

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl.Misc.Appln.No.S-110 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection "A".
2. For hearing of main case.

15.04.2024.

Mr. Saeed Ahmed B. Bijarani, Advocate for the applicant.

Mr. Iftikhar Ali Arain, Advocate for private respondent No.1.

Mr. Aitbar Ali Bullo, D.P.G for the State

Heard learned counsel for the parties and have gone through the impugned order. For the reasons to follow the impugned order dated 28.03.2024, passed by learned 1st Additional Sessions Judge, Kandhkot (revisional Court) vide Criminal Revision No.01 of 2024 Re-Abdul Hameed v. The State and others is hereby set aside. Consequently, the order dated 08.12.2023, passed by learned Civil Judge J.M-II, Kashmore over an application under section 176(2), Cr.P.C, filed by the respondent accused whereby he declined the prayer for exhumation of dead body of deceased Shahmeer is hereby maintained.

The trial Court is hereby directed to expedite the trial and to conclude it within shortest possible time under intimation to this Court.


Judge

M.Y.Panhwar/**

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CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Crl: Misc. Application . No. S. 110 of 2024

Applicant: Yar Ali Chachar. V/S Abdul Hameed and others

SINDH HIGH COURT

Composition of Bench Before Mr. Justice Muhammad Saleem Jessar

Single/ D/B

of: Hearing : 15/04/2024

of: Order : 15/04/2024

(a) Judgment approved for
Reporting

YES
NO

C E R T I F I C A T E

Certified that the judgment / Order is based upon or enunciates a principle of
/ decides a question of law which is of first impression / distinguishes/ over-rules/
erses/ explains a previous decision.

Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used. The Reader must attach it to be the top of the first page
Of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is
Approved for reporting.

(iv) Those directions which are not to be used should be deleted.

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ORDER.

Through instant Crl. Misc. Application, the applicant/ complainant has assailed the order dated 28.03.2024, passed by 1st Additional Sessions Judge, Kandhkot (revisional Court) vide Criminal Revision No.01 of 2024 *Re-Abdul Hameed v. The State and others*, whereby the revisional Court set aside the order dated 08.12.2023 passed by Civil Judge and J.M-II, Kashmore on an application under section 176(2), Cr.P.C filed by the respondent/accused seeking exhumation of dead body of the deceased Shahmeer.

2. Mr. Saeed Ahmed Bijarani, learned counsel for the applicant, submitted that the incident had occurred on 02.07.2022, whereby the respondent/accused had committed the murder of deceased Shahmeer by causing him gunshot injuries; however, after registration of the case and completion of investigation, the case has been challaned, which is now pending for trial before 1st Additional Sessions Judge, Kandhkot (revisional Court). He next submitted that prior to this application, nephew of respondent No.1, namely, Naseebullah had filed such application before the Magistrate, which was dismissed vide order 23.08.2022 and against said order, they filed Crl. Revision Application before the Court of Sessions, which was dismissed as withdrawn on 03.12.2022. Again, the respondent No.1 filed/repeated same application before Judicial Magistrate, which too was dismissed on 13.03.2022. Against said order, the respondent No.1 filed revision application before

the Court of Sessions, which later was assigned to Additional Sessions Judge, Kashmore, who after hearing the parties, allowed the same vide order dated 21.10.2023, by directing the Judicial Magistrate to pass fresh speaking order. Upon receipt of such directions by the Additional Sessions Judge, Kashmore, the Judicial Magistrate-II, Kashmore, had again dismissed the application through his order dated 08.12.2023. The respondent No.1 filed fresh revision application No.01 of 2024 before the Court of Sessions, who later assigned it to revisional Court. The revisional Court after hearing the parties has allowed said application vide impugned order dated 28.03.2024.

3. Mr. Bijarani, learned counsel for the applicant further submitted that the impugned order suffers illegality and the revisional Court itself is the Court of trial, where Medico-legal Officer, namely, Dr. Muhammad Umair was examined on 23.11.2023 vide Ex-6; hence submitted that the concern shown by the respondent, on which basis they have been seeking exhumation of dead body, in view of the evidence/deposition of the Medico-legal Officer has become redundant, therefore, the impugned order may be set aside. He next submitted that in case instant application may not be allowed then sanctity of grave as well as dead body of deceased including honour of the family will be spoiled. In support of his contentions, he placed his reliance upon the cases of *Muhammad Akram v. Additional Sessions Judge, Depalpur and 3 others* (2014 P.Cr.L.J 1030) and *Zafar Ali v. Mst. Muradan and another* (2017 P.Cr.L.J 1341).

4. Mr. Aitbar Ali Bullo, learned D.P.G., appearing for the State, did not support the impugned order on the ground that after about two years of the incident exhumation of dead body will not serve any legal purpose except to dis-honour the sanctity of grave as well as the bereaved family.

5. Mr. Iftikhar Ali Arain, learned counsel for the respondent No.1, opposed the application on the ground that revisional Court has rightly passed the impugned order which is not questionable, as

according to him, the cause of death of deceased has to be ascertained. Learned counsel further submitted that according to provisions of Section 176, Cr.P.C, the exhumation deems to be necessary when the cause of death is not known; however, in instant case complainant had specifically mentioned in the FIR that the deceased was done away with at the hands of accused/respondents, particularly with weapons and such their version has been incorporated by the Investigating Agency vide memo of injuries as well as Medico-legal version through postmortem notes. As far as objection raised by the counsel for the applicant that respondent No.1 is not relevant person to seek exhumation of dead body, submitted that respondent No.1 is accused in the case, therefore, is competent to file application and there is no embargo which may forbid him to move application for exhumation. In support of his contentions, he placed his reliance upon the cases of *Mst. Nargis v. The District Magistrate, Gujrat and 2 others* (1985 MLD 782), *Muhammad Rzmzan and others v. The State and another* (1987 SCMR 272), *Mst. Ghazala Begum and others v. The District Magistrate, Khanewal and others* (1996 P.Cr.L.J 389), *Ameer Afzal Baig v. Ahsan Ullah Baig and 3 others* (2003 P.Cr.L.J 2000), *Syed Riaz-Ul-Hassan Shah v. Additional Sessions Judge, Vehari and 3 others* (2006 YLR 2953), *Mansab Ali v. Asghar Ali Faheem Bhatti, Additional Sessions Judge, Nankana Sahib and 3 others* (PLD 2007 Lahore 176), *Muhammad Tufail v. Additional Sessions Judge* (2010 MLD 5) and *Rana Shahbaz Ahmed v. Sessions Judge and another* (2018 MLD 460).

6. The applicant being cousin of the deceased does not want to get exhumation of the dead body of deceased, thereby causing humiliation and disrespect to the dead body of the deceased. It appears that the respondent No.1, who is nominated accused in the subject case/crime, has been making efforts for the exhumation of the dead body, which, in my opinion, is nothing but an attempt to blackmail the complainant party. The legal heirs of the deceased are undeniably the trustees of his grave to keep it maintained, not only the grave but respect and dignity of the dead body. No doubt under Section 176(2), Cr.P.C. the Magistrate has ample powers to disinter any body to ascertain the actual

cause of death of deceased person, who has already been interred and there is no limitation provided in criminal law for moving any application for exhumation of grave and disinterment of dead body, but in doing so the Magistrate has to examine the information or application for exhumation of dead body prudently. Perusal of impugned order dated 28.3.2024 reveals that the revisional Court has allowed the revision application filed by the respondent No.1, mainly on two counts i.e. as per postmortem report of deceased the probable time between injury and death was instantaneous, while the deceased was shown to have received fire shot injury at his non-vital part of body and that as per postmortem the fire shot injury resulted in fracture of humerus bone of the deceased, but the same fracture is not shown by the police in mashirnama of inspection of injuries of deceased. Both these grounds can best be considered at the time of trial, after conducting proper cross-examination of the investigation officer and the medical officer. Even otherwise, since the reason/cause of death of deceased is known, therefore, application for exhumation cannot be entertained.

7. Having observed so, I am of the considered opinion that the impugned order dated 28.3.2024 passed by the learned 1st Additional Sessions Judge, Kandhkot/revisional Court does not seem to be legal and valid; hence, cannot withstand. Consequently, instant criminal miscellaneous application is allowed. Resultantly, the impugned order is set aside.

8. Above are the reasons for short order dated 15.4.2024, whereby instant criminal miscellaneous application was allowed, impugned order dated 28.3.2024 passed by learned 1st Additional Sessions Judge, Kandhkot (revisional Court) vide Cr. Revision No.01/2024 re-Abdul Hameed v. The State & others, was set aside and order dated 08.12.2023 passed by Civil Judge & J.M-II, Kashmore on an application u/s 176(2), Cr.P.C was maintained.


JUDGE