

Form No. HCJD/C-121

ORDER SHEET
LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Crl.Misc.No.17387-M of 2016

Sabiha Sardar Vs. Abid Jameel, etc.

Sr. No. of order of proceeding	Date of order of proceeding	Order with signature of Judge, and that of Parties of counsel, where necessary
(3)	14.02.2017	Mr. Shahid Shaukat Ch., Advocate for the petitioner. Mr. A.D. Bhatti, Advocate for respondent No.1. Mr. Haroon-ur-Rasheed, DDPP.

Through the instant petition, the legality of the order dated 22.10.2016 passed by the learned Additional Sessions Judge, Faisalabad is called in question.

2. Precisely stated, the brief facts which led to the filing of the instant petition are that Sabiha Sardar (petitioner) was married with one Muhammad Abid Jameel (respondent No.1) on 07.04.2013. On account of certain domestic disputes, she approached the Family Court, Faisalabad for the dissolution of marriage and recovery of dower, maintenance allowance and dowry articles. The family suit was decided in her favour vide judgment dated 03.03.2016 and was partially decreed. She was held entitled to recover maintenance allowance at the rate of Rs.5,000/- per month for her *Iddat* period, maintenance of Rs.5,000/- per month for her minor son and was also held entitled to recover either the articles mentioned in a list, Exh-P4 or its alternate price, fixed as Rs.5,00,000/-. Subsequent to the decision, Abid Jameel (respondent No.1), filed an application under section 476 Cr.P.C. before the Judge Family Court on 14.03.2016, mentioning therein that Sabiha Sardar (petitioner) produced certain receipts which were brought on record as Mark-1 to Mark-18; that these receipts were pertaining to

certain dowry articles purchased by the family of Sabiha Sardar (petitioner) and that all these receipts are forged. In the application under section 476 Cr.P.C, besides Sabiha Sardar (petitioner), 10-other persons were made respondents. All these respondents were the owners of the shops, from where the articles were purchased.

3. The application under section 476 Cr.P.C was dismissed by the learned Judge Family Court vide order dated 28.03.2016, with the following observation:-

“Admittedly, family case has been decided by undersigned vide judgment/decreed dated 03.03.2016 According to section 195 (C) of Cr.P.C 1898 only the concerned court can initiate proceedings under section 476 Cr.P.C. This point is fortified by judgment of above said case law referred by counsel for the petitioner. As, at the time of final decision on 03.03.2016, no material was found under section 476 Cr.P.C, and complaint was not made in writing by this Court as required under section 195 (C) Cr.P.C, so, petitioner is not competent to move the application under the above quoted law. Accordingly, the petition is dismissed.”

4. The above mentioned order of Judge Family Court was assailed by Sabhia Sardar (petitioner) through a criminal revision. The revision petition was decided by the learned Additional Sessions Judge, Faisalabad vide order dated 22.10.2016 and the matter was remanded to the “Trial Court” for fresh decision. The order dated 22.10.2016 passed by the learned Additional Sessions Judge, Faisalabad is challenged through the instant petition.

5. Learned counsel for the petitioner contended that the order of Judge Family Court is not revisable and the learned Additional Sessions Judge while treating it as such, committed an error; that the disputed receipts were produced during the trial but no objection was raised by the other side; that till today no material is available on

record to hold these receipts as forged, hence proceedings under section 476 Cr.P.C are not warranted; that the perusal of the order of learned ASJ sufficiently reflects that he mentioned no specific ground on the basis of which he remanded the matter to the Judge Family Court and that the application under section 476 Cr.P.C is solely aimed at pressurizing the petitioner to desist her from the claim arising out of judgment of the Family Court.

6. Learned counsel for respondent No.1 strongly controverted the arguments of the learned counsel for the petitioner and argued that the petitioner was successful in getting the case decided in her favour, on the basis of forged documents; that none of the original receipts was annexed with the case and that if the proceedings under section 476 Cr.P.C are not initiated, the criminality of the act of the petitioner will go unpunished.

7. I have carefully attended to the arguments advanced by both the parties and have minutely examined the record. In my humble view, an important aspect skipped notice of learned Additional Sessions Judge, who was assigned the task to decide the revision petition filed by the respondent No.1. Such aspect pertains to the maintainability of the criminal revision. The Sessions Court derives its power of revision through the provisions mentioned in chapter XXXII of the Criminal Procedure Code of 1898. The scope of the revision is cited in section 435 Cr.P.C whereas, the powers which a Sessions Judge can exercise under this Chapter are incorporated in section 439-A Cr.P.C. While exercising powers under section 439-A Cr.P.C., the Sessions Judge has the same powers as conferred on High Court under section 439 Cr.P.C. Originally, in Criminal Procedure Code no such power was conferred upon a Sessions Judge, to revise an order

passed by the Magistrate. However, by virtue of Law Reforms Ordinance 1972, these powers were conferred upon Sessions Judge. The scope of revision is mentioned in section 435 Cr.P.C. It would be advantageous to reproduce section 435 Cr.P.C which is as under:-

“435. Power to call for records of inferior courts.
The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending examination of the record.”

9. It evinces from the perusal of section 435 Cr.P.C. that the Sessions Judge can examine the correctness, legality or propriety of any finding, sentence or order passed by any inferior criminal court. Such aspect gives rise to another question that what in law, the expression **“Inferior Criminal Courts”** means. The inferior criminal court, for the purposes of section 435 Cr.P.C. means the Court established under the Criminal Procedure Code. The classes of criminal courts stand enumerated in section 6 of the Criminal Procedure Code. The perusal of section 6 shows that besides the High Courts, the criminal courts are categorized as (i) Courts of Session and (ii) Courts of Magistrates. Admittedly, the Family Court does not fall in the classes of criminal courts as mentioned in section 6.

10. Family Courts are established under the West Pakistan Family Court Act 1964 (herein after referred to as the **Act of 1964**). By virtue of section 14 of the Act of 1964, a decision or decree passed by a Family Court is appealable to the High Court, or to the District Court. The provision of section 14 of Act of 1964 reads as follow:-

“14 (1) Notwithstanding anything provided in any other law for the time being in force, a decision given or decree passed by a Family Court shall be appealable:-

(a). to the High Court, where the Family court is presided over by a District Judge, an Additional District Judge or any person notified by Government to be of the rank and status of a District Judge or an Addl. District Judge; and

(b). to the District Court, in any other case.”

11. From the above discussion, it divulges that since the Family Court is not the creation of the Criminal Procedure Code, hence cannot be termed as an inferior criminal court, within the meaning of section 435 Cr.P.C. This being so, any order or finding of a Family Court cannot be called in question through a Criminal Revision under section 435/439-A Cr.P.C. The decision of a Family Court can be assailed through the enabling provision of section 14 of the Act of 1964. Now the question arises as to how or in what manner a decision of dismissal of complaint under section 476 Cr.P.C, passed by a Judge Family court is to be assailed. It is explicitly mentioned in the said section that a “**decision**” or “**decree**” can be subject to an appeal before the Courts mentioned therein. As a necessary corollary, it follows that section 14 of the Act of 1964 is not confined to the extent of a decree passed by a Family Court but it also relates to any decision. Now the question arises as to how the word “**decision**” stands defined. Admittedly, it is not defined either in Criminal Procedure Code or in the West Pakistan Family Court Act 1964. It is a salutary principle of law that if an expression is not defined in any law, then recourse has to be made to its dictionary meaning. Such an approach is in accordance with the principle of interpretation laid down by the Hon’ble Supreme Court of Pakistan. In this respect, reliance can be placed to the case reported as Chairman, Pakistan Railway, Government of Pakistan, Islamabad and others v. Shah Jahan Shah (PLD

2016 SC 534), wherein the Hon'ble Supreme Court of Pakistan observed as under:-

“when a word has not been defined in the statute, the ordinary dictionary meaning was to be looked at”.

In accordance with the rule of interpretation laid down by the Hon'ble Supreme Court of Pakistan in the above case, the dictionary meaning of “**decision**” is looked into by this Court. In Black's Law Dictionary, 6th Edition, the word “**decision**” is defined as under:-

“A determination arrived at after consideration of facts, and, in legal context, law. A popular rather than a technical or legal word; a comprehensive term having no fixed, legal meaning. It may be employed as referring to ministerial acts as well as to those that are judicial or of a judicial character.”

From the above, it follows that the order dated 28.03.2016 passed by the Judge Family Court, qualifies to be termed as a decision within the meaning of section 14 of Act 1964. In this backdrop, I am of the view that the order of the Judge Family Court was to be assailed in terms of section 14 of the Act of 1964 and not through a petition under section 435/439-A Cr.P.C, as the same was not passed by an Inferior Criminal Court. It is a settled law that if a statute provides a specific procedure or forum to assail the order of a Court, the litigant cannot be permitted to have recourse to any other forum or procedure. Resultantly, I am of the view that the order dated 22.10.2016 passed by the learned Additional Sessions Judge, Faisalabad is based on erroneous assumption of jurisdiction under section 435/439-A Cr.P.C. While holding so, I am guided by the case of H. Munawar Ali v. Mst. Sarwar Bano (NLR 1989 Criminal 649) wherein the Hon'ble Supreme Court of Pakistan observed as under:-

“The impugned orders even otherwise were without jurisdiction as pointed out by learned counsel for

the petitioners, as powers under Section 439-A Cr.P.C. which have been vested in the Court of Session, pertain to the orders passed by Magistrates. The Judge Family Court cannot, by any means be termed as Court of 1st Class Magistrate.”

12. Since I have arrived at a conclusion that the criminal revision in the instant case was not maintainable and instead the order of Judge Family Court should have been assailed in accordance with section 14 of West Pakistan Family Court Act, 1964, hence, the order of learned Additional Sessions Judge is found to be beyond jurisdiction. It is well settled that any order, indictment or sentence passed by a court not having jurisdiction is nullity in the eye of law and is coram non judge. Reliance in this respect is placed to the case of Mst. Neelam Nawaz v. The State (1994 P Cr. L J 1922).

13. While holding so, I am not oblivious of the provision of sub-section 4 of section 476 Cr.P.C which provides the forum of appeal. The perusal of the forgoing provision reveals that it provides a forum of appeal to a person who is sentenced by a Court, while proceeding under section 476 Cr.P.C. In the instant case, learned Judge Family Court proceeded to dismiss the application under section 476 Cr.P.C. on the question of maintainability, hence even section 476 (4) Cr.P.C is not applicable. Even otherwise, at the time of passing of the judgment dated 03.03.2016, the Judge Family Court proceeded to decide the case in favour of petitioner. Proceedings under section 476 Cr.P.C. could only be initiated, if he had arrived at the conclusion that the receipts were dubious in nature or were fabricated. Since the Judge Family Court never drew any such conclusion, hence, proceedings under section 476 Cr.P.C. are not warranted in the instant case. More importantly, even the

petitioner made no serious effort to challenge the authenticity of receipts as neither he summoned the shopkeepers concerned nor placed on record any material to raise suspicion about their genuineness. In such a situation, initiation of proceedings under section 476 Cr.P.C. and that too on the desire of litigant is not permissible as such an approach amounts to forcing him to arrive at a conclusion different from the one he arrived at. In this respect, reference can be made to the case of Hakim Muhammad Ahmad v. Shaheen Bibi and others (1991 P Cr. L J 1879).

13. I am of the view that if the controversy between the parties is decided solely on the grounds mentioned above, it is likely to give rise to multiplicity of the litigation. So in this view of the matter, it would be appropriate to settle the dispute finally. The provision of section 476 Cr.P.C. is enacted with an object to ensure that the course of justice must not become polluted with impurities. Through this provision, a procedure is provided to check certain offences, affecting the administration of justice. To be more precise, it provides a procedure of trial relating to certain classes of offences mentioned in section 195 (1) Clause (b) or (c) of Cr.P.C., if committed in relation to a proceeding in any Civil, Revenue or Criminal Court. However, before proceeding under section 476 Cr.P.C, the Courts are obliged to see that from the contents of the complaint, if presented, some offence mentioned in section 195(1)(b)(c) of Cr.P.C. is made out. Proceedings under section 476 Cr.P.C ought not to be used by the litigants as a tool to wreck private vengeance, to satisfy personal grudge or for settling the personal score. Similarly, a process is not to be issued under section 476 Cr.P.C. as a matter of routine on each and every application moved by a litigant. The court

concerned is required to examine the material which is being placed before him and then to see that whether it gives rise to any of the offences, mentioned in the relevant clauses of section 195(1) of Cr.P.C. or not. While observing so, this Court is guided by the judgment of Hon'ble Supreme Court of Pakistan reported as Ch. Feroze Din v. Dr. K.M Munir and another (1970 SCMR 10).

14. In the instant case, though the respondent No.1 alleged that the relevant receipts were fabricated and forged but in support of this claim, no material was brought on record. Surprisingly, all the shopkeepers concerned were also cited as accused. It appears that the proceedings under section 476 of Cr.P.C. were aimed at using them as tool to secure positive ends in the litigation arising out of the decision of the Family Court.

15. For what has been discussed above, this application under section 561-A Cr.P.C. is allowed and the order dated 22.10.2016 passed by the learned Additional Sessions Judge Faisalabad is set-aside.

(Ch. Abdul Aziz)
Judge

Approved for reporting

(Ch. Abdul Aziz)
Judge