

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**W.P No.15-M/2024**

**Suleman and 7 others Vs. Jawad Khan and 2 others**

**Present:**        **Mr. Aurangzeb, Advocate for petitioners.**

**Nemo for respondents being Motion case.**

Date of hearing:        **16.01.2024.**

**JUDGMENT**

**MUHAMMAD NAEEM ANWAR, J.-** Through instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have challenged the order of the learned Additional Sessions Judge/Judge Child Protection Court, District Swat dated 18.12.2023 whereby objection of the petitioners was turned down and bailiff of the Court was directed to hand over possession of the property in question to legal heirs of complainant in presence of patwari halqa.

2. Brief facts of the case are that complainant Ghafoor Khan, father of respondent No.1, filed a complaint under Section 3 of the Illegal Dispossession Act, 2005 (**The Act**) against the petitioner along with application under Section 7 for restoration of possession of land fully mentioned in Para-1 of the complaint. As per averments of the petitioners, the learned trial Court directed SHO of the concerned police station three times for inquiry and reports which were accordingly submitted. The petitioners filed an application for

dismissal of the complainant and another application for inquiry against the respondent No.1. The learned trial Court heard application of complainant u/s 7 of the Act along with the referred to above applications of the petitioners, resultantly, the application for restoration of possession u/s 7 of the Act was accepted vide order dated 19.03.2021 whereas the application of petitioners for dismissal of complaint was dismissed leaving their application for inquiry against respondent No.1 unattended. The said order was maintained by this Court vide judgement dated 23.10.2023 in W.P No. 170-M/2021 filed by petitioners. Complainant Ghafoor Khan died during pendency of the writ petition, therefore, on receipt of case file by learned trial Court, learned counsel for the petitioners raised the objection that complainant Ghafoor Khan has died while respondent No.1 namely Jawad Khan is not the sole legal heir of Ghafoor Khan. The learned trial Court vide order dated 18.12.2023 turned down the objection and directed the bailiff to hand over possession of the land in question to respondent No.1, hence, instant petition.

3. Arguments heard and record perused.

4. Mian contention of learned counsel for the petitioners is that complainant Ghafoor Khan has died whereas his son Jawad Khan (respondent No.1) is pursuing the matter under the Act as attorney for legal heirs of the complainant. He further contended that there is no concept of power of attorney in criminal law, as such, the learned trial Court has illegally proceeded with the matter. The main question for resolution before this Court is if the complainant dies

during pendency of a private criminal complaint whether the complaint be continued by his successors or the case would come to an end? The record shows that complainant Ghafoor Khan had filed the complaint under Section 3 of the Act with a view that the petitioners have illegally dispossessed him from the landed property mentioned in the complaint. After his death, his son Jawad Khan pursued the complaint on behalf of other legal heirs of the deceased complainant which was objected to by petitioners on the sole ground that there is no concept of power of attorney in criminal proceedings. Admittedly, the complainant had filed the complaint in respect of land he was claiming to be his ownership and same is the position of his legal heirs before the learned trial Court. None of the remaining legal heirs of the complainant has raised any objection against respondent No.1 rather he is their duly authorized attorney, therefore, the objection raised by petitioners before the learned trial Court was rightly turned down.

5. A similar issue came before the Supreme Court of India in the case titled "Ashwin Nanubhai Vyas Vs. State of Maharashtra and Anr" (AIR 1967 Supreme Court 983) wherein it was held that:

The later view is distinctly in favour of absence of the complainant allowing the prosecution to continue except in those cases where the Code is siled says that on the absence of the complainant the accused must be either acquitted or discharged. The present is not one of those case and in our judgment the Presidency Magistrate was right in proceeding with the inquiry by allowing the mother to carry on the prosecution, and under S. 495

the mother may continue the prosecution herself or through a pleader. We see no reason why we should be astute to find a lacuna in the procedural law by which the trial of such important cases would be stultified by the death of a complainant when all that the S. 198 requires is the removal of the bar.

Another judgment in this regard is that of Punjab-Haryana High Court in the case titled "Kalbir Kaur Vs. Dalip Singh" reported as 1987 Cr.LJ 1555 wherein complainant filed a complaint u/s 494/114/109/34 IPC, however, she died during pendency of the complaint upon which one of the accused filed an application for dismissal of the complaint because of her absence. The trial Court dismissed the application by allowing father of the complainant to continue the proceedings in the said complaint. The High Court, while entertaining a petition against the said order, made discussion on Section 249, Cr.P.C. (India) and dismissed the petition by observing that:

"I have heard the counsel for the parties at length and am of the view that in such a situation, as in the present case, the trial Court has the discretion to continue the proceedings and for that purpose it can allow any other person to prosecute and, in its discretion, it has allowed Dalip Singh, father of the complainant deceased, to continue the complaint against the petitioner and Ors.

We have also a similar provision i.e., S. 247, Cr.P.C. dealing with deliberate absence of the complainant as suggested by plain reading of the said provision and in that eventuality the Court has the discretion to acquit the accused. However, in the present case, the issue before this Court is death of the complainant after filing of

complaint u/s 3 of the Act, therefore, in absence of any clear-cut provision in this regard, it would be against the norms of justice to deprive legal heirs of the complainant to proceed with the complaint filed by their predecessor. Further reliance is placed on the judgment of High Court of Orisa in Crl. Rev No. 579 of 2011 titled "Afr Sanjit Kumar Mishra & Others vs Ranjit Mishra" decided on 6<sup>th</sup> September, 2022. While referring to various judgments, it was observed in the said judgment that the law is now fairly well settled that the legal heirs of the deceased complainant can be substituted in his place.

6. It was not disputed by the petitioners that in the complaint they were not put on notice rather they have been put on notice and the cognizance was taken by the learned Judge and an order under section 7 of the Act was passed by the learned trial Court and thereafter the complainant died. It may be added that the alleged offence was not person specific which could be held to have been abated by the death of the complainant as held by the apex Court in the case of Mir Shakeelur Rehman and others vs. Yahya Bakhtiar and others (PLD 2010 SC 612) where a complaint was filed under Ss.500, 501 and 502, P.P.C. against accused for publishing report against the complainant but he died during pendency of the complaint and her daughter filed an application to pursue the complaint, Hon'ble Supreme has held:

**The case in hand does not fall in the category of cases where the complaint would survive the complainant. A bare reading of the libel published which subject matter**

of this case would show that it was directed against the person of the complainant alone. It could be totally wrong and scandalous. But the fact remains that it was person specific and transaction specific. In the complaint filed and the statement made by the complainant before the trial Court, there is no allegation that the libel had in any manner injured the reputation of his family or relatives.

7. Moreover, in the case titled Munib vs. Ali Mardan and 6 others (2020 YLR 457) the complaint filed under Illegal Dispossession Act 2005 was at initial stage where on the receipt of report from the local police, the complaint was dismissed and criminal petition was filed before Hon'ble Sind High Court however, during pendency of criminal miscellaneous the complainant expired and it was held by the Court that since the complaint was at initial stage therefore, the legal heirs of the deceased may file a fresh complaint under Illegal Dispossession Act, 2005 if advised so. However, the circumstance of the matter in hand are distinguishable as an order under section 7 of the Act has been passed by the trial Court and that was upheld by this Court thus, there is no illegality to allow the son of the complainant to pursue the complaint.

8. In light of the above discussion, it can safely be concluded that in the event of the death of the complainant, if it is not person specific, when the accused has been put on notice after taking the cognizance, the legal heir of the complainant may continue to proceed with the complaint. In such an eventuality, the learned trial Court has rightly held that death of complainant is not fatal to the

maintainability of complaint and presence of all the legal heirs is not a legal requirement for continuation of complaint under Section 3 of the Act. The impugned order, being in accordance with law, cannot be interfered with by this Court. Resultantly, instant petition is dismissed in *limine*.

Announced.

16.01.2024.

Released on.

11.03.2024.

  
JUDGE

  
JUDGE

Office  
11/3/2024

Sabz Ali/\* (S.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR