

**IN THE COURT OF APPEAL OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an Application for Leave to Appeal against the Order of the Board of Quazis in terms of Section 62(1) of the Muslim Marriage and Divorce Act No.13 of 1951 as amended read with Rule 4 of the 5<sup>th</sup> Schedule to the said Act.

C.A. L.A. Case No.04/2013

Board of Quazis Case No.160/2010

Quazi Court of Kinniya Lying Expenses Case No.5262/09

Ajeem Rizwana

Vilvaly, Kinniya.

APPLICANT

-Vs-

Mohamed Yoosuf Abdul Raheem

No.124/1, Peraru,

Kantale.

RESPONDENT

AND NOW BETWEEN

Mohamed Yoosuf Abdul Raheem

No.124/1, Peraru,

Kantale.

RESPONDENT-PETITIONER-PETITIONER

-Vs-

Ajeem Rizwana

Vilvaly, Kinniya.

APPLICANT-RESPONDENT-RESPONDENT

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : M.H.A. Raheem for the Respondent-Petitioner-  
Petitioner  
Farook Miskin for the Applicant- Respondent-  
Respondent

Decided on : 11.07.2018

A.H.M.D. Nawaz, J.

The leave to appeal application has been preferred against the order of the Board of Quazis dated 14.09.2013 and on the question of leave, both Counsel made both oral and written submissions.

This was originally an application made by a wife (the Applicant-Respondent-Respondent) for lying-in-expenses. The Quazi of Kinniya, in an order dated 23.01.2010 awarded her a sum of Rs.83,000/- payable by the husband (the Respondent-Petitioner-Petitioner).

When one peruses the record before the learned Quazi, one could observe a number of attempts made by the Quazi to have the husband (the Petitioner before this Court) present himself for an inquiry but on his failure to get him down despite notices, the Quazi had gone ahead with an *ex parte* inquiry and made his order dated 23.01.1983 awarding the wife (Respondent before this Court) a sum of Rs.83,000/- after having heard her. These are applications made under Section 47(1) of the Muslim Marriage and Divorce Act and the Quazi thereafter had moved the Magistrate's Court, Trincomalee for an

enforcement. It is under Section 64 of the Muslim Marriage and Divorce Act that the *Quazi* seeks orders for enforcement *via* the relevant Magistrate's Court.

If there is a material error in the certificate filed by the *Quazi*, it may be returned to the *Quazi* for appropriate action and if necessary parties may also be directed to appear before the *Quazi* and the proceedings before the Magistrate's Court may be adjourned for a future date until the corrected certificate is filed-*see* the effect of the proviso to Section 66.

The learned Magistrate, *Trincomalee*, on receiving the certificate had acted under the proviso to Section 66 and permitted the Petitioner to re-open the case before the *Quazi*.

The application for enforcement remained adjourned till 21.05.2010.

The Petitioner avers that he was present before the *Quazi* on 08.05.2010 and though the *Quazi* recorded proceedings, and made the same order, he refused to issue certified copies of the proceedings. Apart from this mere *ipse dixit*, there is no proof whatsoever that the Petitioner was ever present before the *Quazi* on the 08.05.2010.

This Court does not see any evidence to support the assertion that this was brought to the notice of the Magistrate on 21.05.2010. There are no certified copies of the proceedings had in the Magistrate's Court in *Trincomalee* to ascertain whether a complaint was brought home to the notice of the learned Magistrate, since it is the learned Magistrate who had directed the *Quazi* to re-open the proceedings in the *Quazi* Court application bearing No.5262/09. The Magistrate should have been apprised of the intransigence of the *Quazi* if there was such refusal. What became of the MC proceedings is not known. This question arises because the Petitioner was due to have appeared in the Magistrate's Court on 21.05.2010. The absence of proceedings pertaining to the Magistrate's Court, *Trincomalee* casts doubt on the question whether the Petitioner appeared at all in the Magistrate's Court on 21.05.2010.

Instead the Petitioner petitioned the Board of *Quazis* to have the order made by the *Quazi* on 08.05.2010 set aside.

This was a revision application made to the Board of *Quazis* in terms of Section 62(1) of the Muslim Marriage and Divorce Act No.13 of 1951 as amended read with Rule 4 of the 5<sup>th</sup> schedule to the Act.

The Board of *Quazis* by its order dated 14.09.2013 dismissed the application for revision, whilst holding that the order issued to the learned *Quazi* of *Kinniya* to recall the application and certificate for enforcement filed in the Magistrate's Court of *Trincomalee* was vacated. The learned *Quazi* of *Kinniya* was ordered to take necessary steps according to the provisions of law.

It is against the order of the Board of *Quazis* dated 14.09.2013 that the Petitioner has sought leave to appeal. The Board of *Quazis* has in their order lamented the absence of a number of documents material to the revision application before it. The following documents, the Board of *Quazis* states, were not before them.

1. A copy of the application and certificate for enforcement made by the learned *Quazi* of *Kinniya* to the Magistrate, *Trincomalee*.
2. The learned Magistrate's order dated 01.04.2010 that the *Quazi* must re-open the proceedings.

This becomes material in view of the assertion of the Petitioner that he tendered a true copy of the MC proceedings dated 01.04.2010 to the learned *Quazi* on 15.04.2010.

3. The Petitioner speaks of a refusal on the part of the learned *Quazi*, *Kinniya* to issue a certified copy of the order made on 08.05.2010. There was no evidence manifesting this refusal.

The Board of *Quazis* in their order dated 14.09.2013 has pinpointed the aforesaid infirmities. Even the further remedy of setting aside the initial order of the *Quazi* on 23.01.2010 has been sought rather belatedly only in the counter objections before the

Board of *Quazis*. The failure to produce so much of the record as would be necessary to understand the order to be revised and to place it in its proper context has always been material in revisionary applications and that principle seems to have led to the dismissal of the revision application filed by the petitioner before the Board of *Quazis*-see *David Appuhamy v. Yassassi Thero* (1987) 1 Sri.LR 253 and *Mary Nona v. Fransina* (1988) 2 Sri. LR 250-cases that focused on revision application to the Court of Appeal. This Court too has not been furnished with material documentation that would have expatiated the case of the Petitioner.

What is dispositive of the matter is the observation made by the learned Chairman of the Board of *Quazis*. He states that the learned *Quazi* of *Kinniya* is ordered to take necessary steps according to the provisions of law to recover the lying-in-expenses which had been made payable by the Petitioner. The Respondent has been driven from pillar to post not being able to recover her long overdue lying in expenses owing to these efforts which have not been *though* properly and legally taken and in the circumstances this Court is not inclined to grant the Petitioner leave to appeal in this matter. I must confess that there were no exceptional circumstances in the case of the Petitioner that would have shocked the conscience of the Board of *Quazis* for its exercise of revisionary jurisdiction. The same consideration would weigh with this Court.

Accordingly the order of the Board of *Quazis* dated 14.09.2013 is affirmed and this application for leave to appeal is refused.

The Registrar is directed to send a copy of this order to the Board of *Quazis* and the learned *Quazi* of *Kinniya* to take steps according to law to recover the lying in expenses that are due to the Respondent from the Petitioner.

JUDGE OF THE COURT OF APPEAL