

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

1<sup>st</sup> Appeal No.13 of 2022

Ali Haider Umrani	-----	Appellant
	Versus	
Javed Ali	-----	Respondents

Mr. Raja Jahanzeb Ali Leghari, advocate for appellant  
Mr. Muhammad Hassan Chang, Advocate for respondent  
Mr. Rafiq Ahmed Dahri, Asstt: A.G.

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J. -** Through this 1<sup>st</sup> Appeal, Appellant is asking for setting aside the Judgment dated 09-02-2022 passed by learned Illrd Additional District Judge, Hyderabad in Defamation Suit No. 20 of 2021 (Re- Ali Haider Umrani v. Javed Ali) filed by the appellant / plaintiff, whereby the learned Judge dismissed the aforesaid suit being causeless, not maintainable and being not found fall within the provision of Defamation Ordinance.

2. Brief facts of the case as per the memorandum of appeal are that allegedly an incident had taken place between the respondent and one Misri and his relatives who happen to be the close relatives of the appellant. That one Raees Ali Nawaz Khan Umrani had no harmonious relations with the appellant; therefore, the respondent at his behest on 14.12.2020 uttered, spoke, and also got published defamatory news with malafide intention to injure him in his profession and to expose him in the eyes of his colleagues, relatives, friends and the general public at large that appellant and his brother had instigated Misri @ Mohsin, Noor Ahmed and others to murder respondent; and, on such instigation, the respondent was seriously injured by those persons, whereas as per appellant, the respondent is vagabond, roaming in the village and cooking false stories, implicating the appellant / plaintiff and his brother in false criminal case at the behest of Raees Ali Nawaz. It is the further case of the appellant that respondent managed to obtain a letter for treatment from the police station so also without admitting him in the hospital, obtained medico-legal certificate but the fact is that on the day of alleged incident dated 14.12.2020 neither the appellant nor his brother were present at the place of incident and were available at their duties. As per the appellant, the respondent, while talking to electronic media, including Azad TV Channel, succeeded in publishing defamatory news in print media which caused serious damage to his reputation, hence he filed the suit for defamation before the

trial court with the aforesaid accusation. Upon notice, the respondent filed a written statement denying the allegations leveled in the plaint and submitted that on a trivial matter of parking of motorcycle, the appellant and his brother belabored him, and to save their skin from facing the criminal case, he has filed the suit; therefore, the suit of the appellant/plaintiff is without any cause and not maintainable under the law. From the pleading of the parties the trial court framed only the issue '*Whether the suit of the plaintiff is maintainable under the law*'. From the pleadings of the parties and without recording any evidence the trial court dismissed the suit.

3. Mr. Muhammad Hassan Chang learned counsel for the respondent has supported the impugned order and submitted that the instant appeal is not maintainable under the law; as no material has been placed to substantiate the allegations leveled against the respondent. He prayed for dismissal of the instant appeal.

4. I have heard learned counsel for the appellant on the point of maintainability of the instant appeal in terms of the ratio of the judgment passed by the trial court, at considerable length; and, also reviewed the record available before me.

5. Primarily, from the reading of Defamation Ordinance, 2002, it does not again preclude a person from initiating an action for damages under the general law of the land i.e. Law of Torts by filing a suit for damages under CPC. The alleged defamation is a news report broadcast on electronic media. It is the appellant's / plaintiff's case that the impugned news report had falsely portrayed him as an accused and that such news was broadcast with malice at the instance of and in collusion with the defendant.

6. To allege that the respondent/defendant was behind the impugned news, Raja Jahanzeb Ali Leghari, learned counsel for the Appellant has submitted that the impugned judgment and decree passed by the trial court is against the facts, law, and equity; that learned trial court failed to decide the case on merits after recording evidence; that learned trial court has held that appellant failed to array editor of newspaper and Administrator of Azad TV News Channel as defendants and that the appellant has failed to show any defamatory words which tend to injure his reputation. In this regard, it is submitted that the appellant intended to call the Administrator of said news channel if needed after recording of evidence of the respondent by moving proper application. It is further submitted that if the respondent had any grievance he should have lodged FIR against appellant but he had no right to publish the fake news through electronic media / news channel without any proof which damaged his reputation and the finding of trial court that media statement / news in no way are defamatory is against the norms of justice; that learned trial court has held that the appellant and his brother were

accused in criminal case and they without waiting for the outcome of that criminal case has filed Suit for defamation, but the trial court has not appreciated that no proof of pendency of criminal had been produced and only the words of respondent have been treated as gospel truth and held that the suit was not maintainable; that learned trial court has failed to appreciate that the appellant filed Suit for recovery of compensatory and general damages besides defamation on account of distress, anguish, mental torture, financial loss and injury inflicted to his reputation and same was very much maintainable in the facts and circumstances of the case, as no criminal case was / is pending against appellant, in view of observation made by the trial court that the appellant may file Suit for damages after outcome of criminal case pending against him; that learned trial court failed to appreciate that the respondent has not made such allegations against appellant in his application filed for registration of FIR, which were leveled in his media statement published in Azad News Channel vis-a-vis instigation. Even the appellant was not nominated in that application; that since there was a difference between the police letter and Medical Certificate which contains an injury caused by a sharp cutting weapon [337-F(ii)], whereas the police letter dated 14.12.2020 (annexed) does not show such injury, and the learned Justice of peace also observed such difference in his order dated 09.01.2021 while disposing of the aforesaid application, the respondent did not register the FIR; that the impugned judgment of trial Court clearly shows that the same is one-sided, biased, tainted, pre-determined and the finding has been stretched against the appellant; that the trial court committed illegality in not appreciating the legal proposition of law while dismissing the Suit; that the impugned judgment is based upon surmises and conjectures and based on no evidence.

7. Per learned counsel for the appellant, the sting of the impugned news report was that the respondent/defendant had implicated the appellant/plaintiff as a facilitator of an accused in the aforesaid case. Such a statement would “tend to lower the appellant / plaintiff in the estimation of right-thinking members of society generally”, and on a prima facie view of the matter, it was libelous, thus matter required evidence of the parties before the trial court as such hushing up the case at the beginning was not called for.

8. The freedom of speech and press, and by now it is settled that the latter including electronic media, is a Fundamental Right enshrined in Article 19 of the Constitution of Pakistan. However, the said freedom is not an absolute right. It is subject to certain reasonable restrictions specified in Article 19 itself. The right to have access to information in matters of public importance under Article 19 of the Constitution is also subject to regulation and reasonable restrictions imposed by law. The defense of Article 19 of the Constitution to an action for defamation was discussed by the Supreme Court of Pakistan in the case of *Sheikh Muhammad Rashid v. Majid Nizami* (PLD 2002 SC 514).

9. Article 19 of the Constitution provides freedom of press subject to any reasonable restrictions which may be imposed by law in the public interest and glory of Islam, therefore, the press is not free to publish anything they desire. The press is bound to take full care and caution before publishing any material and to keep themselves within the bounds and ambit of the provisions of the Article. It follows that the defense of Article 19 of the Constitution is not a complete defense to an action for defamation, and on a case-to case-basis the Fundamental Right to free speech is to be balanced against the right to reputation. Regarding the defense of "qualified privilege", a privileged occasion is one where the person who makes the communication has an interest or duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it, such reciprocity being essential. This is called the "duty-interest test" of the defense qualified privilege, and traditionally, where such test was satisfied, i.e., where the publication of the matter was in the public interest, then the publication was protected notwithstanding that it was defamatory/untrue. This defense is available to the press and electronic media on the principle that on matters of public importance they are under a duty to report the same to the public who have a corresponding interest to know the same. The defense of qualified privilege can be defeated if the plaintiff proves that the defendant was actuated by malice, that the maker did not believe the statement to be true, or that he made statement with reckless indifference to its truth or falsity.

10. In principle due diligence before reporting news so that rumors and implications are filtered out, also recognized that the thoroughness of inquiry should be commensurate with the magnitude of disclosures, in terms of the ratio of the judgments rendered by the Honorable Supreme Court in the case of *Suo Moto Action Regarding Allegation of Business Deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar Attempting to Influence the Judicial Process (PLD 2012 SC 664)* and *Suo Moto Case Regarding Discussion in TV TalkShow with regard to Sub-judice Matters (PLD 2019 SC 1)*.

11. Given the nature of impugned news report via media, where the imputation or allegation against the appellant / plaintiff, is that the respondent/ defendant while talking on electronic media (Azad TV News Channel) allegedly has spoken the following words:-

زرع کے مطابق سول اسپتال حیدرآباد جاوید عمرانی نے مذکورہ نیوز سے بات کرتے ہوئے بتایا کہ میں اپنے گھر کے باہر کھڑا تھا کہ میرے علاقے کے رہنے والے دو بھائی جو حیدرآباد کورٹ کے ملازم علی حیدر امتیاز عرف گڈو عمرانی کے کہنے پر مصری عرف محسن، سمیر، نور احمد، وقار، نثار اور چند نامعلوم افراد نے مجھ پر حملہ کر دیا اور کہنے لگے کہ آپ کیا کر سکتے ہیں ہم کو جس نے کہا ہے آپ کو جان سے مارنے کو وہ کورٹ کے افسر ہیں آپ کچھ بھی نہیں کر سکتے۔

12. I have perused the findings of learned trial court. An excerpt of the judgment is reproduced below:-

“ 7. In the case in hand, although the plaintiff has alleged that the defendant got published the defamatory words in the newspaper neither he has referred to the name of the newspaper nor has he made the editor of the newspaper a defendant. Further, the plaintiff has alleged that the defendant talking on electronic media (Azad TV News Channel) allegedly defamed him but he has not made the Administrator of Azad TV News Channel the defendant. Besides that the plaintiff has failed to show any defamatory words which tend to injure the reputation of the plaintiff, the only words alleged to the defendant to have spoken are as under.....

8. The above words in no way are defamatory. From the contents of the plaintiff and the written statement of the defendant, it appears that the plaintiff and his brother Imtiaz Ali are accused in the criminal case and they have taken the plea of alibi, and to support their plea they have filed the present suit against the defendant without waiting for the outcome of that criminal case. It will be proved in that criminal case registered against the plaintiff and his brother that the said criminal case was not prosecution but persecution and thereafter, the plaintiff may file the suit for damages under Defamation Ordinance. The suit of the plaintiff is causeless, does not fall within the provision of Defamation Ordinance, therefore, not maintainable under the law and dismissed with no order as to cost.”

13. Touching the core issue, naturally there are certain obvious common features between civil action for damages for defamation and a criminal complaint for defamation under PPC. The essence of the cause of action in the civil suit for damages is the tortious liability for compensation for the damage to or loss in reputation suffered by the aggrieved party. Naturally, damages in a civil action for defamation, with of course a few exceptions, are always much heavier than a fine in criminal proceeding in contempt under PPC. Harm to the reputation is also the main ground in criminal defamation under PPC just as much as harm to the reputation is the essence of the cause of action in a civil suit for damages. Harm to the reputation is therefore a common ground. Punishment of course in the criminal proceeding is provided in PPC which means a sentence of imprisonment. Conviction and sentence of imprisonment, therefore, are the essential features of criminal defamation and not civil defamation. The exceptions to the criminal defamation provided in Penal Code are also indicative of the test of civil and criminal defamation. Truth necessarily is the defense both in civil and criminal defamation, but the first exception to Section insists that in addition to truth, the imputation must be shown to have been made for the public good. Public good, therefore, is an overriding relevant consideration in criminal defamation which is concerned with the protection of society unlike a private suit for damages or defamation. Again, in criminal defamation public conduct of a public servant is a defense within limits so long as it is in good faith and respecting only public conduct and no further. Again, in the third exception, the conduct of any person touching

any public question is a defense in criminal defamation, so long as the imputation or opinion touches public character and conduct and is made in good faith. The public test in criminal defamation can be traced to other exceptions. A public test as such is hardly a defense for a civil suit for damages in a private action. No doubt the normal public test in a civil suit that the reputation must be lowered has to be satisfied.

14. I have gone through the impugned judgment from all angles and found the following discrepancies, which could warrant interference by this Court in the exercise of appellate jurisdiction in terms of defamation law:-

- a) The learned trial court failed to appreciate that the alleged defamatory words published and broadcasted in the Media recorded via CD, was/is required to be proved to the extent that the alleged words uttered were true, and if proved consequence whereof would be drastic, and if not proved then it would amount false allegations which prima-facie would attract the provisions of the subject law; besides the defendant has given two version, one in the written statement; accusing the appellant/plaintiff about his involvement in the alleged incident, secondly, in the Miscellaneous Application filed before the learned justice of peace, he has not made any accusation with regard to his involvement in the incident. The aforesaid factum needs to be looked into by the trial court.
- b) The trial court is clothed with powers under CPC to array the Editor and the Administrator of Azad TV News Channel as defendants at any stage.
- c) The defamatory words which allegedly injured the reputation of the appellant/plaintiff require to be proved via evidence under the law, that aspect has not been attended to by the trial Court and simply dismissed the suit on the point of maintainability, though the matter was / is required to be adjudicated on merit by calling upon the parties to adduce evidence, by framing proper issues, including the issue of maintainability of the suit.
- d) The trial court failed to appreciate that in a case of defamation for damages, the publisher and / or an individual, who used the defamatory material, need to prove through cogent evidence, besides pleading good faith that they were diligent in checking facts and followed the best practices of professional ethics universally accepted. If they are unable to establish the factual correctness of the material published on their part, prima-facie stands established through implication.

15. In principle the defamation of any person or citizen through spoken or written words or any other means of communication lowers the dignity of a man fully guaranteed by the Constitution, thus, it is not only the constitutional obligation of the State but all the citizens and persons living within the State of Pakistan to respect and show regard to the dignity of every person and citizen of

Pakistan otherwise if anyone commits an act of malice by defaming any person, would be guilty under the Constitution and would cross the red line of prohibition imposed by the Constitution, attracting serious penal consequences under the law and the person violating the same has to be dealt with under the law.

16. In view of the matter, I am not satisfied with the reasoning put forward by the trial Court that the suit of the plaintiff was without any cause as discussed supra for the simple reason that allegations and counter allegations are required to be proved through evidence. In such circumstances the impugned Judgment dated 09-02-2022 passed by learned Illrd Additional District Judge, Hyderabad in Defamation Suit No. 20 of 2021 is liable to be set-aside, for just decision of the case on merit. Consequently, the instant Appeal is disposed of and the matter is remanded to the trial Court to record evidence of the parties and after providing them meaning full hearing, pass appropriate order under law, within one month.

17. The observation made hereinabove is tentative, shall not prejudice the either party before the trial court.

Karar\_hussain/PS\*

**JUDGE**