

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Criminal Original Petition No: **12** /2020

In
HRC No. 39438-S/2018

**(IN THE MATTER REGARDING
INVESTIGATION OF MURDERS AND
REQUEST FOR PROTECTION)**

Nayyab Umrani D/o Sikandar Umrani (late), R/o Flat No. 620, Al-
Mustafa Tower, Sector F-10, Islamabad, Cell No. 0336-3037777
.....Petitioner

VERSUS

1. Ghazanfar Qadri, Deputy Commissioner, Jacobabad, DC Office, Jacobabad, Teh. & Dist. Jacobabad, Sindh
2. Zafar Baloch, Deputy Commissioner, Naseer Abad, DC Office, Naseer Abad, Tehsil & District Naseer Abad, Balochistan
3. Agha Sher Zaman Pathan, Deputy Commissioner, Jaffarabad, DC Office, Jaffarabad, Tehsil & District Jaffarabad, Balochistan
4. Muhammad Yonas Sanjrani, Deputy Commissioner, Sohbat Pur, DC Office, Sohbat Pur, Tehsil & District Sohbat Pur, Balochistan

.....Respondents

**PETITION UNDER ARTICLE 204 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973, READ WITH SECTION 3 & 4 OF
THE CONTEMPT OF COURT ORDINANCE, 2003,
AND ITS ALL OTHER ENABLING PROVISIONS FOR
INITIATING CONTEMPT PROCEEDINGS AGAINST
THE RESPONDENTS FOR NON COMPLIANCE OF
ORDER DATED 09.11.2018, PASSED BY THIS
HONOURABLE COURT IN HRC NO. 39438-S/2018**

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Respectfully Sheweth:-

1. That on 09.11.2018, in the above noted case this Honourable Court was pleased to passed the following Order:-

"As far as the properties in which the petitioner has a share, it has been pointed out that some of the properties are clear and the same have been subdivided and the share coming to the petitioner has been determined. There is a property situated in Deh Abdullah Dakhan Tapo Baqapur Taluka & District Jacobabad in which the petitioner has a share measuring approximately $3\frac{1}{4}$ acres. The learned counsel appearing on behalf of the petitioner and the petitioner herself submit that in view of her share, it is not possible for the petitioner to take possession of the property or to administer the same. It would, therefore, be appropriate if the property is disposed of and its proceeds are given to the petitioner. It is suggested that Ms. Sofia, Advocate practicing at Jacobabad may be appointed as a Local Commission to facilitate sale of the said property of the petitioner. The Deputy Commissioner, Jacobabad submits that he will arrange for partition of the property and demarcation of belongings to the petitioner.

In this view of the matter, the aforementioned Advocate is appointed as a Local Commission. Her recommendations shall be determined at a subsequent stage. She will make efforts to sell the property of the petitioner. However, before any such sale takes place, she shall apprise this Court through a report about the price and other terms and conditions on which the property has been offered for sale. These shall be subject to approval by this Court.

We have been informed that there is another plot measuring 3000 ft situated at Dangar Mohallah

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Jacobabad in which the petitioner has a share. The same is presently leased to Ufone for installation of a Tower against which rent is received. The Deputy Commissioner Jacobabad is directed to ensure that proceeds of the rent are equitably divided amongst the claimants and the share of the petitioner is paid to her regularly through a cross-cheque issued in her name.

We have further been informed that there are three other properties in which the petitioner has a share. The DC Jacobabad has informed us that on account of fire during the riots after the assassination of Mohtarma Benazir Bhutto all record has been burnt and none of the legal heirs who claim entitlement to such properties has any record. The process of reconstruction of the record has been started and notices in the newspaper have been issued. Let efforts be made for reconstruction of the record of the residential house of the petitioner Dangar Mohallah Jacobabad bearing Survey No. 2/630 which is in possession of the petitioner as well as other properties in which she has a share. As soon as the record has been reconstructed, efforts would be made for sale of the property by adopting a suitable mode.

As for as three shops and a house built thereon situated at Family Lane Jacobabad is concerned, the petitioner submits that the same is in possession of her bother-in-law and children of her late sister who are getting the benefit of rent which is received against the said properties.

As regard the shop situated opposite Al-Habib Hotel Jacobabad, according to the report submitted by DC Jacobabad, Haji Anwar S/o Sikandar Khan Umrani who is the step brother of the petitioner is collecting rent from Muhammad Irfan who is in possession of the said shop.

In view of the fact that there are no records relating to ownership of the property, the dispute cannot be resolved unless the record is reconstructed. The DC Jacobabad is directed to make all possible efforts to reconstruct the record to determine real title of the parties. He is authorized to place a transaction ban on the aforementioned properties so that these are not disposed of while the petitioner is pending before this Court."

2. That despite the clear directions of this Honourable Court regarding the share of petitioner in property as per list already submitted before this Honorable Court, the Respondents in connivance of rivals of the petitioner have not cooperated with the petitioner due to which the petitioner is still running from pillar to post and living a miserable life though she is owner of several properties in Provinces of Balochistan and Sind. The Respondents are paying no heed to the Orders/directions of this Honourable Court regarding her share in different properties; therefore, the petitioner has been deprived from her vested right.
3. That the petitioner is a poor girl without having any power to cope with the matter by all alone, hence, knocked the doors of this Honourable Court. The property and life of the petitioner is at stake and the step brothers of the petitioner are at verge to take her life at any time to usurp her share in property as they already had tried to murder her sister, brother and sisters-in-law.
4. That it was directed by this Honourable Court in Order dated 09.11.2018, the Local Commission be constituted and after the disposal of the case the Local Commissioner namely Ms. Sofia, Advocate several times visited the Respondents No. 01, who remained absent and did not bother to meet with her for further necessary action, which act shows deliberate denial on behalf of Respondents No. 01, of the Orders/Directions of this

Honourable Court. This act of the Respondents No. 01, is highly contemptuous and to negation of his duties being a public servant, hence, liable to be dealt with in accordance with law.

5. That the then Investigation Officer wrote letters to the Respondents Nos. 02 to 04, in the light of directions of this Honourable Court but no avail. They all remained adamant and flouted away the Orders of this Honourable Court, hence, are liable to be punished in accordance with law as being contemnors.
6. That this Honourable Court was pleased to direct the Respondents of all the four Districts vide its Order dated 08.10.2018, that ".....let the Commissioners equip themselves with all the facts of the case and appear before this Court on the next date of hearing alongwith the detailed report in order to ascertain as to who is occupying the property and why the share of the applicant and her brother in the same has not been given to them". In this regard it is worthy to note here that none of the Respondents submitted their respective detailed reports nor they appeared before this Honourable Court and nor they have complied with the said Order dated 08.10.2018, passed by this Honourable Court, which shows mala fide and ulterior motives on their part and the same is needed to be taken into consideration by this Honourable Court while summoning them to appear before this Honourable Court in person and they may be asked that why they have not complied with the Orders/Directions of this Honourable Court in its letter and spirit.
7. That it is submitted with utmost respect that despite several directions of this Honourable Court the shares of the petitioner and her brothers/sisters in properties have not been given to her yet. It is requested that the shares of petitioner and her brothers/sisters may graciously be ordered to be determined and given to them to meet with the ends of justice.

8. That the Respondents despite the clear directions passed by this Honourable Court have willfully, intentionally and deliberately are flouting out and frustrating the Order dated 09.11.2018, passed by this Honourable Court alongwith may other Orders in this regard.
9. That the Respondents are under statutory obligations to implement the orders of this August Court, in its letter and spirit but they have intentionally out to flout it. Therefore, they are liable to be dealt with under the provision of Contempt of Court.
10. That by not obeying the Orders/Directions of this Honourable Court especially direction passed in Order dated 09.11.2018, the Respondents are lowering the prestige and dignity of this Honourable Court and are, thus, guilty of having committed Contempt of this Honourable Court, punishable under the law.
11. That Section 3 of the Contempt of Court Ordinance, 2003, reads as under:-

"Whoever disobeys or disregards any order, direction or process of a Court, which he is legally bound to obey; or commits a willful breach of a valid undertaking given to a Court; or does anything which is intended to or tends to bring the authority of a Court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings, or to lower the authority of a court or scandalize a judge in relation to his office, or to disturb the order or decorum of a court is said to commit "contempt of Court"

12. That even otherwise, the discretion does not confer unbridled power but is circumscribed by the following principles, in that

(as held by this august Court in the case of Tariq Aziz uddin,
2010 SCMR 1301):-

"... Discretionary power conferred on government should be exercised reasonably and subject to existence of essential conditions, required for exercise of such powers within the scope of law. All judicial, quasi judicial and administrative authorities while exercising mandatory or discretionary jurisdiction must follow the rule of fair exercise of power in a reasonable manner and must ensure dispensation of justice in the spirit of law. Seven instruments that are the most useful in structuring of discretionary power are open plans, open policy statement, open rules, open findings, open reason, open precedents and fair informal procedure. Power to exercise discretion would not authorize such authorities to act arbitrarily, discriminately and malafide. They have to act without any ulterior motive". (Para 19).

13. That as per Articles 4 and 5 (2) of the Constitution of Islamic Republic of Pakistan, 1973, even the Chief Executive of the Country is bound to obey the command of the Constitution and to act in accordance with law and decide the issues expediently and without fail.
14. That despite unambiguous and clear verdict couched in specific directions to the Respondents, no step has been taken to implement the Order of this Honourable Court.
15. That it is the constitutional obligation of all state functionaries to obey the command of the Honourable Supreme Court contained in its Orders/Directions. Any infraction from this obligation renders them liable for the contempt of the August Court as contemplated in Article 204 of the Constitution of the Islamic Republic of Pakistan read with the Contempt of the Court ordinance 2003.

16. The act of the Respondents disobeying and not implementing the lawful Orders of this Honorable Court is clear contempt. This act on their part is contemptuous and they have not intentionally and deliberately complied with the Order of this Honorable Court, therefore, is liable to be punished in accordance with law.
17. That this aspect of the matter indicates the malicious and contemptuous attitude of the Respondents and unveils attempt to defuse the spirit and essence of the orders of this August Court.
18. That the act of the Respondents disobeying the lawful Order of this Honorable Court amounts to Contempt of Court and comes within the ambit of defiance by showing prodigious annoyance.
19. That the Respondents are willful defaulter and are liable to be punished under the law.
20. That the Respondents despite the clear directions passed by this Honourable Court have willfully, intentionally and deliberately disobeyed the verdict of this Honorable Court which amounts to violation and frustration the Order dated 09.11.2018, passed by this Honourable Court.
21. That the Respondents are under statutory obligations to implement the order of this August Court, in its letter and spirit but they intentionally out to flout it. Therefore, they are liable to be dealt with under the provision of Contempt of Court.
22. That by not obeying the Order of this Honourable Court dated 09.11.2018, the Respondents are lowering the prestige and dignity of this Honourable Court and is, thus, guilty of having committed Contempt of this Honourable Court, punishable under the law.

23. That the Petitioner have no other remedy except to move this Criminal Original Petition under Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973.

It is, therefore, respectfully prayed that by accepting the instant petition Contempt Proceedings may graciously be initiated against the Respondents for non compliance of Order dated 09.11.2018, passed by this Honourable Court in HRC NO. 39438-S/2018, in the interest of justice.

Syed Rifaqat Hussain Shah
Advocate-on-Record
Supreme Court of Pakistan
Islamabad
For the Petitioner

Dated: 20.02.2020

CERTIFICATE:-

Certified that prior to this no other Contempt Petition was filed by the Petitioner before this Honorable Court against the Order dated 09.11.2018, passed by this Honourable Court.

Advocate-on-Record