

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl:Jail Appeal No.D- 134 of 2009
Crl:Jail Appeal No.D- 133 of 2009
Crl:Jail Appeal No.D- 135 of 2009
Crl:Jail Appeal No.D- 136 of 2009
Crl:Jail Appeal No.D- 137 of 2009 &
Criminal Confirmation Case No. 07 of 2009

Before:- Mr.Justice Ahmed Ali Shaikh, J.
Mr.JusticeSalahuddinPanhwar, J.

Appellants/accused: Muhammad Amin, Ghulam Mustafa @ Mustoo @
Mushtaque, Qurban, GhulamHyder and Dooso,
through Mr.Anwer Ali Shaikh, Advocate.

Respondent : The State, through
Mr.Zulfiqar Ali Jatoi, D.P.G.

Date of hearing: 17th. January, 2013

ORDER

SALAHUDDIN PANHWAR, J:- The appellants/accused namely Muhammad Amin, Ghulam Mustafa @ Mustoo @ Mushtaque, Qurban, Ghulam Hyder and Dooso have filed the compromise application U/s 345(6), Cr.P.C and pray for their acquittal. They have also prayed for acquittal of 06 absconding accused in their absentia. The application is also signed by Ghulam Rasool and Saeed Khan who claimed themselves as legal-heirs of deceased Meenhal, GhulamHussain, Mst.Maryam, Yar Muhammad (minor), Ghulam Muhammad (minor) and Aijaz (minor).

02. By order dated 28.7.2010, the D.P.G and office was directed to formulate the above application. The compromise application was sent to the trial Court for legal verification and genuineness. Thereafter the learned trial Court in its' report dated 25.7.2011 disclosed that the legal-heirs of deceased Meenhal and 05 others have shifted to some unknown place and their present whereabouts are not known to anybody else. It was also stated that reports were called from Police

Station and Secretary Union Council Mirzapur, Taluka Garhi Yasin, District Shikarpur, which reflects that the cited village Rakhial-ji-Wandh is not situated within their jurisdiction.

03. Again on furnishing of fresh address of the legal-heirs of deceased persons, the trial court was directed to conduct inquiry, pursuant to that the trial court conducted inquiry and submitted report dated 25.10.2011, which reveals that Secretary Union Council Mirzapur has disclosed that deceased Meenhal and 05 others left behind only Ghulam Rasool and Saeed Khan Kharose as their surviving legal-heirs and it was further reported that deceased Meenhal had 03 daughters but they did not disclose their names, whereas by police inquiry, it was surfaced that one Ghulam Rasool and Saeed Khan Kharose are the only legal-heirs of deceased Meenhal and 05 others, subsequently the Mukhtiarkar Garhi Yaseen and S.D.P.O, Ketti Pir Pagara were directed by this court to conduct thorough probe and submit report regarding legal-heirs of deceased Meenhal, Ghulam Hussain, Yar Muhammad (minor), Ghulam Muhammad (minor), Aijaz (minor) and Mst.Maryam.

04. It is further revealed in the inquiry report filed by S.D.P.O, KettiPirPagara that deceased Meenhal had three sons namely deceased Ghulam Hussain, Ghulam Rasool and Saeed Khan and deceased Meenhal had contracted marriage with Mst.Waziran who was resident of Peshawar (KPK) and she had three daughters from her first husband namely Mst. GulParri, Mst.Nabul and Mst.Piyari.

05. After hearing and meticulous examination of record, it is evident that it was very difficult to ascertain the whereabouts of legal-heirs of six deceased persons (named-above) and their residence. Since filing the compromise application on many times the authorities were directed to conduct inquiry, locate

the actual legal-heirs and their residence, and it is also surfaced that the reports submitted by the concerned persons are in vague in the following terms.

- (i) All reports do not disclose the proper parentage of the deceased persons and are contradictory to each other.
- (ii) The Mukhtiarkar Garhi Yaseen, District Shikarpur in its' report has disclosed only two legal-heirs, whereas the concerned Secretary Union Council Mirzapur has disclosed that deceased Meenhal has two daughters but the legal-heirs are concealing their names.
- (iii) The S.D.P.O, Ketti Pir Pagara in its' report has disclosed that Mst.Waziran wife of deceased Meenhal had three daughters from her first husband and detail is also available but he has not bothered to record the statements of said three daughters of Mst.Waziran Widow of deceased Meenhal regarding the authenticity, whether they are real daughters of deceased Meenhal or not.
- (iv) The Mukhtiarkar, Garhi Yaseen, in its' report has mentioned Mst.Hayatan as mother of Mst.Maryam. Whereas, S.D.P.O Ketti PirPagara has mentioned that Mst.Hooran is mother of deceased Mst.Maryam.

5. The all reports are silent regarding the legal heirs of deceased Maryam, as to **whether** at the time of her death, father , mother , brothers or sisters were surviving legal heirs or not, and how two cousins can be the legal heirs of that deceased, especially, when time of death of her children's is same.

6. It is also strange that learned additional sessions judge has not examined that all reports are not showing the exit time of death of deceased persons, and in absence thereof, how question of heir ship can be determined as under Islamic law , inheritance of a Muslims opens at the moment, when he dies.

Thus, in view of above, it is manifest to say that inquiries held by trial Court and reports submitted by Mukhtiarkar, Secretary Union Council, Mirzapur, TalukaGarhiYasin and S.D.P.O KettiPirPagara before this court requires further probe and it is yet to be ascertain whether at the time of death who were the surviving legal-heirs of deceased Meenhal, (2) Ghulam Hussain, (3) Ms.Maryam, (4) Yar Muhammad, (5) Ghulam Muhammad and (6) Aijaz. Here it is necessary to explain that we are conscious of the fact that to The Allah almighty also has

shown his liking to those who dare to forgive therefore, no limitation has been prescribed in the Cod for effecting compromise which even can be pressed when man is being hanged for the wrong. Thus this seems to be the reason that this Court has taken so much trouble in verifying the status of those who have come as legally entitled to compound the offence within meaning of Section 345(ii) Cr.P.C because the Court (s) are the ultimate guardian of the rights, interests and claims of individual. The Section 345(ii) Cr.P.C also insists the genuineness of compromise within satisfaction of the court, which includes that the court (s) are to take utmost care that not a single legally entitled person to compound the offence is left more particular keeping in view the interests of minor (s) legal heir for whom the Wali can only waive right of Qisas and not of Diyat. Therefore, we direct the District Sessions Judge Shikarpur and Special judge, ATC, Khairpur , to conduct thorough, probe, by adopting all modes, according to law for ascertaining the actual legal-heirs of deceased (named-above) according to injunctions of Islam and submit such report positively within one month.

Office is directed to fix this matter in Court for rehearing of compromise application after receipt of the report.

JUDGE

JUDGE