allowed and order, dated 14.09.2013 is hereby set-aside. The revision petition filed by the petitioner shall be treated as pending before the learned revisional court. The latter after affording an opportunity of hearing to the parties is expected to decide the petition at the earliest and in accordance with law, inter alia, taking into consideration the law laid down by the august Supreme in the aforementioned judgment.

(CHIEF JUSTICE)

*Asif Mughal/**