

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No. D-335 of 2023  
(*Hafeezullah Maitlo v. Public at Large*)

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro &  
Mr. Justice Arbab Ali Hakro**

Mr. Abdul Ghani Abro, Advocate for the Petitioner.  
Mr. Ali Raza Baloch, Assistant A.G Sindh.

Date of Hearing & Order: **24-10-2023**

## **ORDER**

**MUHAMMAD IQBAL KALHORO, J:-** Petitioner, a mentally disordered / retarded person, is a son of late Ghulam Rasool, a pensioner retired from government service in Local Government Department. After his death, his wife, mother of petitioner started receiving family pension. She died on 15.03.2017 leaving behind seven legal heirs, the petitioner is one of them. Then, the petitioner along with other legal heirs filed an application for Succession Certificate, the same was disposed of accordingly. However, the petitioner was directed to file an application for appointment of manager under Section 29 of The Sindh Mental Health Act, 2013 in the Court of Protection i.e. District Court having jurisdiction. After that, the petitioner filed an application before the Court of Protection viz. Additional District Judge-III, Khairpur after obtaining a consent in writing from the Advocate General Sindh, a requirement, envisaged under Section 29 of the Act. His application was dismissed vide order dated 13.09.2021 by the said Court and he was directed to approach the Family Court instead for appointment of his guardian. The petitioner obliged and filed an application for appointment of guardian, the same has been dismissed vide order dated 29.09.2021. Hence, this petition.

**2.** We have heard learned counsel for the petitioner and learned AAG, who has not supported the impugned order and in order to assist for resolution of point in dispute, has relied upon the case law reported in 2019 CLC 431.

3. We have considered submissions and are of the view that learned Additional District Judge-III, Khairpur without absorbing the scheme of the Sindh Mental Health Act, 2013 dismissed the application in a cursory manner vide order dated 13.09.2021 by observing that the issue falls exclusively within jurisdiction of a Family court. While dismissing the application, the said Court has neither taken pains to go through the relevant provisions of the Act, 2013, such as Section 2 defining various references including the Court of Protection; sec. 29 visualizing proceedings / enquiry for ascertaining mental health of an alleged mentally disordered person; sec. 30 explaining procedure to regulate proceedings of the Court of Protection; sec. 31 envisaging enquiry by the Court for appointing a commission to determine whether alleged mentally disordered person is suffering from mental disorder and is incapable of managing himself and his affairs; and on finding so, pass an appropriate order in the best interest of such person; and in case such person is incapable of taking care of himself, appointing any suitable person to be his guardian under Section 32; and u/s 33 appointing any suitable person to be the manager of the property of mentally disordered person, found to be incapable of managing it. Nor the Court has given any reason for forming an opinion that the case of the petitioner comes within the ambit of Family Laws.

4. It is apparent that the impugned order, devoid of any reasons, is a result of lackluster approach by the Court towards the issue which was brought up for a judicial determination. Such lacklusterness on the part of presiding officer is highly problematic and has resulted into miscarriage of justice. Accordingly, the impugned order is set aside and the case is remanded back to the Additional District Judge-III, Khairpur with directions to decide the application under Section 29 of the Sindh Mental Health Act, 2013 strictly in the terms of its provisions after conducting a proper enquiry as envisaged thereunder within a period of one month without fail.

5. This petition is **disposed of** in the above terms.

**JUDGE**

**JUDGE**