

# THE HIGH COURT OF SINDH, KARACHI

## Criminal Revision Appl. Nos. 68 and 69 of 2015

- Cr. Rev. Appl. No.68/2015 : Suleman Lalani and two others versus Aqeel Karim Dhedhi and another.
- Cr. Rev. Appl. No.69/2015 : Khalid Imran versus Aqeel Karim Dhedhi and another.
- For the Applicants : Mr. Yaser Ali, Advocate.  
[In Cr. Rev. Appl. No. 68/2015]
- Mr. Mehmood A. Qureshi, Advocate.  
[In Cr. Rev. Appl. No. 69/2015]
- For the Respondents : M/s. M. Jaffer Raza and Asif Khawaja, Advocates for the Respondents.  
[In both Cr. Rev. Appl. No. 68 & 69/2015]
- M/s. Alizeh Bashir, Nisar Ali Noushad & Gul Faraz Khattak, Assistant Attorney Generals for Pakistan.
- Mr. Muntazar Mehdi, Addl: Prosecutor General Sindh.
- Date of hearing : 20-03-2023 & Re-hearing on 23-05-2024
- Date of order : 30-05-2024

### ORDER

**Adnan Iqbal Chaudhry J.** - The background is that Jahangir Siddiqui & Company Ltd. [JSCL] and JS Bank Ltd. had filed private complaint No. 894/2014 before the Additional Sessions Judge [ASJ], alleging that Aqeel Karim Dhedhi [Dhedhi] and others were running a defamatory campaign against them on television, constituting offences punishable under sections 500, 501, 120-A and 34 PPC. The ASJ took cognizance and issued process against the accused persons *via*ailable warrants. The matter was reported in the Daily News on 26.08.2014 as under:

***“Non-bailable warrants issued against Dhedhi, Mubashar***

*By our correspondent*

*KARACHI: Additional District and Sessions Court (South) on Monday issued non-bailable warrants against stockbroker Aqeel Karim Dhedhi and ARY TV anchor Mubashar Lucman for making baseless allegations against JS Bank and its related business organisations.*

*Mehwish and Jahangir Siddiqui Foundation, JS Bank and JS Company lodged a complaint against the ARY TV anchor Mubashar Lucman, Aqeel Karim Dhedhi, Iftikhar Shafi, Khalil Masood for making false and baseless allegations against the applicant on December 20, 2013 in a TV talk show. Applicants submitted that the defendants made false allegations in a TV programme aired on December 20 and caused irreparable loss and damage to their reputation. They sought registration of case and action against them in accordance with the law.*

*ADJ-(South) Abdul Qadoos Memon issued non-bailable warrants against Aqeel Karim Dhedhi and Mubashar Lucman for their non-appearance in sum of Rs.50,000 for September 13.”*

2. Apparently, the above publication had misreported the process of bailable warrants as ‘non-bailable’ warrants. Dhedhi contended that such news report was defamatory of him, an offence under section 499 PPC, and he proceeded to file private complaint No. 2987/2014 before the ASJ against (i) Mir Shakeel-ur-Rehman as the Editor-in-Chief of the Daily News, (ii) Khalid Imran and (iii) Suleman Lalani as Chief Executives respectively of JSCL and JS Bank, (iv) Jahangir Siddiqui and (v) his spouse, Mahwish Jahangir Siddiqui. After recording statements on oath under sections 200 and 202 CrPC, the ASJ took cognizance and passed order dated 03.06.2015 to issue process against said accused persons *albeit* summons with surety. It is this order that is impugned in these two revision applications filed by the accused Suleman Lalani, Jahangir Siddiqui, Mahwish Jahangir Siddiqui and Khalid Imran. Cr. Revision Application No. 12/2006 by the accused Mir Shakeel-ur-Rehman is also pending, but that had been separated by order dated 20.03.2023.

3. Mr. Mehmood Qureshi Advocate submitted that the learned ASJ did not apply his mind in issuing process against the Applicant Khalid Imran who was the Chief Executive of JS Bank as he was neither the ‘maker’ nor ‘publisher’ of the news report within the meaning of section 499 PPC. He submitted that the propriety of an order passed under section 204 CrPC can be examined by the High

Court in revisional jurisdiction. On behalf of the other Applicants/accused, Mr. Yasir Ali Advocate made similar submissions. On the other hand, Mr. Jaffar Raza, learned counsel for the Respondent/complainant submitted that for issuing process under section 204 CrPC, the learned ASJ had only to see if a *prima facie* case was made out, which was so made out, and thereafter if the Applicants are aggrieved they have a remedy before the trial court under section 265-K CrPC. The learned APG supported the latter submission.

4. Heard learned counsel and perused the record.

5. The order impugned in these revision applications was passed by the learned ASJ under section 204 CrPC *i.e.* an order to issue process against persons accused upon taking cognizance on a private complaint under section 200 CrPC. The test for issuing process under section 204 CrPC is that “there is sufficient ground for proceeding”, or in other words, there exists a *prima facie* case. At such stage, the Court is not required to enter into a minute examination or assessment of the material/evidence for or against the complaint.<sup>1</sup> However, if the Court is of the opinion that there is no sufficient ground for proceeding, the complaint may be dismissed under section 203 CrPC. Per Justice A.R. Cornelius<sup>2</sup>: “But cases are conceivable in which the facts alleged in a complaint or report do not constitute a *prima facie* case of the offences alleged, and in such a case, if a Magistrate were to call for evidence, the duty of the Courts of correction would be to reverse that order and to dismiss the complaint or report.” In *Abdul Wahab Khan v. Muhammad Nawaz* (2000 SCMR 1904), which was followed in *Zafar v. Umer Hayat* (2010 SCMR 1816), it was observed that: “It is well-settled by now that the Court concerned must scrutinize the contents of complaint, nature of allegation made therein supporting material in support of accusation,

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<sup>1</sup> *Noor Muhammad v. The State* (PLD 2007 SC 9); *Zeba Bakhtiar v. Arshad Sami Khan* (1998 SCMR 922).

<sup>2</sup> *S.M.H. Rizvi v. Abdus Salam* (PLD 1960 SC Pak. 358).

the object intended to be achieved, the possibility of victimization and harassment if any to ensure itself that no innocent person against whom allegations are levelled should suffer the ordeal of protracted, time consuming and cumbersome process of law.”

6. Learned counsel for the Respondent had stressed on the case of *Muhammad Farooq v. Ahmed Nawaz Jagirani* (PLD 2016 SC 55) to argue that once cognizance was taken by the learned ASJ, the remedy of the Applicants was before the trial court by way of an application for acquittal under section 265-K CrPC. However, *Muhammad Farooq* is for the proposition that the inherent jurisdiction of the High Court under section 561-A CrPC is not intended to be a substitute for remedies specifically provided by the CrPC in sections 435 (revision) and 249-A/ 265-K CrPC (acquittal). Suffice to state the instant proceedings are not under section 561-A, but are registered as revision applications under section 435. As observed in *Muhammad Farooq* itself, orders passed under sections 203 and 204 CrPC are ‘judicial orders’, and the Sessions Judge or the High Court, as the case may be, can exercise revisional powers under section 435/439 CrPC to examine the correctness, legality or propriety of any order passed, and as to the regularity of any proceedings of an inferior court.<sup>3</sup>

7. In view of the foregoing, where the proceedings in question are by a Court immediately inferior to this Court, and since an appeal is not provided from an order passed under section 204 CrPC, this Court can examine said proceedings in the exercise of revisional jurisdiction to see if a *prima facie* case was indeed made out for issuing process, so that the Applicants do not unnecessarily suffer the ordeal of the process of law. Compared to powers under section 561-A CrPC, the scope of revisional jurisdiction is wider and is not confined merely to errors of law.<sup>4</sup>

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<sup>3</sup> Also see *Ali Gohar v. Pervaiz Ahmed* (PLD 2020 SC 427).

<sup>4</sup> *Muhammad Shafique v. Abdul Hayee* (1987 SCMR 1371).

8. As noted above, the news alleged to be defamatory had misrepresented the process of bailable warrants against Dhedhi as 'non-bailable' warrants. His complaint was that as a result he was defamed. Apart from his statement on oath under section 200 CrPC, the learned ASJ also examined two witnesses under section 202 CrPC who deposed that Dhedhi was a renowned businessman, and the news or at least the perception of it, that he may be arrested for a crime had subjected him to unjust scrutiny amongst peers. Therefore, the opinion of the learned ASJ to the extent that there was sufficient ground for proceeding further to examine the allegation of defamation, was not without basis. In fact, that is also not the case of the Applicants. The question raised is whether there was sufficient ground for proceeding against each of the Applicants accused.

9. The news in question was published in the Daily News to report proceedings of private complaint No. 894/2014 filed by JSCL and JS Bank against Dhedhi. The memo of that complaint acknowledged that Jahangir Siddiqui was majority shareholder of JSCL and that Dhedhi was his business rival. Therefore, the allegation in Dhedhi's complaint (No. 2987/2014) that the defamatory publication was made at the behest of Jahangir Siddiqui, his business rival, was not something that could be ruled out at the preliminary stage *i.e.* before calling Jahangir Siddiqui to answer the allegation. The submission that Jahangir Siddiqui could not be classified as 'maker' or 'publisher' under section 499 PPC, does not address the proviso to section 500 PPC which prescribes punishment also for the 'originator' of the defamatory imputation, an aspect that has yet to be examined.

10. As regards the other Applicants, the complaint against them is not on the same footing. It is not averred that Mahwish Jahangir Siddiqui too was a business rival or that she exercised control over JSCL and/or JS Bank who had filed the complaint against Dhedhi. Rather, she has been arrayed as an accused person solely for the reason that she is the spouse of Jahangir Siddiqui and that both are related to Mir Shakeel-ur-Rehman who is the Editor-in-Chief of the

Daily News. That statement, in my view, was not a sufficient ground for proceeding against her under section 204 CrPC.

11. As regards the Applicants Suleman Lalani and Khalid Imran, while the complaint states that they are officers of companies controlled by Jahangir Siddiqui, but ultimately the allegation in para 9 of the complaint is: "The said story was published by Accused No.1 (Mir Shakeel-ur-Rehman) at the behest of Accused No. 4 and 5 (Jahangir Siddiqui and Mahwish Jahangir Siddiqui)". Nowhere in the complaint was it even alleged that the publication was also at the behest of Suleman Lalani and Khalid Imran, and yet the learned ASJ proceeded to issue process against them.

12. It is therefore apparent that while passing the impugned order dated 03.06.2015 under section 204 CrPC, the learned ASJ lost sight of the contents of the complaint which did not disclose a sufficient ground for proceeding under section 204 CrPC against three out of the four Applicants. Consequently, these revision applications are disposed of as follows:

- (i) Criminal Revision No. 68/2015 is allowed for the Applicants 1 and 3 namely Suleman Lalani and Mahwish Jahangir Siddiqui. To their extent, Private Complaint No. 2987/2014 is dismissed;
- (ii) Criminal Revision No. 68/2015 is dismissed for the Applicant No.2 namely Jahangir Siddiqui;
- (iii) Criminal Revision No. 69/2015 is allowed for the Applicant Khalid Imran. To his extent, Private Complaint No. 2987/2014 is dismissed.

Office shall place a signed copy of this order in Criminal Revision Application No. 69/2015.

**JUDGE**

Karachi:

Dated: 30-05-2024