

2015 S C M R 1373**[Supreme Court of Pakistan]****Present: Jawwad S. Khawaja, Sh. Azmat Saeed and Maqbool Baqar, JJ**

C.M.A. No. 3305 of 2014 in Civil Petition No. 740 of 2013

(Show Cause Notice to the petitioner in C.P. 740/13 issued in compliance of the order of this Court dated 21-5-2014)

C.R.P. No.295 of 2014 in Civil Petition No. 740 of 2013

(Review against this Courts order dated 21-5-2014 passed in C.P. 740 of 2013)

AMEER REHMAN and others---Appellants**versus****AMEER MUMTAZ and others---Respondents**

C.M.A. No. 3305 of 2014 in Civil Petition No.740 of 2013 and C.R.P. No.295 of 2014 in Civil Petition No. 740 of 2013, decided on 1st July, 2015.

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

---S. 476---Settlement of Disputes of Immovable Property (Chitral) Order [P.O. 12 of 1980], para 12---Abuse of the process of the Court---Supreme Court dismissed petition filed by the petitioners/accused persons and also issued notices to them to show cause as to why action under para 12 of President's Order No.12 of 1980, and S.476, Cr.P.C. should not be initiated against them for abusing the process of the Supreme Court---Plea of counsel of accused persons was that they were not highly educated, and therefore, there was absence of mens rea and as a consequence the notice issued to them should be discharged---Validity---Supreme Court observed that, in the present proceedings, it was not for the Court to make a factual determination of the existence or otherwise of mens rea, the same being an issue of fact---During proceedings of the present case one of the accused persons had filed an application in Court which was written in Urdu and was also signed by the said accused---Supreme Court, in such circumstances, sent the matter to the Sessions Judge, and directed him to entrust the matter to a competent court for proceedings in accordance with law against the accused persons, and to conclude their trial expeditiously---Order accordingly.

(b) Administration of justice---

---Perjury--- Fabrication of evidence--- False litigation, deterrent against---Perjury and fabrication of documentary evidence were to be taken very seriously by Courts, as this

was necessary for ensuring that the administration of justice was not undermined and baseless and false litigation was also deterred.

Syed Rafaqat Hussain Shah, Advocate-on-Record for Appellants (in C.R.P. 295 of 2014).

Dr. Babar Awan, Senior Advocate Supreme Court on Court's Notice (in C.M.A. 3305 of 2014).

Sher Muhammad, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondents.

Date of hearing: 1st July, 2015.

JUDGMENT

JAWWAD S. KHAWAJA, J.---C.M.A.-3305/14:-On 21-5-2014 while deciding C.P. No.740 of 2013 we had passed an order dismissing the said petition with costs. However, while dismissing the petition, we had also observed as under:-

"(8) In the foregoing circumstances, we hold that the title of the private respondents stood established and there no necessity for reopening the issue of title considering the circumstances which have been narrated above. We have, however, considered the possibility of taking action against the petitioners under para 12 of President's Order No.12 of 1980, which provides as under:-

"Punishment,---Whoever obstructs any person in enforcing or giving effect to any decision or order made under this Order shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both."

(9) In the alternate, we may also consider initiating proceedings inter alia, under section 476 of the Code of Criminal Procedure, 1898. We cannot allow abuse of process of the Court as it undermines the credibility of the Court.

(10) Let notice issue to the petitioners to show cause as to why such action should not be initiated. Notice shall also issue to the respondents. Mr. Sher Muhammad Khan, learned Advocate Supreme Court accepts notice on behalf of the private respondents. The office shall create a separate file and list this matter for hearing after thirty days. The petition stands dismissed with costs."

Pursuant to the notice which was issued to Ameer Rehman, Rehm Dad, Muhammad Nawab and Pir Jamal petitioners in C.P.-740/2013, a separate file was created which is before us. We have heard learned counsel for the aforesaid Ameer Rehman, etc. He has taken us through the order passed by us on 21-5-2014. His main plea is that the aforesaid persons namely Ameer Rehman, etc. are not highly educated, and therefore, there was absence of mens rea and as a consequence the notice issued to them should be discharged. In the present proceedings, it is not for us to make a factual determination of the existence or otherwise of mens rea, this being an issue of fact.

Learned counsel for respondents Ameer Mumtaz, etc. has, however, drawn our attention to an application filed on 3-11-2012 by Ameer Rehman, etc. This application is written in Urdu and is signed by Ameer Rehman, etc. and makes mention of the order dated 18-2-1976. We, however, would not like to make any further comment as it may cause prejudice to the trial which we now propose to order.

2. In the foregoing circumstances, we send the matter to the learned Sessions Judge, Swat who shall entrust it to a competent Court for proceedings in accordance with law against Ameer Rehman, etc. For the reasons which we have given for taking notice of this matter, it is expected that the trial shall be concluded expeditiously. A report shall be submitted in Court within six months from today for our perusal in Chambers.

3. We would like to add that perjury and fabrication of documentary evidence are to be taken very seriously by Courts. This is necessary for ensuring that the administration of justice is not undermined and that baseless and false litigation is also deterred. The listed matters stand disposed of.

CRP-295/2014:- No valid ground for review is made out. The review petition is, therefore, dismissed.

MWA/A-15/SC Order accordingly.

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