

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Yahya Afridi, CJ
Justice Muhammad Shafi Siddiqui
Justice Shakeel Ahmad

C.P.L.A.3984/2024

(Against the order dated 11.06.2024 passed by the Lahore High Court, Bahawalpur Bench, Bahawalpur in ICA No.98 of 2022)

Muhammad Akhtar Hussain Pirzada ...Petitioner(s)

Versus

Medical Superintendent, THQ Hospital Lodhran ...Respondent(s)
and others

For the Petitioner(s) : Mr. Aftab Alam Yasir, ASC
Syed Rifaqat Hussain Shah, AOR

For Respondent(s) : N.R.

Date of Hearing : 15.04.2025

ORDER

Shakeel Ahmad, J.- This petition for Leave to Appeal filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, has arisen out of the judgment and decree dated 11.06.2024 passed by Lahore High Court, Bahawalpur Bench, Bahawalpur, whereby and whereunder the Intra Court Appeal No.98 of 2022, filed against the order dated 23.06.2022 passed by the Single Judge in Chambers, dismissing the Constitution Petition No.4467 of 2022 of the petitioner, was dismissed in limine.

2. The facts of the case, in brief, are that the petitioner filed a Constitution Petition No.4467 of 2022 before the Lahore High Court, Bahawalpur Bench, Bahawalpur, seeking issuance of directions to the Medical Superintendent, District Head Quarter Hospital, Lodhran to decide his application, pending before him for the constitution of Medical Board to conduct DNA Test of the petitioner, as well as respondents No.4 and 5 to ascertain as to whether the minor is his daughter or not. After providing right of audience to the learned counsel for the parties, the petition was dismissed, vide judgment dated 23.06.2022. Dissatisfied with the same, the petitioner filed Intra Court Appeal No.98 of 2022, which was dismissed in limine, vide judgment dated 11.06.2012. Hence this petition.

3. Heard and record perused.

4. We heard arguments of the learned counsel for the petitioner at length and examine the record with his valuable assistance. It appears from the impugned judgment that the Constitution Petition and Intra Court Appeal filed by the petitioner, seeking issuance of direction to the Medical Superintendent, District Head Quarter Hospital, Lodhran, for constitution of Medical Board to conduct DNA test of the petitioner and the respondents No.4 and 5 to ascertain as to whether minor, Nibah Noor is daughter of the petitioner or not; firstly, on the ground that, before filing the Constitution Petition before the Lahore High Court, Bahawalpur Bench, Bahawalpur, the petitioner had moved an application before the *Ilaqa* Judicial Magistrate for conducting DNA Test of the minor, which was declined, vide order dated 02.05.2008. The said order of the *Ilaqa* Judicial Magistrate was not impugned before higher forum, thus the same has attained finality; secondly, that along with the reply of the petitioner, the respondent No.4 had appended copy of the consolidated judgment dated 25.09.2007 passed in family suit for recovery of maintenance allowance and maternity expenses titled “***Mst. Nadia Khan and another Vs. Muhammad Akhtar Hussain***” and the suit for restitution of conjugal rights instituted by the petitioner. The learned Trial Court had framed a specific (issue No.4A) on the legitimacy of minor, Nibah Noor, and after recording findings on the said issue, the Trial Court held that the said Nibah Noor is the daughter of the petitioner in the light of the principles laid down in Islamic Law. The appeal filed against the said judgment of the Trial Court was dismissed, by the Appeal Court on 06.03.2008, thereagainst the petitioner filed Constitution Petition No.1523 of 2008, before the High Court, which was also dismissed vide judgment dated 08.10.2008 with the observation that the petitioner has failed to lead cogent evidence to prove that Nibah Noor was not his daughter and in presence of admitted *Nikah* between the parties presumption is that she (Nibah Noor) belongs to him.

5. The learned Counsel for the petitioner while arguing the case mainly relied on ex-parte judgment and decree dated 23.09.2019, passed by the Civil Judge, Kehror Pacca, whereby the suit of the petitioner denying paternity of the minor was decreed in his favour ex-parte, vide judgment and decree dated 23.09.2019 and went on to say that in the light of the said ex-parte judgment and decree the minor is not the legitimate child of the petitioner, therefore, the impugned judgments passed by the courts below are liable to be set aside. This contention of the petitioner seems to be misplaced.

6. We find from the record that the material question relating to the paternity of the minor Nibah Noor has already been determined by three courts below in the earlier round of litigation, on the basis of evidence available on the record. The ex-parte judgment and decree relied upon by the learned counsel for the petitioner being subsequent to the judgment in family suit referred to above, in our view, cannot nullify the earlier judgment, passed by the court of competent jurisdiction, establishing the legitimacy of the minor.

7. There is no reason made out for interference with the conclusion reached in the Constitution Petition as well as Intra Court Appeal below, which is in favour of legitimacy of the minor, Nibah Noor. In the case reported as “*Shah Nawaz and another vs. Nawab Khan*”,¹ it has been ruled that:-

“It may be that conditions attached to legitimacy are more strict under Muslim Law than under other systems but the Muslim jurist-consults as also the Courts have generally been very reluctant to stigmatize a child as illegitimate and, therefore, as far as possible every presumption is made in favour of its legitimacy. Courts, therefore, have been reluctant to declare a child bastard and have generally refused to admit illegitimacy when legitimacy can be inferred from the surrounding circumstances.”

8. For the foregoing reasons, we find no merit in the instant petition, the same is hereby dismissed and leave declined. No order as to costs.

Chief Justice

Judge

Judge

Islamabad
15.04.2025
APPROVED FOR REPORTING
M.Rizwan/*

¹ (PLD 1976 SC 767)