

**HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS****C.P. No. D-965 of 2024****Old No.D-2487 of 2019**

Present: Mr. Justice Amjad Ali Bohio  
Mr. Justice Dr. Syed Fiaz ul Hasan Shah.

Petitioner : Ali Akbar son of Zahoouddin.  
Through Mr. Rao Faisal Ali, advocate

Respondents : Abdul Jabbar & 05 others  
Mr. Muhammad Sharif, Assistant.  
A.G for respondent No.6

Dates of Hearing : 18.02.2025

Date of Decision : 18.02.2025

**ORDER**

**Dr. Syed Fiaz ul Hasan Shah, J:** Through this Constitutional Petition, the petitioner has challenged the legality of Order dated 18.10.2019 passed by learned District Judge Mirpur Khas in Civil Revision Application No.19/2019. The Respondent/Defendant in Suit No.199/2015 filed an application under Article 164 of Qanoon-e-Shahadat Order, 1984 for calling Scanner/Modern Device in order to readout the barcode affix on the Stamp Paper issued by the Stamp Office, Government of Sindh. This stamp paper is claimed by the petitioner for his sale agreement. After hearing the parties, the trial Court has dismissed the said application under Article 164 of the ibid Order, 1984. Thereafter, the Respondent No.1 preferred Civil Revision No.19/ 2019 before the District Judge Mirpurkhas and the same was allowed vide Order dated 18.10.2019 while setting aside the Order dated 06-08-2019 of the trial Court passed in F.C, Suit No.199 of 2015 (Re-Ali Akbar Vs. Abdul Jabbar & others).

2. The brief facts giving rise to the instant petition are that the petitioner being plaintiff filed a F.C Suit No. 199/2015 (Re: Ali Akbar Vs. Abdul Jabbar & others) for Specific Performance of contract and Permanent Injunction against the legal heirs of Abdul Sattar/Respondent No. 1 for the performance of his contractual obligations. The petitioner has pleaded that a shop bearing No.01 having an area of  $11.9 \times 13.3 = 158.27$  sq.ft situated in Khisakpura Mirpurkhas have sold by the deceased Abdul Sattar who was the father of Respondent No. 2 to 5 against sale consideration of Rs. 35,00,000/- out of which Rs. 20,00,000/- were paid by the plaintiff/petitioner at the time of execution of sale agreement. The petitioner further contended that in the year 2014, the Seller Abdul Sattar expired and thereafter the petitioner/plaintiff filed the suit with following prayers:

a) Direct the defendant No.1 to 5 (or any other person claiming as legal heir of deceased Abdul Sattar) to execute the sale deed in respect of shop in question, being their legal obligation/duties as plaintiff is ready and prepared to pay remaining sale consideration of Rs. 15,00,000/- in case of failure the Nazir be authorized for such purpose.

b) Grant permanent injunction against the defendants No. 1 to 5 (including any other person claiming as legal heir of deceased Abdul Sattar) restraining and prohibiting them from causing any attempt to create any third party interest in respect of shop in question of the plaintiff by themselves through their men, agents, servants or any other person in any manner what so ever may be in league or collusion with defendant No.6 to 9 even in any manner whatsoever so may be.

3. The only point, involved in the *lis*, is regarding applicability and usage of modern device to read out the serial number and barcode printed on the stamp paper which is utilized for sale agreement by the petitioner in pursuit of decree from court of law. The petitioner/plaintiff has filed a suit for specific performance of contract on the basis of Sale Agreement dated 01.02.2013, which is attached with the Memo of petition as *Annexure A-31*. On close scrutiny of Sale Agreement and the stamp paper used for it, we have noticed that on the head of stamp paper a serial number and barcode is printed and it is clearly visible. We have further noticed that the

petitioner, during his evidence, has produced Sale Agreement and the Respondents /defendants have moved an application under Article 164 of the Qanoon-e-Shahadat Order, 1984 in order to disprove the said stamp paper through the aide of modern device and scanner/ digital reader of the barcode in order to determine the exact date of print and date of issuance of such stamp paper by the Stamp Office concerned who are responsible for distribution and regulation of stamp papers (judicial & non-judicial) under proper stock register which are being printed and administered by the Government of Sindh under the Stamp Act, 1899. Recently the Government of Sindh has introduced e-paper website for issuance of judicial and non-judicial stamp papers against stamp duty by way of “online application”.<sup>1</sup>

4. The background of historical development regarding the usage of modern devices and scientific technologies in the judicial history unveil that the Pakistani courts are conveniently adopting modern devices to present the evidence in the courts for safe administration of justice and to reach at just and proper decision-making. The concept was firstly emerged through Article 59 of Qanun-e-Shahadat order, 1984 which has recognized the globally accepted devices as an evidence in various categories.<sup>2</sup> The evidential value and evidential representation by using modern devices is permissible in various developed judiciary across the Continents. By implication, modern devices as evidence, the Federal Shariat Court<sup>3</sup> has already declared that the use of modern device as evidence or the scientific and analytical methods to discover the truth are not forbidden and on the contrary it has been core value by the Holy Quran and emphasized to know and discover the truth in administration of justice.

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<sup>1</sup> <https://estamps.gos.pk/eStampCitizenPortal/ChallanFormView/HomePage>

<sup>2</sup> For instance; finger print or question signature or writings, Serologist Report, Toxicology, Digital Forensic Science, Ballistic Analysis report, Crime Scene Ballistic report, Firearms examination report, Tool Mark Analysis report, Close Circuit Television (CCTV), Call Data Record (CDR), Deoxyribonucleic Acid (DNA), etc

<sup>3</sup> PLD 2010 FSC 215

5. The historical legal theory of Courts unscrupulously receptive for the application and ubiquitously use advanced technologies and modern device evidences in the matters related to the chemical examination or chemical analysis, forensic analysis for recourse the Courts trail and for this purpose the insertion of Article 164 was added in Qanun-e-Shahadat Order, 1984 to give modern impact for the construction of evidence in the following manners: -

**“164. Production of evidence that has become available because of modern devices, etc.** In such cases as the court may consider appropriate, the court may allow to be produced any evidence that may have become available because of modern devices or techniques”.

The Code of Civil procedure, 1908 has been also made consistent and coordinated with the Qanun-e-Shahadat Order, 1984. This addition in the statute of Qanun-e-Shahadat Order, 1984 is further harmonized in 1994 by an amendment in the procedure of implementation in the Code of Civil procedure, 1908 through its Order V, rule 20, which provides:

“(b) any electronic device of communication which may include telegram, phonogram, telex, fax, radio and television;”

6. The Pakistani legal system has further acknowledged the significance and importance of modern device and scientific technologies by enactment *“Electronic Transaction Ordinance, 2002”*. The establishment of *“Electronic Certification Accreditation Council”* under Section 18 of the said Ordinance, 2002 is milestone towards the usage of modern devices and scientific technologies and it is also acknowledged and served in various manners for presentation and transmission of evidence in the courts towards achievement the objective and perspectives of State and religion’s rubric rules regarding acceptance and admissibility.

7. The subjective evolution has firstly been enunciated by the Honorable Supreme Court of Pakistan<sup>4</sup> while defining the principles of

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<sup>4</sup> *“Fakir Muhammad Vs. Federation of Pakistan” (PLD 1958 SC 118)*

extension in the law and statutes to new things through effectuation of doctrine of *“Updating Construction of Statutes”*. The doctrine of updating construction of Statutes and existing legal structures demands to close the gap between law and technology. A forensic report is considered by Courts as a crucial piece of evidence that can significantly impact cases as it provides scientific analysis of physical evidence, which can be used to establish a suspect’s guilt or innocence in criminal cases or defining preponderance of probabilities in civil cases and is generally admissible in Court if properly collected, analyzed and presented by qualified witness. Simultaneously, contamination concerns when improper collection or bad handling of evidence, it can be the instant of distrust or question of its integrity. Therefore, the Court always assess the reliability and relevance of the Forensic and related evidence presented for its consideration on the yard stick of factors like the complexity of the analysis and potential limitations.

8. No doubt, the status of forensic evidence is corroboration. Universally, it is not conclusive evidence but its value is robust explanatory to the direct evidence. The Supreme Court of Pakistan<sup>5</sup> has consistently settled the point of admissibility of Digital usage and forensic, for example, the DNA Test. The Pakistani Courts are deeply interested for advance technologies to move with contemporary world. The 21<sup>st</sup> century is an era of advance technology and traveling in space. The study of Judgment of Hon’ble Supreme Court of Pakistan regarding advance technologies and modern device give determinative guidelines for the application of modern device in order to prevent maneuvering and tampering of evidence with the help of advanced technologies. Reliance can be placed on the dictum of Hon’ble Supreme Court of Pakistan<sup>6</sup>:

**“Importance of modern forensic science and DNA.**

Before analyzing the circumstantial evidence, it might be useful to underline the role of science, modern forensic techniques and devices under our criminal justice system. For the law to serve people in this technologically complex society, courts

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<sup>5</sup> Azeem Khan v. Mujahid Khan, 2016 SCMR 274; Salman Akram Raja v. Government of Punjab, 2013 SCMR 203; 2016 SCMR 2084

<sup>6</sup> “Ali Haider @ Pappu vs. Jameel Hussain & others” (Crl Petition No.513 of 2020)

need to understand and be open to science and its principles, tools and techniques. Legal decisions of the courts must fall within the boundaries of scientifically sound knowledge. A judge and more so a trial judge, acts as a gatekeeper of the scientific evidence and must, therefore, enjoy a good sense and understanding of science. As science grows so will the forensic techniques, tools and devices; therefore, courts must be open to developments in forensic science and embrace new techniques and devices to resolve a dispute, provided the said technique and device is well established and widely accepted in the scientific community as a credible and reliable technique or device. Article 164 of the Qanun-e-Shahadat Order, 1984 (QSO) is our gateway allowing modern forensic science to come into our courtrooms. Article 164 provides that courts may allow to be produced any evidence that may have become available because of modern devices and techniques. Proviso 2 to Article 164, added in the year 2017, provides that conviction on the basis of modern devices and techniques may be lawful. Article 164 read with Article 59, inter alia, allows modern forensic science to enter courts through the credible and valued scientific opinions of experts as evidence, in order to arrive at the truth.”

9. The Counsel for the petitioner has also failed to point out any infirmity in the impugned Order with regards to settled parameters of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Notably, the objective of Article 199 of the Constitution is to foster justice, protect rights and correct any wrongs. The Constitution empowers the High Court to rectify wrongful or excessive or colorable exercise of jurisdiction by lower courts or to probe the procedural illegality or jurisdictional error or procedural improprieties that may have prejudiced a case of an aggrieved person. For guidance reliance can be placed on the recent judgments of Supreme Court<sup>7</sup> elaborated on this view:

“8. The object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is to foster justice, preserve rights and to right the wrong. The appraisal of evidence is primarily the function of the Trial Court and, in this case, the Family Court which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-

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<sup>7</sup> Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another (2023 SCMR 246)

reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, mis-reading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken.”

10. It may be observed that the law is guidepost for minimally acceptable behavior in society. In a modern society, the law informs everyday life in a wide variety of ways and is reflected in numerous branches of Law with its ultimate object to serve society as such immense need to use technology with a dynamic and visionary scheme in Court proceedings. Recently, the Hon’ble Supreme Court of Pakistan<sup>8</sup> has magnificently imply the vision by once again invoking doctrine of *“updating construction of Statutes”* and elucidated the definition of word *“attendance”* used in Order XVIII Rule 4 C.P.C. It has been allowed qualified individual to take part virtually in a legal communication or evidence in line with the legal requirement, even when other attendees are physically gathered. The expansion of definition of word *“attendance”* as used in Order XVIII Rule 4 C.P.C has now included initial participation or attend digitally or virtual attendance subject to certain requirement. Therefore, moving towards a milestone in application of Digital or scientific Technology and modern devices, the Supreme Court<sup>9</sup> has held that the *“physical attendance”* is interchangeable with *“virtual attendance”* by courageously appreciation of the usage of modern device or scientific Technology within the judicial system of Pakistan.

11. The counsel for the petitioner has failed to satisfy us as what would prejudice caused to him and how he has been aggrieved with the impugned Order in case article 164 has been invoked to verify the authenticity of document by usage of modern device which is a transparent

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<sup>8</sup> “Meera Shafi v. Ali Zafar” (C.P. No.1795 of 2022)

<sup>9</sup> *ibid*

manner and helpful to the trial Court to arrive at just and proper decision in order to determine the controversy between the parties. It is mandatory for a petitioner to demonstrate from the record that he is aggrieved with an order realistically otherwise one should bear in mind that a person cannot be said to be an aggrieved party within the meaning of Article 199 of the Constitution, if his rights and interests are not adversely affected or if he suffers no loss or injury by a particular Order. It is sine quo non for proceeding of writ or judicial review under Article 199(1)(a) of the Constitution<sup>10</sup> that a person should be aggrieved with an order and in other words a non-aggrieved person does not qualify to invoke extra-ordinary jurisdiction of this Court.

12. With exposition of law under the doctrine of “updating construction of Statues” in cases referred above, the impugned Order passed by learned District Judge with regard to the permissibility to use Modern Device (Scanner) to readout barcode of disputed document under Article 164 of the Qanoon-e-Shahadat Order, 1984, for determinative steps about birth date, time or seriality order as well as veracity as per Stock Register of Stamps paper, we do not find any illegality, or jurisdictional defect in the impugned order. We are not persuaded with the arguments of learned counsel for the petitioner that the grant of application under Article 164 of ibid Order, 1984 by the Revisional Court would cause delay in concluding of trial as we have noticed that the petition is pending for the last 05 years and no efforts have been taken by the petitioner to expedite the proceedings rather delay caused at his hand. To our understanding, the petition is filed to undermine the law such as Article 59, 164 of the Qanoon-e- Shahadat Order, 1984, Order V Rule 20 (b) Order XVIII Rule 4 of the Code of Civil Procedure, 1908 and the dictum of Honorable Supreme Court of Pakistan on usage of modern devices and scientific technologies as evidence in Court.

11. Notably, the composite definition of the scope and power of Article 199(1)(a) of the Constitution and courageous dictum of the Hon’ble Supreme Court for use of Modern device and advance technology as

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<sup>10</sup> **Hafiz Hamadullah v. Saifullah Khan and others (PLD 2007 SC 52)**



evidence in courts, the petition is devoid from law and merits. These were reasons for dismissal of petition vide our short Order dated 18.02.2025. Let the copy of this order be forwarded to the trial court with directions to conclude the trial of the suit within 90 days hereof and in accordance with law, without being influenced with any of the findings recorded hereinabove.

JUDGE

JUDGE

“Adnan Ashraf Nizamani”