

PLJ 2015 Lahore 915
[Bahawalpur Bench Bahawalpur]

Present: MIRZA VIQAS RAUF, J.

SAJID MEHMOOD--Petitioner

versus

ADDITIONAL SESSIONS JUDGE, RAHIM YAR KHAN, etc.--Respondents

W.P. No. 33-Q of 2015/BWP, decided on 6.1.2015.

Criminal Procedure Code, 1898 (V of 1898)--

----S. 176--Constitution of Pakistan, 1973, Art. 199--Constitutional petition--Inquiry by magistrate into cause of death--Exhumation of dead body, was allowed--Limitation--Challenge to--Application for disinterment and exhumation of body of deceased could be moved even on simple ground of suspicion--Magistrate, who after due satisfaction may cause body to be disinterred and examined--Exhumation of body of deceased would be in interest of petitioner and his co-accused so as to exonerate them from allegations levelled in FIR if their version of innocence becomes true--No time limit fixed for disinterment of body as is laid in Medical Jurisprudence and toxicology by Modi's whereas in France such period is limited to 10 years, while it is 30 years in Germany. [Pp. 918 & 919] A & B

Disinterment of Dead Body--

----Right to know cause of death--Exhumed--If he and his other close relatives suspect that death of deceased body was not on account of natural causes or by biting of snake and were interested in disinterment of her body in order to know real-cause of her death--To get body exhumed for that purpose was their right. [P. 919] C

Disinterment--

----Suspicion--Application for disinterment can be moved--Application for disinterment can be moved on simple ground of suspicion--In interest of justice that order of exhumation of dead body of deceased is passed and in such like cases no interference by High Court is called for. [P. 919] D & E

Criminal Procedure Code, 1898--

----S. 176--Disinterment--Suspicion--Death was not on account of natural causes--Right to know cause of death--Thus, is interested in disinterment of her body in order to know real cause of her death--Legal heirs of deceased and other close relatives had right to know cause of death, if they feel that deceased did not have a natural death--To get body exhumed for this purpose is their rights. [P. 920] F

Disinterment--

----Limitation--Lapse of 13 months--Order for disinterment could be passed--There is no time limit fixed for disinterment of body. [P. 920] G

Criminal Procedure Code, 1898 (V of 1898)--

----S. 176--Disinterment of dead body--Suspicion--Application for disinterment can be moved--In interest of justice that order of, exhumation of dead body of deceased is passed and in such-like cases no interference by High Court is called for--Under facts and circumstances of present case, a serious allegation of murder has been levelled, against present petitioner, suspecting him of murder of deceased. [P. 921] H

Mr. Muhammad Farooq Warind, Advocate for Petitioner.

Date of hearing: 6.1.2015.

JUDGMENT

Through instant petition, the petitioner has challenged the order dated 31st of December, 2014 passed by the learned Additional Sessions Judge, Rahim Yar Khan, whereby, the revision petition filed by the petitioner against the order dated 25th of November, 2014 passed by the learned Illaqa Magistrate, Rahim Yar Khan has been dismissed.

2. Precisely, the facts necessary for the adjudication of instant petition are that the Respondent No. 5 moved an application before the learned Illaqa/Judicial Magistrate, Rahim Yar Khan for the exhumation of dead body of his cousin Irfan-Ul-Haq S/o Irshad Ahmed which was allowed *vide* order dated 25th of November, 2014 by the said Court. The petitioner assailed the said order through a revision petition before

the learned Additional Sessions Judge, Rahim Yar Khan but the same was dismissed *vide* order dated 31st of December, 2014.

3. Learned counsel for the petitioner contended that the Respondent No. 5 has no *locus-standi* to file the application for exhumation of dead body of the deceased brother of the petitioner. He maintained that both the Courts below have erred in law while allowing the exhumation. In support of his contention, he placed reliance on 2014 P Cr. L J 1030.

4. I have heard the learned counsel for the petitioner and perused the record.

5. The record reveals that Irfan-ul-Haq deceased died on 06th of October, 2014 in the house of his brother i.e. the petitioner. Prior to his death, in the day time the Respondent No. 5, statedly paternal uncle of deceased Irfan-Ul-Haq, was attracted to the house of petitioner on hue and cry of Irfan-ul-Haq where he saw him in an unconscious position. As per statement of Respondent No. 5, Irfan-Ul-Haq at that time was in a precarious condition however, he disclosed that the petitioner and Respondent No. 7 has administered something to him in the food. At that time certain other close relatives were also gathered there and on arrival of Rescue 1122, the petitioner and Respondent No. 7 stated that Irfan-Ul-Haq has no serious problem and they will take care of him as it is their internal matter, upon which all the said persons left their house. It was then late in the evening that petitioner disclosed about the death of Irfan-Ul-Haq.

6. The Respondent No. 5 moved an application for exhumation and post-mortem of deceased Irfan-Ul-Haq before the learned Illaqa/Judicial Magistrate on 22.10.2014. In the meanwhile, an FIR was also registered Bearing No. 472 on 08th of November, 2014 under Section 302/34, PPC on the statement of Respondent No. 5 at Police Station Kotsamaba, District Rahim Yar Khan. As a sequel of the said FIR, the Investigating Officer of the case also requested for the exhumation and post-mortem of the dead body of the deceased Irfan-Ul-Haq to the learned Illaqa/Judicial Magistrate, Rahim Yar Khan. The learned Illaqa/Judicial Magistrate, *vide* its order dated 25th of November, 2014 allowed the said applications. The petitioner though assailed the said order before the learned Additional Sessions Judge, Rahim Yar Khan by way of revision petition but the said order was upheld by the learned Additional Sessions Judge by way of order dated 31st of December, 2014 by rejecting the said revision petition.

7. Before coming to the other aspects of the case in hand, it would be advantageous first of all to go through the relevant provision of law attracted in the instant case and for the said purpose, Section 176 of the Criminal Procedure Code, 1898 is reproduced below:

“176. Inquiry by Magistrate into cause of death.--(1) When any person dies when in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in Section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead, of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) Power to disinter corpses.--Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.”

8. Perusal of sub-section (2) *ibid* clearly envisages that it is within judicial discretion and domain of the concerned Magistrate to make an examination of the dead body of any person who has already been interred, in order to discover the cause of his death. There are serious allegations about unnatural death of deceased and the real cause of death can only be ascertained by exhuming the body of deceased. To this effect, FIR No. 472 dated 08th of November, 2014 has already been registered with the police on the complaint of Respondent No. 5 who is the paternal cousin of the deceased and in the said FIR, the petitioner as well as Respondents No. 6 & 7 have been nominated as accused. The application for disinterment and exhumation of body of deceased could be moved even on simple ground of suspicion and it is up to the judicial conscious of the learned Magistrate, who after due satisfaction may cause the body to disinterred and examined. Even otherwise, exhumation of body of the deceased would be in the interest of the petitioner and his co-accused so as to exonerate them from the allegations levelled in the FIR if their version of innocence becomes true.

9. The alleged occurrence took place on 06th of October, 2014 and the first application to this effect was moved on 22nd of October, 2014 by the Respondent No. 6 whereas the police has moved for the said purpose after the registration of the case on 21st of November, 2014. In Pakistan, there is no time limit fixed for the disinterment of body as is laid in the Medical Jurisprudence and toxicology by Modi's whereas in France this period is limited to 10 years, while it is 30 years in Germany.

10. The judgment relied by the petitioner in the case of *Muhammad Akram vs. Additional Sessions Judge, Depalpur and 3 others (supra)* has its own facts which are quite distinct from the present case, thus the same is not applicable to the proposition in hand. In this regard, reliance can safely be placed on the case of *Faryad Ali vs. The State* (2008 SCMR 1086), *Mst. Ghazala Begum and others vs. The District Magistrate, Khanewal and others* (1996 PCr.LJ 389) and in order to further elaborate the matter in issue guidance can be sought from the case of *Ghulam Farred vs. Additional Sessions Judge, D.G. Khan and 4 others* (2010 PCr. LJ 4) wherein this Court while dealing with the similar issue has laid down that:

“10. The law is clear on this point that the learned Magistrate is fully empowered to disinter any dead body for discovering cause of death and he was not obliged, to hear complainant or record the evidence with regard to cause of death.

11. In the present, Respondent No. 4, who moved an application for disinterment of the dead body of *Mst. Naseem Bibi*, is her real brother and he has every right to know the cause of death. If he and his other close relatives suspect that death of *Mst. Naseem Bibi* is not on account of natural causes or by biting of snake and are interested in disinterment of her body in order to know the real-cause of her death. To get the body exhumed for this purpose is their right. Reliance can be placed on 2007 PLD Lah. 176 and 1991 PCr.LJ 806.

12. It may be noted that even on simple ground of suspicion, an application for disinterment can be moved. This is more so because a person should have a right to ascertain the real cause of death. In *Ameer Afzal Baig v. Ahsan Ullah Baig (supra)*, on the ground of mere suspicion, the order of disinterment passed by this Court was upheld by Honourable Supreme Court of Pakistan. It is, therefore, in the interest of justice that order of exhumation of dead body of the deceased is passed and in such like cases no interference by this Court is called for. Under the facts and circumstances of the present case, a serious allegation of murder has been levelled against the present petitioner, suspecting him of the murder of the deceased. A fact which has been vehemently denied by the petitioner himself. It would, therefore, be in his interest also that the body of the deceased is exhumed so as to exonerate him from, this allegation forever.”

11. Even in the judgments rendered in case of *Mansab Ali vs. Asghar Ali Faheem Bhatti, Additional Sesssions Judge, Nankana Sahib and 3 others* (PLD 2007 Lahore 176), the same principles were reiterated. The relevant extract from the same is reproduced below:--

“The contention of the learned counsel for the petitioner that due respect should be given to the deceased, and her body should not be exhumed does not carry weight, as there is an allegation that the deceased died an unnatural death, therefore, the only way to ascertain her real cause of death is by exhuming her body.

7. Respondent No. 3 is the brother of the deceased *Mst. Sardaran Bibi* and suspects that her death is not on account of natural causes and, thus, is interested in disinterment of her body in order to know the real cause of her death. The legal heirs of the deceased and other close relatives have the right to know the cause of death, if they feel that the deceased did not have a natural death. To get the body exhumed for this purpose is their rights. In *Ghulam Nabi v. District Magistrate, Okara* 1989 MLD 4147, the application for disinterment of the dead body was moved by the brother of the deceased which was also allowed and the District Magistrate was directed to take action in this regard. Respectful reliance is also placed upon *Ameer Afzal Baig v. Ahsan Ullah Baig* 2006 SCMR 1468.

8. The deceased passed away on the night between 5/6th September, 2005 even after a lapse of 13 months, this order for disinterment could be passed. In Pakistan, there is no time limit fixed for the disinterment of body. Modi in his Medical Jurisprudence and toxicology giving the time limit of exhumation writes:--

“In India-Pakistan, no time limit is fixed for the disinterment of a body. In France, this period is limited to 10 years, while it is 30 years in Germany.”

Reliance is placed upon *Muhammad Ramzan v. State* 1987 SCMR 272 in which the Hon'ble Supreme Court of Pakistan did not interfere in the order passed by this Court even one year from the date of death of the deceased. *Mst. Ghazala Begum v. The District Magistrate, Khanewal* 1996 PCr.LJ 389 is also referred.

9. It may be noted that even on simple ground of suspicion, an application for disinterment can be moved. This is more so because a person should have a right to ascertain the real cause of death. In *Ameer Afzal Baig v. Ahsan Ullah Baig (supra)*, on the ground of mere suspicion, the order of disinterment passed by this Court was upheld by the Hon'ble Supreme Court of Pakistan. It is, therefore, in the interest of justice that order of exhumation of dead body of the deceased is passed

and in such-like cases no interference by this Court is called for. Under the facts and circumstances of the present case, a serious allegation of murder has been levelled, against the present petitioner, suspecting him of the murder of the deceased. A fact which has been vehemently denied by the petitioner himself. It would, therefore, be in his interest also that the body of the deceased is exhumed so as to exonerate him from this allegation forever.”

12. The above principles have even been further acknowledged by the learned Karachi High Court in case of *Damsaz vs. Assistant Mukhtiarkar Revenue/Special Judicial Magistrate and 2 others* (2010 MLD 1681). The relevant extract from the same for ready reference is reproduced below:--

“From the examination of impugned order it appears that it is just and proper and the learned special Magistrate while passing the impugned order has taken note of the correct legal position. It is consistent view of the Superior Courts that exhumation of dead body could be ordered on the request or information of even a stranger for the purpose to know the actual cause of death so that criminal machinery be set into motion. In the present case Respondent No. 2 is closely related to the deceased under the prohibited degree and she is justified in making an application for exhumation of the dead body of deceased to know cause of death. The judgment cited by the learned counsel for the Respondent No. 2 fully support the case of the Respondent No. 2. In the circumstances, I had dismissed this criminal miscellaneous application by a short order dated 5-7-2010 these are the reasons for the same.”

13. In the light of above discussion and the precedents cited *supra*, this Court is of the considered view that the application for exhumation of body of the deceased was rightly allowed by the learned Magistrate and the said order was rightly affirmed by the learned Additional Sessions Judge by way of order dated 31st of December, 2014. There is no illegality or infirmity in both the said orders requiring any interference by this Court in exercise of writ

jurisdiction. Both the Courts below have exercised their jurisdiction which was clearly vested on the said Courts by the mandate of law. This being so, the instant petition is devoid of any merits and is therefore, *dismissed in limine* with no order as to costs.

(R.A.) Petition dismissed