

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-V:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Jamal Khan Mandokhail
Mrs. Justice Ayesha A. Malik

C.P. 3127/2020

*(Against the order of Lahore High Court, Lahore
dated 06.10.2020, passed in Writ Petition No.10492/2016)*

Qazi Naveed ul Islam

.... **Petitioner**

Versus

District Judge, Gujrat, etc.

.... **Respondents**

For the petitioner: Mr. Anis Muhammad Shahzad, ASC.

For the respondents: Respondent No.3, Qazi Mubasher Shahzad, in person.

Date of hearing: 12.01.2023

ORDER

Syed Mansoor Ali Shah, J.- The petitioner seeks leave to appeal against an order of the Lahore High Court, dated 06.10.2020 ("impugned order"), whereby the High Court has dismissed his writ petition filed against the orders of the trial court and revisional court, dated 14.12.2015 and 20.02.2016 respectively. The trial court, by its order dated 14.12.2015, had dismissed the application of the petitioner filed under Section 476 of the Code of Criminal Procedure 1898 ("CrPC") against respondents No. 3 to 5 and by its order dated 20.02.2016, the revisional court had dismissed his revision petition filed against that order of the trial court. All three courts below have thus decided the matter against the petitioner.

2. Briefly, the facts of the case are that on the death of his father (Qazi Khursheed Alam), respondent No.3 (Qazi Mubasher Shahzad) made an application for the issuance of a succession certificate in respect of an amount of Rs.32,185/- left by his deceased father in a bank account, which was allowed by the trial court on 03.12.2009. The present petitioner's father (Qazi Zahoor Alam), who was the brother of the deceased Qazi Khursheed Alam and was in litigation with him over some other property, made a miscellaneous application to the trial court, on 10.11.2010, for the cancellation of the succession certificate and taking legal action against respondents No. 3 to 5 on the ground that in

the application for the succession certificate as well as in their statements made before the court, respondent No.3 and his brother (respondent No.4) and mother (respondent No.5) had not mentioned the names of the daughters of the deceased Qazi Khursheed Alam, and had thus played fraud and perjury in the court proceedings. The petitioner's father died during the pendency of this application, upon which the petitioner and his siblings were substituted as applicants in the application.

3. The sisters of respondent No.3 (daughters of the deceased Qazi Khursheed Alam) appeared before the trial court and filed their written reply opposing the said application with the assertions that the applicants had no *locus standi* to make the application; that they had surrendered their share in the amount of Rs.32,185/- left by their deceased father and had no objection on the succession certificate issued in favour of their brother, respondent No.3, to receive that amount from the bank; and that their family was in litigation with the applicants for the last about 7/8 years and they had made the application just to blackmail respondents No.3 to 5 (their brothers and mother).

4. Although we are unable to understand why the trial court did not reject the application summarily, and instead proceeded further thereon by framing issues, after the said reply of the sisters of respondent No.3, ultimately the trial court dismissed the application after recording evidence on the issues, vide its order dated 27.01.2015, with the findings that the applicants being not the legal heirs of the deceased Qazi Khursheed Alam had no *locus standi* and cause of action to challenge the succession certificate issued in respect of his legacy, and that the filing of the application was based on *mala fide* in order to avenge the other litigation ensuing between the parties. This order of the trial court was not challenged by the petitioner or any of his siblings and thus attained finality.

5. Just about a month before the final decision of that application, and probably in view of the expected decision, the present petitioner filed an application under Section 476 of the CrPC, on 09.12.2014, against respondents No. 3 to 5, making the same averments. Respondents No. 3 to 5 filed their written reply, opposing the application. After hearing the arguments of the counsel for the parties, the trial court dismissed this application, vide its order dated 14.12.2015, holding

therein that the matter had already been decided in the order dated 27.01.15 passed on a similar application on the same matter, which order having not been challenged had attained finality and that the issue of *mala fide* in the previous application had been decided against the petitioner. The petitioner preferred a revision petition against this order of the trial court, which was dismissed by the revisional court, vide its order dated 20.02.2016. The petitioner did not stop there and filed a writ petition in the High Court, challenging the orders of the trial and revisional courts. The High Court dismissed his writ petition, by the impugned order. Hence, the petitioner has filed the present petition, in this Court, for leave to appeal.

6. Having heard the learned counsel for the petitioner and respondent No.3 in person and examining the record of the case, we are of the view that it is a classic case of abusing the process of the court. Respondent No.3 has been punished with a penalty of pursuing an outright frivolous litigation for a period of more than a decade, just for the reason that he had got a succession certificate in his favour to receive a meagre amount of Rs.32,185/- left by his deceased father in a bank account, and that too on the applications of the persons who had no right or interest in the legacy of his deceased father rather had been in litigation over some other property first against the deceased father of respondent No.3 and after his death against respondent No.3 and his mother and siblings.

7. To our query, as to what right or interest of the present petitioner or his deceased father was affected by the issuance of the succession certificate in favour of respondent No.3, the answer of the learned counsel for the petitioner was nothing but that the petitioner and his deceased father had acted just as informers of the commission of offences of fraud and perjury with the court during the proceedings of the application for succession certificate. The spiteful conduct of the petitioner and his deceased father in making repeated applications and venomously pursuing them up to this Court do not paint of picture of a bonafide informer committed to unfold the offences of fraud and perjury for the love of justice, equity and fairplay. The conduct of the petitioner reeks of private vengeance against respondent No.3 and his mother and siblings, because of a simmering dispute over some other property.

8. It is also regrettable to note that the first application filed by the petitioner's father and later pursued by the petitioner and his siblings after his death, for cancellation of the succession certificate and taking legal action against respondents No. 3 to 5, which should have been dismissed summarily after the filing of opposing written reply of the sisters of respondents No. 3, was proceeded with unnecessarily by framing issues and decided after the protracted proceedings of about five years.

9. The power conferred by Section 476, CrPC on a Civil, Revenue or Criminal Court to take cognizance of certain offences committed in, or in relation to, any proceedings before it, is discretionary as evident from the expression, "may take cognizance", used in the Section. No doubt, like all other discretionary powers, the court concerned is to exercise this discretion judiciously, not arbitrarily, while taking into consideration the facts and circumstances of the case.¹ Previously, before its substitution by the Act XXI of 1976, Section 476 had stated it expressly that the court is to take action under Section 476 when it is of opinion that "*it is expedient in the interests of justice*" that an inquiry should be made into such an offence. As the discretionary powers must always be exercised in the interests of justice, we are of the considered view that notwithstanding the omission of that expression in the present Section 476, while exercising its discretion under this Section the court concerned should give prime consideration to the question, whether it is expedient in the interests of justice to take cognizance of the offence. The court is to exercise this discretionary power with due care and caution, and must be watchful of the fact that its process under Section 476 is not abused by an unscrupulous litigant scheming to wreak private vengeance or satisfy a private grudge against a person,² as has been done by the petitioner in the present case.

10. In view of the stance of the sisters of respondent No.3 as to having no objection to the succession certificate issued in favour of their brother, respondent No. 3, the trial court had rightly dismissed both the applications, the first filed by the petitioner's father and the second by the petitioner, vide its orders dated 27.01.2015 and 14.12.2015, by noting the fact that the same had been filed with *mala fide* to avenge a private grudge and without having any interest in the matter decided by

¹ Abdul Hakeem v. State 1994 SCMR 1103.

² Feroze Din v. Munir 1970 SCMR 10; Naushaba v. Khalil Ahmad 2004 SCMR 805.

it. And the order of the trial court has correctly been maintained by the revisional court and the High Court. The present petition is completely frivolous and vexatious and the process of court has been abused just to pressurise the other side and to settle a personal score.

Imposition of costs

11. 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 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 under Order 28 Rule 3 of the Supreme Court Rules, 1980 ("Rules"). The spectre 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 defence³ 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 court fee, process fee and lawyer's fee paid in relation to the litigation.⁴ 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 house but also absence of such cases allows more court time for the adjudication of genuine claims. It also incentivizes the litigants to adopt alternative dispute resolution (ADR) processes and arrive at a settlement rather than rushing to courts.⁵ Costs lay the foundation for expeditious justice⁶ and promote 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. In a nutshell costs encourage alternative dispute resolution; settlements between the parties; and reduces unnecessary burden off the courts, so that they can attend to genuine claims. Costs are a

³ Vinod Seth v. Devinder Bajaj (2010) 8 SCC 1; Province of Balochistan v. Murree Brewery Company PLD 2007 SC 386 (5-MB).

⁴ Ibid.

⁵ Ibid.

⁶ Article 37(d) of the Principles of Policy under the Constitution.

weapon of offence for the plaintiff with a just claim to present and a shield to the defendant who has been unfairly brought into court⁷.

12. In the instant case, the petitioner has repeatedly abused the courts to advance a personal grudge by repeatedly filing vexatious and frivolous claims in various courts, not only wasting the precious time of these courts but also causing anguish and pain to the other party that unnecessary, unfair and prolonged litigation brings. We, therefore, dismiss the present petition with costs of Rs.100,000/- which shall be deposited by the petitioner in the trial court for payment to respondent No.3 (Qazi Mubasher Shahzad) within three months from today. In case of failure by the petitioner to deposit the said costs within the prescribed time, they shall be recovered from the petitioner as a money decree with 10% monthly increase, and the costs of the execution proceedings shall also be recovered in addition thereto.

Judge

Islamabad,
12th January, 2023.
Approved for reporting
Iqbal

Judge

Judge

⁷ Arthur L. Godhart, 'Costs' (1929) 38 Yale Law Journal 849