

JUDGMENT-SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No. 172 of 2021
Ms. Ghazala Ali
Versus
Sikandar Ramzan Ch.

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Appellant By: Raja Iftikhar Ahmad Advocate.
Respondents By: Mr. Mudassar Hussain Malik Advocate.
For the State: Mr. Hazrat Younas with Anwar SI.
Date of Hearing: 08.11.2023

ARBAB MUHAMMAD TAHIR, J: Through the listed criminal appeal in terms of Section 417 (2A) Cr.P.C, '**appellant**' namely Ms. Ghazala Ali (complainant) impugns order dated 12.10.2021, passed by learned Judicial Magistrate Section-30, Islamabad-West whereby respondents 1&2 namely *Sikandar Ramzan Ch.* and *Ms. Samina Babar Ramzan* ('**respondents**') were acquitted in terms of Section 249-A Cr. P.C in case FIR No. 228, dated 25.05.2018, under sections 420, 468 & 471 PPC, Police Station Aabpara, Islamabad.

2- Precisely, subject FIR stood registered on the complaint of appellant *Ms. Ghazala Ali* wherein it was alleged that she is daughter of *Ch. Ramzan Ali*, who was owner of House No. 41, Street No. 12, Sector F-6/3 Islamabad ('**subject house**'); that her father died in the year 1990; that her two brothers namely *Sikander Ramzan Ch.* (respondent No.1) and *Babar Ramzan Ch.* (late), by producing fake person in CDA and putting fake signatures of her father got transferred subject house in their name; that at the relevant time, other brother and sisters had been abroad, therefore, remained unaware regarding said forged transaction; that their father *Ch. Ramzan Ali* died on 30.10.1990 while the subject house stood transferred in the name of two brothers on 23.11.1991; that her brother *Babar Ramzan Ch.* died in the year 1992 and at that time their mother *Ms. Anwar Sultana* was alive and entitled to 1/6th share in subject house; that her mother *Ms.*

Anwar Sultana died in the year 1997; that after the death of her mother, her legal heirs including appellant and brother *Tariq Ramzan Ch.* were entitled to their due share in the subject house; that in the year 2005 respondents *Sikandar Ramzan.* and *Ms. Samina Babar Ramzan* prepared forged succession certificate and fraudulently got transferred the subject house in their names and in the names of their children, thus deprived the appellant and other legal heirs of their legal share in subject house by employing fraud and forgery.

3- After due investigation, report in terms of Section 173 Cr.P.C was submitted before the court of competent jurisdiction for trial. The said report primarily based upon documentary evidence including the application and transfer forms collected from CDA containing signatures of late *Ch. Ramzan Ali* and Opinion of Handwriting Expert wherein on examination, questioned signatures of the late found not similar with that of his routine signatures. Subsequently, on an application by respondent No.1 regarding tendering of Opinion with fake signatures of the Examiner, supplementary report under section 173 Cr PC was submitted before the court with Opinion of Handwriting Expert of even date i.e. 19.04.2019 wherein, the signatures of the late on questioned documents and routine signatures were found similar in nature. At the trial, respondents were charge-sheeted on 31.07.2019 where after they filed an application under section 249-A Cr. P.C. The learned Trial Court after hearing the parties, accepted the application vide order dated 12.10.2021, being impugned through the listed appeal.

4- Learned counsel for the parties addressed lengthy arguments by referring previous litigation, both civil and criminal, launched by the appellant and one of her brother *Tariq Ramzan Ch.* against respondents and others. Both the sides documented the appeal to highlight their respective contentions. Respondents through separate civil misc. placed on record copies of FIRs, orders passed thereupon and copies of civil litigation and orders thereupon besides an agreement-family settlement dated 17.01.1998.

5- The circumference of the submissions advanced by learned counsel for the appellant had been to the effect that respondents by playing fraud and forgery, deprived the appellant and other legal heirs of their share in the subject house; that forgery and fraud is substantiated by the Opinion of Handwriting Expert and that in order to perpetuate illegal act just to grab the property by depriving other legal heirs, respondents subsequently got prepared succession certificate by deliberately concealing all legal heirs and then fraudulently got transferred the subject house in their names and in the names of their children. Learned counsel in support of his submissions referred various documents, tendered before the CDA for the purpose of transfer of allotment of subject house by the respondents. According to learned counsel, the subject transfer of allotment in the name of respondents, on the face of it, is bogus as it was made after the death of *Ch, Ramzan Ali*, who died on 30.10.1990 while alleged transfer of allotment in the name of respondents was made much later on 23.11.1991, therefore, under the circumstances, proper course for the Trial Court was to record evidence and then decide the case on merits instead to knockout the appellant without affording her due opportunity to produce evidence, thus impugned order being against the spirit of natural justice, contrary to incriminating material made basis to indict the respondents for the alleged offence and offensive to right of fair trial envisaged in Article 10-A of the Constitution is liable to be set aside.

6- On the other hand, learned counsel for respondents vehemently repelled the submissions advanced by learned counsel for the appellant by contending that respondents had been/are facing dense litigation, both civil and criminal, initiated by the appellant and the other brother *Tariq Ramzan Ch*, while none of the other two sisters came forward to support the appellant; that the matter inter se the parties had already been settled regarding estate of their predecessor through family settlement in the year 1998 where after, appellant and her brother *Tariq Ramzan Ch* launched criminal and civil actions, one after the other out of personal grudge and vendetta against widow of their late brother and the other brother

with whom they had already settled the family issue; that in an identical case lodged by *Tariq Ramzan Ch*, respondents were acquitted in terms of Section 249-A Cr. P. C and appeal against the said order was also dismissed by this Court with costs, therefore, instant appeal being frivolous, vexatious and offshoot of malicious prosecution launched by appellant, deserves the same treatment.

7- Heard the learned counsel for the parties and consulted the documents made available on file with their able assistance.

8- The *parties-to-lis* hail from common pedigree. The subject house was owned by *Ch. Ramzan Ali* (predecessor in interest of the parties) who died on 30.10.1990. the appellant and respondents are closely related with each other. The appellant and respondent No.1 *Sikander Ramzan Chaudhry* are real brother and sister while respondent No.2 *Ms. Samina Babar Ramzan Ch.* is widow of *Babar Ramzan Chaudhry*, late brother of appellant and sister-in-law (*bhabhi*) of appellant. Late *Ch. Ramzan Ali* (died in 1990) was survived by *Ms. Anwar Sultana* (died in 1997) widow, three sons *Tariq Ramzan Ch.*, *Sikander Ramzan Ch.* (respondent No.1), *Babar Ramzan Ch.* (died in 1992) and three daughters *Bushra Bibi*, *Zahida Parveen* and *Ms. Ghazala Ali* (appellant).

9- As per the documents made available on file, before the rift cropped up between the parties, dispute with regard to estate of the deceased was settled through an agreement dated 17.01.1998. The appellant and her brother *Tariq Ramzan Ch.* were also signatories of the said agreement. The said agreement, as per documents, still holds the field and has not yet been cancelled/revoked by the court of competent jurisdiction despite questioned by the appellant and her brother *Tariq Ramzan Ch* through a civil suit.

10- Record further reveals that appellant and her brother *Tariq Ramzan Ch* commenced the litigation, both civil and criminal,

against respondents and others in the year 2018, then in 2019 and 2020 as well.

The first action was initiated on 09.01.2018 by appellant and her brother *Tariq Ramzan Ch* by filing suit against respondents and others seeking decree for declaration, partition, cancellation of agreement dated 17.01.1998, permanent and mandatory injunction.

After about five months of filing of said suit on 25.05.2018 appellant got registered FIR, subject matter of instant appeal wherein respondents were acquitted vide impugned order.

Thereafter, on 11.12.2018, *Tariq Ramzan Chaudhry* got registered FIR No.432, under section 420 PPC, at same Police Station i.e. Aabpara Islamabad, regarding preparation of forged agreement dated 13.02.2007 (*after more than ten years of said agreement*) against respondents. In the said case, respondents were acquitted in terms of Section 249-A Cr.P.C by learned Judicial Magistrate Section-30 Islamabad-West vide Judgment dated 12.10.2021. *Tariq Ramzan Chaudhry* assailed the said order before this Court through Crl. Appeal No. 199 of 2021 which was dismissed with costs of Rs.200,000/-. Paragraph 7, 8 and 9 being significant are reproduced:-

"07. Father of the appellant namely Ch. Ramzan Ali, got transferred House No. 41, Street No.12, Sector F-6/3, Islamabad in the names of his sons Sikandar Ramzan and Babar Ramzan on 11.08.1990, in his life time, by adopting legal procedure in the office of Capital Development Authority, Islamabad.

08. The deceased father affixed his signatures and thumb impression himself on the transfer application form, consequently transfer letter was issued by the office of C.D.A on 23.11.1991, after the death of Ch. Ramzan Ali but all the legal and codal formalities of transfer of the property were completed on 11.08.1990, during life time of Ch. Ramzan Ali.

09. When confronted, learned counsel for the appellant has admitted that there is no expert report that the thumb impressions and the signatures of deceased father are fake or forged." {**Emphasis added**}

On 20.02.2019, *Tariq Ramzan Chaudhry* again got registered another FIR bearing No. 131, under section 420, 468, 471 PPC, this time at Police Station Civil Lines Rawalpindi, against the respondents on the same allegation of preparing forged *agreement dated 13.02.2007*. It this juncture, it is necessary to mention that as per stance of respondents said agreement had been made pursuant to original agreement/settlement of 1998 in order to protect rights of legal heirs.

On 09.05.2019 *Tariq Ramzann Chaudhry* filed an application against his sister-in-law/respondent No.2 *Ms. Samina Babar Ramzan* for cancellation of guardianship certificate dated 25.07.1995 but the same was dismissed by learned Guardian Judge vide order dated 02.12.2021.

On 11.09.2019 *Tariq Ramzan Chaudhry* fled suit for declaration, possession, mesne profits and permanent injunction against respondents and others.

On 23.12.2019, one *Tariq Masood*, employee of Hammad son of *Tariq Ramzan Chaudhry* got registered FIR No. 435, under sections 324, 34 and 109 PPC, at Police Station Shalimar Islamabad against respondents and others wherein the latter were acquitted in terms of section 249-A Cr.P.C by the learned Judicial Magistrate Section 30 Islamabad-West vide order dated 02.11.2021.

On 01.05.2020, *Tariq Ramzanan Chaudhry* got registered FIR No. 122, under section 420, 468, 471, 201, 498-A and 466 PC, at Police Station Shahzad Town Islamabad, on the allegation of fraudulent transfer of property of her in laws by excluding other legal heirs wherein respondent No.2 *Samina Babar Ramzan* was allowed pre-arrest bail by learned ASJ-II Islamabad East vide order dated 30.07.2021.

11- Perusal of documents regarding above litigation, launched by appellant and her brother *Tariq Ramzan Chaudhry* reveals that respondents were subjected to face criminal and civil litigation primarily on the same subject matter. Besides present FIR, four FIRs were got registered against them besides two civil suits, filed by appellant and her brother *Tariq Ramzan Chaudhry* against respondents and an application for cancellation of guardianship certificate which was dismissed. It appears that the appellant and

her brother *Tariq Ramzan Chaudhry* had been/are keeping the respondents on their target. The above mentioned proceedings though no directly related to subject FIR yet their relevance and significance cannot be ignored, primarily for the reason of having one and the same original cause of action, made basis by appellant and her brother *Tariq Ramzan Ch.* to launch proceedings against respondents and the aspect that same do form part of judicial record, having direct nexus with the subject matter of instant appeal. Under the principle, documents that retain such like qualifications can be made basis to take judicial notice of the same. Ordinarily, documents are produced through a witness who testifies on oath and who may be cross-examined by the other side. However, there are exceptions with regard to facts which need not be proved; these are those which the Court can take judicial notice of under Article 111 of the Qanun-e-Shahdat Order, 1984 and are mentioned in Article 112, and facts which are admitted (Article 113, Qanun-e-Shahdat Order, 1984), pertaining to part of judicial record, having direct nexus with subject matter of instant appeal. Reliance is placed upon recent pronouncement of the Supreme Court of Pakistan in the case of *Manzoor Hussain (deceased) through LRs v. Misri Khan (CA No. 1698 of 2014).*

12- Adverting to the merits of the case, it is noticed that the alleged transaction of transfer of allotment in the name of two brothers i.e. respondent No.1 *Sikandar Ramzan Chaudhry* and *Babar Ramzan Chaudhry* (late), husband of respondent No.2 was made in the year 1991 while subject FIR was got registered by the appellant in the year 2018 i.e. after twenty-seven years of alleged transaction and after about twenty years of the first agreement wherein she had also been a signatory, challenged the same subsequently after twenty years of alleged transaction. Before the registration of instant FIR, the appellant had already filed suit on 09.01.2018 for cancellation of agreement dated 17.01.1998 with a delay of more than twenty years.

13- As there were two reports of Handwriting Expert of even date, filed before the Trial Court along with reports under section

173 Cr.P.C, one allegedly contained fake signatures of the Official concerned while the other, filed with supplementary report under section 173 Cr.P.C, testified as genuine. In order to verify the veracity of the report, on the direction of this Court, FIA filed comprehensive report on 24.10.2022 highlighting the procedure and SOPs, being followed for examination of questioned documents. As per said report, made part of file, after careful examination and adopting due process, report was prepared by the concerned official, then examined and approved by Deputy Director Technical and thereafter Director Technical Wing FIA. The report dated 19.04.2019 reveals that signatures of late *Ch. Ramzan Ali* are similar in characteristics with his routine signatures. Thus, report, authenticated and verified by the Deputy Director and Director Technical Wing FIA, negates allegation of forgery, as alleged by the appellant in her FIR and pressed to seek full-length inquiry on the basis of reports containing fake signatures of the official concerned, which of course, deserves stern departmental action against the delinquent/s, after tracing them out by the FIA and the police as well.

14- Apart from fake Handwriting Expert Report, rest of incriminating material made basis to indict the respondents for the offence alleged, comprised of documents mentioned in the recovery memo. The same are *allotment letter in the name of original owner pertaining to the year 1964, application form for transfer of allotment, requisition of transfer application, document containing signatures of late-predecessor in interest of the parties, transfer letter, application for transfer of share, letter of transfer of allotment in the name of respondent No.2, letter of division of subject house and photo copies of CNICs*. None of these documents even remotely suggest that any fraud, as alleged, had been played by the respondents. It was also for the reason that neither the CDA nor the Investigation Agency alleged any forgery in preparation of said documents. Therefore, entire prosecution evidence did not implicate the respondents for commission of alleged fraud and forgery.

15- It is well settled that in terms of Section 249-A Cr.P.C, the Magistrate may acquit an accused at any stage of the case if, after hearing the prosecutors and the accused and for reasons to be recorded, he considers that the charge is groundless or there is no probability of the accused being convicted of any offence. The prerequisites for invoking the power in terms of Section 249 Cr.P.C are to the effect that before passing the order, Magistrate should hear the parties and consult the incriminating material and draw opinion regarding acquittal on the basis of said incriminating material only in case when the charge appears to be groundless or there is no probability of the accused being convicted of any offence. In the present case, as discussed above, charge against respondents, on examination of incriminating material, appears to be groundless and there was no probability of the respondents being convicted of any offence, in case prosecution was allowed to lead entire prosecution evidence.

16- To sum up, on careful examination of incriminating material, made basis to indict the respondents coupled with the fact of launching dense litigation, both civil and criminal highlighted above, by the appellant and her brother *Tariq Ramzan Ch.*, whose identical appeal was earlier dismissed by this Court with costs, it can safely be held that charge against the respondents was groundless and there was no remote probability of their conviction in case the prosecution was allowed to produce entire evidence.

17- It is significant to note that instant case appears to be a classic example of frivolous litigation. It appears that there was blatant abuse of process of law to settle personal vendetta instead to agitate genuine grievance despite the fact that parties are closely related to each other. Such frivolous, vexatious and speculative litigation unduly burdens the courts giving artificial rise to pendency of cases which in turn clogs the justice system and delays the resolution of genuine disputes. Such type of litigation is required to be rooted out of the system and one of the ways to curb such practice of instituting frivolous and vexatious cases is by imposing of costs. The specter of being made liable to pay actual

costs should be such as to make every litigant think twice before putting forth a vexatious claim or defence before the Court. These costs in an appropriate case can be over and above the nominal costs which include costs of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost, besides the amount of the process fee and lawyer's fee paid in relation to the litigation. The imposition of costs in frivolous and vexatious cases meets the requirement of fair trial under Article 10A of the Constitution, as it not only discourages frivolous claims or defences brought to the court but also absence of such cases allows more court time for the adjudication of genuine claims. The imposition of costs lay foundation for expeditious justice and promotes a smart legal system that enhances access to justice by entertaining genuine claims. The purpose of awarding costs at one level is to compensate the successful party for the expenses incurred to which he has been subjected and at another level to be an effective tool to purge the legal system of frivolous, vexatious and speculative claims and defences. The imposition of costs encourages alternative dispute resolution; settlements between the parties; and reduces unnecessary burden of the courts, so that they can attend to genuine claims. The costs are a weapon of offence for the plaintiff with a just claim to present and a shield to the defendant who has been unfairly brought into court. Reliance is placed upon Qazi Naveed ul Islam v. District Judge, Gujrat etc. (CP 3127 of 2020), Province of Balochistan v. Murree Brewery Company (PLD 2007 SC 386 (5-MB), Vinod Seth v. Devinder Bajaj (2010) 8 SCC) and Edwin Coe LLP v. Naseem Ahmad Sarfraz Khan (2022 CLC 1064-Islamabad).

18- In view of above, impugned order, being in accordance with law and facts of the case, does not call for any interference. Consequently, by following the course adopted by learned co-equal Bench while dismissing *Crl. Appeal No. 199 of 2021*, titled "Tariq Ramzan Chaudhry v. Sikander Ramzan etc." instant appeal is **dismissed with costs of Rs.200,000/-** which the appellant shall pay to respondents within a period of two months from the date of this judgment. In case of non-payment of costs by the appellant within the prescribed time, same shall be recovered from her as

money decree with 10% monthly increase, and the costs of the execution proceedings shall also be recovered in addition thereto. Office is directed to transmit copy of this judgment to IG, ICT and DG FIA to hold in-depth inquiry and proceed against the delinquent(s) in accordance with law in terms of Paragraph 12 above.

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.Ansari

Announced in an open Court on ____ .12.2023.

JUDGE

APPROVED FOR REPORTING