JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CIVIL REVISION NO. 32 OF 2025

BASIT SHUJA

VS

RAUF KLASRA

Petitioner by : Barrister Abdul Ahad Khokhar, Advocate.

Respondent by : Ms. Shazia Hanif, Advocate.

Date of hearing : 16.04.2025

MUHAMMAD AZAM KHAN, J.

1. The **Petitioner/Defendant** has instituted the present Revision Petition under Section 115 of the Code of Civil Procedure, 1908 **("CPC")** against the Order dated 06.01.2025 ("Impugned Order") passed by the learned Additional District Judge-VII, West-Islamabad **("Trial Court")**, whereby the Application under Order XVI Rule (6) read with Section 151, CPC seeking the summoning of the tax record of late Arshad Sharif for the year 2019 from the Federal Board of Revenue, was dismissed.

2. The brief facts giving rise to filing the instant Revision Petition are that the Respondent/Plaintiff instituted a Suit for Recovery of Damages on account of Defamation under Sections 3, 4 & 9 of the Defamation Ordinance, 2002 **("Suit")** before the learned Additional District Judge, West-Islamabad. The Petitioner/Defendant contested the Suit by filing a written statement raising both legal and factual objections. Issues were framed in the Suit, and the matter was fixed for recording cross-examination of PW-1, when the Petitioner/Defendant filed an application under Order XVI, Rule (6) read with Section 151, CPC for summoning the tax record of late Arshad Sharif for the year 2019 from the Federal Board of Revenue. Upon hearing the arguments of the learned counsel for the parties, the learned Trial Court dismissed the application through the Impugned Order. Aggrieved thereby, the Petitioner/Defendant has preferred the instant Revision Petition.

3. The learned counsel for the Petitioner/Defendant contended that the Impugned Order passed by the learned Trial Court is contrary to the facts and law and, therefore, warrants interference. It is argued that the order is non-speaking, thereby violating Section 24-A of the General Clauses Act, 1897, and reflects a mechanical application of Order XVI, Rule 6, CPC. The primary dispute in the defamation suit concerns an alleged transaction of PKR 2 million between the Respondent/Plaintiff and the journalist, late Arshad Sharif. It is submitted that the tax records maintained by the Federal Board of Revenue (FBR) are public documents within the meaning of law and thus fall within the purview of Order XVI, Rule 6, CPC. It is further contended that the learned Trial Court failed to appreciate the evidentiary value of such documents, resulting in the violation of the Petitioner/Defendant's fundamental right to fair trial guaranteed under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Furthermore, the refusal to summon the tax record ignored settled legal principles, unjustly impairing the Petitioner/Defendant's right to defend himself effectively against the defamation claim. The learned Trial Court allegedly prioritized expediency over substantive justice, thus risking miscarriage of justice and prejudicing the Petitioner/Defendant**.** Hence, the learned counsel prayed for setting aside the Impugned Order and allowing the application under Order XVI, Rule 6, read with Section 151, CPC by directing the summoning of the tax record of late Arshad Sharif for the year 2019 from the FBR. It was also prayed that proceedings before the learned Trial Court be stayed until the disposal of this Revision Petition and such other relief be granted as deemed appropriate in the interest of justice.

4. Conversely, the learned counsel for the Respondent/Plaintiff argued that the learned Trial Court has rightly dismissed the application filed by the Petitioner/Defendant by passing a well-reasoned order and that there is no illegality or irregularity therein. Thus, it was prayed that the present Revision Petition be dismissed.

5. I have heard the learned counsel for the parties and perused the record with their valuable assistance.

6. The Respondent/Plaintiff, filed a suit for recovery of damages for defamation against the Petitioner/Defendant, alleging that the Petitioner/Defendant, with

malicious intent and to defame him, propagated a false story through a tweet on his Twitter handle titled "@ghazi_shuja" on 05.12.2022, regarding the relationship between the respondent and a well-known journalist late Mr. Arshad Sharif, wherein it was alleged that the Respondent/Plaintiff obtained Rs. 2 million from late Mr. Arshad Sharif for his wife's medical treatment and yet did not attend Mr. Arshad Sharif's funeral. Additional derogatory remarks branding him as selfish, virtue-less, and ungenerous were also levelled. During the course of the Suit, when the matter was fixed for cross-examination of PW-1, the Petitioner/Defendant filed an application for summoning the Income Tax record of late Arshad Sharif, which the Respondent/Plaintiff opposed. The learned Trial Court, vide Impugned Order dated 06.01.2025, dismissed the application holding that tax returns pertain solely to income and tax deduction details of an individual and are irrelevant to the matter at hand.

7. The dispute between the parties concerns allegations of defamation between Rauf Klasra and Basit Shuja. Late Arshad Sharif is not a party to the instant proceedings. In civil litigation, the burden of proof lies upon the party asserting a claim. In view of Section 216 of the Income Tax Ordinance, 2001, requisitioning the income tax records of an individual is prohibited except where proceedings involve the Federal Government or an Income Tax Authority or certain other specified cases. In the present case, no such circumstances exist necessitating summoning the tax records of late Arshad Sharif. For clarity, the relevant portion of Section 216 of the Income Tax Ordinance, 2001 is reproduced hereunder:

> *"**216. Disclosure of information by a public servant. -** (1) All particulars contained in -*
>
> *(a) any statement made, return furnished, or accounts or documents produced under the provisions of this Ordinance;*
>
> *(b) any evidence given, or affidavit or deposition made, in the course of any proceedings under this Ordinance, other than proceedings under Part XI of Chapter X; or*
>
> *(c) any record of any assessment proceedings or any proceeding relating to the recovery of a demand,*
>
> *shall be confidential and no public servant save as provided in this Ordinance may disclose any such particulars.*
>
> *(2) Notwithstanding anything contained in the Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1984), the National Accountability Ordinance, 1999 (XVIII of*

1999), the Federal Investigation Agency Act, 1974 (VIII of 1975) and the Right of Access to Information Act, 2017 (XXXIV of 2017), or any other law for the time being in force, no court or any other authority shall, save as provided in the Ordinance, require any public servant to produce before it any return, accounts, or documents contained in, or forming a part of the records relating to any proceedings under the Ordinance, or declarations made under the Voluntary Declaration of Domestic Assets Act, 2018, the Foreign Assets (Declaration and Repatriation) Act, 2018 or the Assets Declaration Act, 2019 or any records of the Income Tax Department generally, or any part thereof, or to give evidence before it in respect thereof;

(3) Nothing contained in subsection (1) shall preclude the disclosure of any such particulars -

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

(j)

(k)

(ka)

(kb)

(l)

(m) to a Civil Court in any suit or proceeding to which the Federal Government or any income tax authority is a party which relates to any matter arising out of any proceedings under this Ordinance;

(n)

(o)

(p)

(q)

(r)

(s)

(4) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration, or affidavit filed or the giving of evidence by a public servant in respect thereof.

(5)

(6)

(6A)

(6B)

(6C)

(7)

(8)

(underlining supplied for emphasis)

8. From the bare reading of the above referred provision of law, it is manifestly clear that in terms of sub-section (2), a bar is imposed upon the powers of the Court or other authority to require any public servant to produce before it any return, accounts, or documents contained in, or forming a part of the records relating to any proceedings under the "Ordinance" or declarations made under the Voluntary Declaration of Domestic Assets Act, 2018, the Foreign Assets (Declaration and Repatriation) Act, 2018 or the Assets Declaration Act, 2019 or any records of the Income Tax Department generally, or any part thereof, or to give evidence before it in respect thereof except in the manner provided in the "Ordinance". Subsection (3), however, ordains that nothing contained in sub-section (1) shall preclude the disclosure of any such particulars to a Civil Court in any suit or proceedings to which the Federal Government or any income tax authority is a party which relates to any matter arising out of any proceedings under the "Ordinance". Though in terms of sub-section (4), it is stated that nothing in Section 216 shall apply to the production by public servant before a Court of any document, declaration, or affidavit filed or the giving of evidence by a public servant in respect thereof but said provision cannot be read in isolation to sub-section (3).

9. The same question has been discussed in the case of *Mrs. Khalida Azhar v. Viqar Rustam Bakhshi and others*, **(2009 PTD 1694)** before Islamabad High Court and it was held as under: -

> *"2. The subject under discussion was dealt with by section 150 of the Income Tax Ordinance, 1979 which was repealed by the present Income Tax Ordinance. Subsection (4) of section 150 of 1979 Ordinance which was pari materia with subsection (4) of section 216 of Income Tax Ordinance, 2001 read as under:*
>
> > *"Nothing in this section shall apply to the production by a public servant before a Court of any documents, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 68 or section 75 or the giving of evidence by a public servant in respect thereof.*

> *Under subsection (4) of section 150 of the Income Tax Ordinance, 1979, it was permissible for any public servant to produce before a Court any document, declaration or affidavit filed or the record of any statement or deposition made in a proceeding under section 68 or section 75 and there was no bar for the giving of evidence by a public servant in respect thereof. Thus, permission was very limited. Section 68 deals with the registration of firms and section 75 was with regard to partition of a Hindu undivided family. In Income Tax Ordinance, 1979, section 54 covers the subject. Subsection (4) of section 4 of Income Tax Ordinance, 1979 read as under:*
>
> > *"Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed or the record of any statement or deposition made in a proceeding under (section 25A or) section 26A, or to the giving of evidence by a public servant in respect thereof."*
>
> *Section 25-A deals with partition of a Hindu undivided family and section 26-A deals with registration of firms. To me it appears that subsection (4) section 150 of the Income Tax Ordinance, 1979 was taken from the 1979 Ordinance and was enacted as subsection (4) of section 216 by inadvertence. No other explanation is possible because as otherwise subsection (4) of section 216 would nullify the whole of the provisions of subsections (1) and (2) of section 216.*
>
> *3. In view of what has been discussed above, the application filed by the applicant is liable to be dismissed and same is hereby dismissed. A copy of this judgment shall be sent to the Ministry of Law, Ministry of Parliamentary Affairs and the Federal Board of Revenue, Islamabad to examine subsection (4) of section 216 of the Income Tax Ordinance, 2001 and to consider appropriate amendments in this subsection."*

Though sub-section (4) is still part of statute but no other interpretation is possible in the circumstances.

10. In addition to this, the right to privacy involves the protection of individuals from unwarranted intrusion into their personal lives. It safeguards an individual's personal information, communications, family life, and other aspects of their private sphere from unjustified interference by the government, organizations, or other individuals. In the present case, late Arshad Sharif is not party in the present suit, nor his income tax returns are in question before the learned Trial Court in any manner and summoning the income tax record of a deceased person will not be in fitness of things. Reliance is placed upon ruling of august Supreme Court of Pakistan cited in the case titled *"Muhammad Nawaz Vs. Additional District & Sessions Judge and others"* reported as **(PLD 2023 Supreme Court 461)**.

11. In light of the foregoing discussion, it is concluded that the learned Trial Court rightly passed the Impugned Order. No illegality, irregularity, or jurisdictional error

is found warranting interference. Accordingly, the present Civil Revision Petition stands **dismissed** as being devoid of merit.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this 29th day of April 2025.

JUDGE

//Sajid//
Approved for Reporting
Blue Slip added.