

**IN THE FEDERAL SHARIAT COURT**  
(ORIGINAL JURISDICTION)

**PRESENT**

**MR. JUSTICE DR. SYED MUHAMMAD ANWER, ACTING CHIEF JUSTICE**  
**MR. JUSTICE KHADIM HUSSAIN M. SHAIKH**

**SHARIAT PETITION NO. 13/I OF 2022**

1. Mst. Mussarat Fayyaz widow of Mian Rahat Alam (deceased)
  2. Mian Zafar Murtaza (son)
  3. Muhammad Mushtaq Ahmad Mian (son)
  4. Muhammad Asim Aziz (son)
  5. Muhammad Rizwan Uz Zaman (son)
- No.2 to 5 are sons of Mian Rahat Alam (deceased). All residents of House No.280-2-CII, Quaid-e-Azam Town/Township Lahore.

**PETITIONERS**

**VERSUS**

1. Government of Pakistan, through its Secretary Ministry of Law and Justice, Pakistan Secretariat, Islamabad.
2. Government of Punjab, through its Secretary Law and Parliamentary Affairs, Law and Parliamentary Affairs Department, Civil Secretariat, Lahore.
3. Local Government and Community Development Department (LGCD) through its Secretary, Government of Punjab, Civil Secretariat, Lahore.

**RESPONDENTS**

**Counsel for Petitioner:** Mr. Muhammad Gulfam Arshad Rana, Advocate

**Date of Institution:** 07.09.2022

**Date of Hearing:** 04.10.2022

**Date of Judgment:** 20.10.2022

**JUDGMENT:**

**DR. SYED MUHAMMAD ANWER, ACJ:**Through this Shariat Petition, the petitioners have challenged Section 346 of the Muhammadan Law, which contains statement relating to adoption of son.

2. Learned counsel for petitioners at the very outset contends that adoption of child is allowed in Islam, however changing the family name of the adopted child is not allowed as adoption did not change the

relationship of a person with his real parents and siblings nor did it create a real relationship between the adopted child with the adoptive parents and their children. Learned counsel further argued litigation of a case involving the petitioners and argued that the orders passed by the courts below, including the Lahore High Court, are erroneous in nature and against the injunctions of Islam, which shows that the petitioners seek some personal relief through this Shariat Petition, which may not be the scope any Shariat Petition.

3. We have heard the learned counsel for petitioners and perused the record.

4. It has been observed from the record that petitioners are involved in some litigation before different fora concerning change of surname of an adopted child by the adoptive parents. The petitioners also moved the Lahore High Court with the said claim by filing W.P. No.59749/2021, which was decided by the Lahore High Court vide order dated 30.09.2021, in the following manner:

*“Through this petition, the Petitioners have impugned order dated 28.07.2021 passed by Respondent No.1 Additional District Judge, Nankana Sahib whereby the civil revision filed by the Petitioners against the order dated 08.03.2021 passed by Respondent No.2 Civil Judge 1<sup>st</sup> Class, Nankana Sahib in an application under Articles 59 and 64 of the Qanun-e-Shahadat Order, 1984 was dismissed.*

2. *Facts of the case are that the predecessor of the Petitioners filed two suits, one suit for possession, declaration and cancellation of documents with consequential relief and the second suit for declaration with consequential relief for the correction of father's name of Respondent No.3. It is the case of the Petitioners that Respondent No.3 is not the real son of Respondent No.4. During the pendency of the suits, the*

*Petitioners filed an application under Articles 59 and 64 of the Qanun-e-Shahadat Order, 1984 stating therein that Respondent No.3 is not the real son of Respondent No.4 but he is the real son of Respondent No.5 and for that he seeks a declaration from the court and cancellation of all documents in favour of Respondent No.3 showing himself to be the legal heir of Respondent No.4. Hence, this petition.*

3. *The impugned order has duly considered the application of the Petitioners and dismissed the same while relying on Mst. Laila Qayyum v. Fawad Qayyum and others (PLD 2019 SC 449). The said judgment is similar on the facts and finds that where the plaintiff sought a negative declaration, one which had nothing to do with his own legal character then such a declaration cannot be made. The Court held that to challenge a person adoption or legitimacy of birth does not assert to the plaintiff's own legal character and therefore, such a declaration cannot be made.*

4. *Under the circumstances, since the application of the Petitioners has been denied on the basis of the aforementioned judgment of the august Supreme Court of Pakistan, there is no merit in this petition, which is **dismissed in limine**.*

5. This Court in its recent judgment, reported as **PLD 2021 FSC 1**, titled "M/s Najaat Welfare Foundation v. Federation of Pakistan and others", has already declared that the Principles of Muhammadan Law have no force of law. The relevant portion of the judgment is reproduced as under:

*"The book "Principles of Muhammadan Law" (authored by Dinshah Fardunji Mullah) ["the subject book"] was only a reference book, which did not have the force of law and hence did not come under the ambit of law as provided under Article 203-B(c) of the Constitution."*

6. In addition to above, the instant Shariat Petition is also not maintainable in terms of Clause (c) of Article 203B of the Constitution of the Islamic Republic of Pakistan, 1973 as this Court has exhaustively

thrashed out the matter in Para-10 of the judgment passed in the case of "*M/s Najaat Welfare Foundation*" *supra*.

7. In view of the above, the instant Shariat Petition being not maintainable was **dismissed** *in limine* vide short order announced in open Court on 04.10.2022 and these are the detailed reasons for the same.

**MR. JUSTICE DR. SYED MUHAMMAD ANWER  
ACTING CHIEF JUSTICE**

**MR. JUSTICE KHADIM HUSSAIN M. SHAIKH**

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