

IN THE HIGH COURT OF SINDH AT KARACHI

1st Appeal No.01/2012

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before Mr. Justice Nazar Akbar

Khalid Siddiqui,
Appellant through: Mr. Jamil-ur-Rehman, Advocate

Muhammad Manzar Ansari,
Respondent through: Syed Ansar Hussain, Advocate

Date of hearing: 23.4.2014

Nazar Akbar, J. This appeal is directed against the judgment and decree passed by the learned III-Additional District Judge, East, Karachi whereby Suit No.110 of 2008 filed by the appellant / plaintiff claiming a sum of Rs.29,00,000/- as damages for defamation from the respondent / defendant, was dismissed.

2. Brief facts leading to this appeal are that the appellant, a postgraduate, holding the post of Grade-19 officer in the department of Statistics, Government of Pakistan, was aggrieved by the repeated publications of defamatory materials by the respondent in an unregistered newspaper published by him by the name and style of "AKHBAR". The defamatory publications against the appellant continued for over five years in different issues of AKHBAR and, therefore, the appellant sent a legal notice to the defendant, claiming a sum of Rs.2 million as a loss of reputation and Rs.900,000/- by way of mental torture and anguish as a consequence of the illegal act of publishing defamatory material against him.

3. The respondent after service of summons contested the suit. In his written statement the respondent made several counter allegations against the person of the appellant and despite the fact that he denied the contents of paragraphs 8, 9, 10, 11 and 12 as not correct, he admitted the publications by justifying that he was focusing on the grievances and bringing true facts to the notice of the people in *bona fide* discharge of his right. The respondent asserted that there was no malice, no design, no bad intention, no *mala fides*. The appellant has unnecessarily started harassing the defendant / respondent and that the respondent was within his right to project and bring true facts to the notice of higher authorities, there is no point in being offended. In reply of paragraph 13, defendant / respondent again denied the contents of the

paragraph as incorrect, but admitted that the letters were sent by him to the superior officers / bosses of plaintiff and advanced a justification that the appellant had made his life hell and miserable. He further averred that he had only brought the genuine grievances of highhandedness of the appellant to his superior boss. The rest of the written statement was not relevant for the purpose of determination of the following issues framed by the trial Court: -

- i. *Whether the suit is maintainable as framed?*
- ii. *Whether the plaintiff has any cause of action to file the present suit against the defendant?*
- iii. *Whether the defendant cause damage to the plaintiff by publishing scandalous material and defamatory word in Akhbar as well as in letter dated 24-10-2007 to harass and harm his service carrier, good name and fame? If yes what is its effect?*
- iv. *Whether the act of the defendant is illegal, intentionally and mala fide and cause great damages to dignity and reputation of the plaintiff and created great mental torture to him?*
- v. *Whether the plaintiff is entitled to relief claimed as prayed?*
- vi. *What should the decree be?*

4. In support of his claim, the appellant examined himself and two other witnesses and produced documents as Exhibits P/1 to P/11. In rebuttal, the respondent examined only himself and produced documents as Exhibits D/1 to D/46. However, except exhibit D/1 and D/4 all the documents produced by him were photocopies. The court took photocopies on record subject to objection of admissibility of the same to be decided later as photocopies of documents were not admissible in evidence. The trial Court after hearing the parties dismissed the suit. The appellant being aggrieved has preferred this appeal.

5. I have heard the counsel and perused the record.

6. The learned counsel for the appellant has contended that the learned trial Court has totally overlooked the evidence of the appellant and reversed its earlier finding on issues No.2 regarding cause of action since the trial Court had already dismissed an application under Order VII, Rule 11 CPC by an order dated 16.10.2009. Once it was held that the important legal and factual issues are involved and the Court is required to record evidence to decide such issues, the finding on issue No.2 that no cause of action accrued or the plaintiff has failed to prove issue

No.2 was not in conformity with law and record itself. Similarly he further contended that the findings on the issues No.3 and 4 were not based on the evidence and the contentions of the appellant were fully established through the documents produced by him, but the trial Court ignored his evidence. There is no discussion or reference in the judgment on the material claimed to have been defamatory by the appellant. The observation of the learned trial Court that the appellant has failed to establish that the letter dated 24.10.2007 was sent to the Deputy Director General, Federal Bureau of Statistics, Karachi by the respondent was contrary to the record. The respondent / defendant himself has filed not only letter dated 24.10.2007 but other letters sent by him to the higher authorities in the office of Federal Bureau of Statistics, and yet the Court in the impugned judgment has held as under:-

“The Plaintiff have miserably failed to establish the letter dated 24.10.2007 alleged to have sent to the Deputy Director General Federal Bureau of Statistic, Karachi by the defendant”.

He further averred that the Court has not examined the documentary evidence from the point of view of the defamatory nature of the material, which was admittedly published by the respondent. Learned counsel has drawn the attention of this Court to the admitted material published by the respondent which, amongst other, included a false story full of defamatory words and allegations leveled against the appellant under the title: -

” روفی اسپرنگ فلور ایسوسی ایشن کے صدر (غیر منتخب)
خالد صدیقی کا زہنی توازن خراب ہو گیا؟“

The learned counsel has referred to other publications as well, in which the language used is insulting and humiliating. Lastly he has contended that the learned trial Court has even ignored the case law cited during the course of argument and mentioned in written final arguments particularly Division Bench judgment of Lahore High Court reported in **PLD 206 Lah. 557** (*Mudasser Iqbal Butt v. Shaukat Wahab and others*) and, therefore, he claimed that the impugned judgment may be set aside and the suit may be decreed.

7. In rebuttal Mr. Ansar Hussain, learned counsel for the respondent has argued that the respondent has acted within the parameters of law as the publications are based on facts. He further argued that all this has been done by the appellant as a revenge for making the life of the respondent miserable by the appellant through different means. He has reiterated other allegations of harassment and discourteous conduct of the appellant towards the respondent as an excuse for justifying the

material published by him. He admitted that the different issues of “Akhbar” produced and exhibited by the appellant are the same which were published by the respondent, however, he has justified that all these publications were within the parameter of law as he has a right to inform the public-at-large about the conduct of the appellant. Learned counsel for the respondent has also filed written synopsis of his arguments wherein he has discussed the contents of allegedly libelous material published and insisted that in each of such publication nothing has been published but the facts have been narrated. He has also relied on the case law reported in **PLD 1991 Lahore 415** (*Dost Muhammad v. State*) **PLD 2002 SC 514** (*Muhammad Rashid v. Majid Nizami*) in support of his contention that whatever has been published is protected under Article 19 and 19-A of the Constitution of Islamic Republic of Pakistan, 1973, relating to the freedom of speech and right to information.

8. In the light of the arguments advanced by either side, I have perused the evidence from the R&P and findings of the learned Trial Court on the issues reproduced in para-3 above. The learned Trial Court has failed to appreciate that the burden of proof was on the defendant to establish the “truthfulness” and “correctness” of the contents of the material admittedly published by the respondent / defendant. The findings of the learned Trial Court that the plaintiff had no cause of action are not supported by any reasoning. Once it was held by the Court on 16.10.2009 that the suit was maintainable, the Court cannot declare that the plaintiff had no cause of action. Admittedly the plaintiff was aggrieved by certain publications which according to him were not only false but also scandalous and the language used in such publications was insulting and humiliating and thereby harmful to the name and reputation of the Plaintiff. The Defendant has owned all these publications and therefore, there was a triable issue that whether these publications were justified, narration of true facts and the contents were or were not defamatory tending to lowering the esteem of the plaintiff in the society. The very fact that the issues were thrashed out and evidence was recorded by itself was sufficient to appreciate that there was a cause of action for filing of the suit by the appellant against the Respondent, therefore, findings of the Trial Court on issue No.2 ought to have been in the affirmative.

9. Similarly the findings of learned Trial Court on Issues No.3 & 4 appear to be the result of misreading of evidence and failure to appreciate the evidence led by the parties in its true prospect. The Plaintiff in support of his case has himself appeared in witness box and produced two witnesses namely Mirza Haider Ali and Muhammad Saleem Khan who supported the case of the Plaintiff. Both the witnesses

have specifically stated that the publications made by the Respondents were libelous against the appellant and the language used was derogatory. In the cross-examination no suggestion has been made to the witnesses of appellant that the contents of said part of affidavit-in-evidence were false or incorrect nor was it suggested that the publications were factual and not motivated by malice. The learned Trial Court has failed to appreciate that the burden was discharged by the Plaintiff and onus of proof was shifted on the Defendant / Respondent to establish that the contents of publications were “narration of true facts” and protected under the right of freedom of press guaranteed by Article 19 of the Constitution of Islamic Republic of Pakistan, 1973. The solitary statement of respondent was not sufficient to discharge his burden of proof. The quality of evidence was such that the Respondent has produced only photocopies of documents in support of his claim which were not admissible evidence. It was specifically mentioned by trial Court during the recording of evidence of the respondent that *“as all these documents except the Ex.D/1 & D/4 have been produced are photostate copies, admissibility thereof in evidence shall be determined later on”*. That besides the failure of the respondent to prove that the contents of publications were based on truth, the examination of various publications suggests that the contents thereof cannot be accepted as true and correct without corroborating evidence of independent witness. One of such publications on perusal of the contents thereof is sufficient to appreciate that the Respondent has published false, baseless, insulting and humiliating material against the appellant. It is reproduced below: -

**روفي اسپرنگ فلاور ايسوسي ايشن کے صدر (غير منتخب)
خالد صديقي کا زبني توازن خراب ہو گیا؟**

(رپورٹ جمعہ 14 ستمبر) معمول کے مطابق کمپاؤنڈ کے 65 سالہ بزرگ رہائشی محمد منظر مغرب کی نماز پڑھ کر مسجد سے باہر نکلے۔ اسی وقت خالد صديقي سامنے گلی سے نکل کر انہیں گھورنے لگا اور اچانک ان پر حملہ کر دیا۔ یہ سرکاری ملازم ہونے کے ساتھ ساتھ ویلفیر ايسوسي ايشن کا غير منتخب / قابض صدر بھی ہے اور غليظ گاليوں، خواتين سے بدکلامي اور فساد کرنے کی وجہ سے بدنام ہے۔ لوگ اس سے خائف رہتے ہیں۔ حملے کے دوران مسجد سے نکلنے والے نمازیوں نے اسے پکڑا اور حملے کی وجہ پوچھی، خالد صديقي غليظ گالیاں بکنے لگا۔ لوگوں نے اسپر سخت لعنت ملامت کی انکا خیال تھا کہ خالد صديقي کا زبني توازن خراب ہو چکا ہے۔ ایک شخص اسے پکڑ کر اسکے گھر لے گیا اس وقت بھی خالد صديقي گالیاں بک رہا تھا۔ محمد منظر نے بتایا کہ خالد صديقي کے سنگین گھریلو مسئلوں، خواتين سے بدکلامي اور دہشت گردی کے نتیجے میں بڑھتی ہوئی رسوائی، انیس احمد خان کے سنگین الزامات اور ايسوسي ايشن سے ان کا استعفیٰ، فنڈز میں خورد برد کی نیب کے ذریعے ممکنہ انکوائری اور ممکنہ سزا کے خوف نے خالد صديقي کو بڑی دماغی ٹینشن میں ڈالا ہوا ہے۔ چند مہینے پہلے انیس احمد کو خالد صديقي نے ان پر حملہ کروانے کے لئے کہا تھا۔ انیس احمد نے انکار کر دیا تھا اس کے بعد خالد صديقي نے اپنے ساتھی صادق بشیر

کے ذریعے انہیں کار سے کچلوانا چاہا۔ صادق بشیر کو اللہ نے عین
موقع پر گناہ سے بچالیا۔ صادق بشیر نے دوسرے دن مسجد میں فجر
کی نماز کے بعد محمد منظر سے غلطی کی معافی مانگی اور انہوں
نے درگزر کر دیا۔ محمد منظر نے کہا کہ خالد صدیقی کو زہنی سکون
 اور دماغی علاج کی ضرورت ہے یہ بدمعاشی سے نہیں بلکہ اللہ سے
 توبہ کرنے اور اپنی موجودہ بداخلاقی چھوڑ کر ہی ممکن ہوگا۔ اگر
 یہی دماغی حالت قائم رہی تو اعصابی اور دماغی بریک ڈاؤن بھی
 ہوسکتے ہیں۔ اس کے گھر والوں کو اپنی ذمہ داری سمجھنی چاہئے۔

On perusal of the aforesaid material, we find that names of **Anees Ahmed** and **Sadiq Bashir** are mentioned in the story. If this story was factually true then at least to confirm the contents of above material, the Respondent should have called these persons as witnesses. The respondent in the list of witness filed by him has not even mentioned name of Anees Ahmed and Sadiq Bashir. None of the 13 witnesses mentioned in the list of witnesses by the Respondent was called by him nor any request was made by him to the Court that they should be called. This has rendered the case of the respondent to the status of a case of no evidence to rebut the claim of the appellant. The reasoning advanced by the learned Trial Court and reliance placed on the cross-examination of the appellant was not in line with the issues No.3 & 4 that whether the defendant has published scandalous material and used defamatory word in his “AKHBAR” and whether the act of the defendant caused damages to the dignity and reputation of the appellant. The observation of the trial Court to dismiss the claim of appellant that “*the action of libel is an action for loss of reputation for issue of damages, it was to be observed whether the man had good character*” was out of context of the pleadings of the parties. The good or bad character of the appellant was not in issue, nor was it even defence of the respondent to claim protection in relation to publications in question against claim of damages. The Respondent has chosen his defence in relations to the admitted publication which is available to him under Section 5(c) of the Defamation Ordinance 2002. It reads as under:-

5. **Defences.-** In defamation proceedings a person has a defence if he shows that—
- (a).....
 - (b).....
 - (c) it is based on truth and was made for public good;
 - (d)
 - (e) offer to tender a proper apology and publish the same was made by the Defendant but was refused by the Plaintiff;

Therefore, the trial Court was required to examine the evidence of the respondent to appreciate that the burden of “truth” and importance of such material for the “public good” was discharged by the respondent or not. The perusal of above quoted material which the respondent admits to have published by any stretch of

imagination could not be considered in the interest of “public good”, nor were its contents proven to be true and correct.

10. The other contention of the Respondent that he was within his right to publish material complained off on the basis of right guaranteed under Article 19 & 19-A is totally misplaced. The case law relied upon by the Respondent i.e **PLD 1996 Lah. 410** (*Majid Nazami and another ..Vs.. Sheikh Muhammad Rashid*) & **PLD 2002 SC 514** (*Muhammad Rashid v. Majid Nizami*) do not support the contention of the respondent. The privilege of freedom of press contained in Article 19 of the constitution is not absolute but subject to reasonable restriction and that restriction is that the publisher and printer of the defamatory material is required to establish that whatever he has published was based on “truth” as decency and morality has no room to approve false and incorrect information to be circulated in the public. In this context it would be advantageous to reproduce Article 19 here.

19. Freedom of speech, etc.-- Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the Press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court,¹[commission of] or incitement to an offence.

The use of the words “*decency or morality*” in Article 19 of the Constitution after the phrase “*subject to any reasonable restrictions imposed by law in the interest of---* *amongst other ----- public order* “decency or morality”----- suggest that the protection is not absolute.

11. The courts while extending the benefit of Article 19 of the constitution are not supposed to loose sight of the fundamental rights guaranteed to the citizen of Pakistan under Article 4 and 14 of the Constitution. The use of words “*reputation*” in Article 4(2)(a) and the expression “*the dignity of man*” in Article 14 of the constitution seems to have been re-affirmed by the parliament in Article 19 when right to freedom of speech is to qualify the test of “**decency and morality**”. Thus the right to freedom of speech cannot be extended in favour of a publisher who is guilty of violating the right of fellow citizen guaranteed under Article 4 and 14 of the same constitution.

12. In the case in hand the Respondent has failed to prove the “truthfulness” of the publications by means of any independent evidence. The material reproduced above out of several other publications tends to lower the status of the appellant in

the estimation of the other residents of Ruffi Spring Flower Apartment. The publication quoted in para-9 above and particularly underline portion are not supposed to be protected by Article 19 of the constitution, since it is not only against the “**decency and morality**” but it also violates the fundamental rights guaranteed under Article 4 & 14 of the constitution to the appellant.

13. In view of the above discussion, the findings recorded by the learned Trial Court on Issue No.3 & 4 ought to have been in affirmative. Therefore, findings of the learned Trial Court on issue Nos.3 & 4 are hereby set aside and reversed as the appellant has established through unrebutted evidence that the Respondent has published defamatory material in his so called “*Akhbar*” which “contains false statement” and circulated it amongst the residents of Ruffi Spring Flower Apartments. This wrongful act of the respondent tends to lower the reputation and good name of the appellant in the estimation of others.

14. The natural consequence of the above conclusion is that the Plaintiff was entitled to the relief claimed by him, issue No.5 should also have been answered in the affirmative. However, while deciding the entitlement of the claim the Court has to take into consideration several factors to determine the quantum of damages to be awarded to the appellant / plaintiff. Once the case under Section 3 of the Defamation Ordinance 2002 is established, the Court is under an obligation to award compensation as general damages. Section 9 of the Defamation Ordinance 2002 provides certain grounds to be taken into consideration as guideline for assessing and determining the quantum of damages. It would be advantageous to reproduce section 9 of the Defamation Ordinance 2002;

9. Remedies.- Where defamation shall be proved to have occurred, the Court may pass order directing the defendant to tender an apology, if acceptable to the plaintiff, and publish the same in similar manner and with the same prominence as the defamatory statement made and pay reasonable compensatory damages as general damages with a minimum Rs.50,000 (Rupees fifty thousand) ¹[*****] and in addition thereto, any special damage incurred that is proved by the plaintiff to the satisfaction of the court ²[:

Provided that in case of the originator the minimum compensatory damages as general damages shall be three hundred thousand rupees.]

15. The possibility of directing the Defendant to tender apology, if acceptable to the Plaintiff and publish the same in similar manner and reasonable compensatory damages as general damages not less than Rs.50,000/- in addition to any special

damages incurred by the Plaintiff to the satisfaction of the Court. The proviso to section 9 *ibid* in case of “*originator*” of the defamation has mandated that the compensation shall be minimum Rs.300,000/-. In addition to guideline provided in section 9 *ibid* the nature of publication, the circulation strength of such publication, the language used in such publication and its impact on the target of publication are the other factors which should be the basis for determining the quantum of damages. The use of the word “shall” both in the section and the proviso has made it mandatory for the Court not to assess the quantum of damage as general damages below the amount of rupees three hundred thousand in case of an originator. The legislators knowing well the difficulty in assessing the claim of general damages on account of non-availability of any yardstick to assess general damages have determined the minimum penalty as remedy for the target of defamatory material.

16. In the case in hand no special damages has been claimed and the question of directing the respondent to tender an apology does not arise since the respondent has not even suggested it after notice from the appellant nor in his defense in the suit. The Defendant has ignored the statutory defence under Section 5(e) available to him reproduced in para-9 above. The Defendant has not shown any intention to stop publication of insinuating material against the appellant even after the filing of the suit. He has continued to publish objectionable similar material in his *Akhbar*. The appellant has placed on record May 2010 and June 2010 issues of “*Akhbar*” showing such publication even after filing of the instant suit. It is pertinent to mention here that the respondent is both printer and publisher of the so called *Akhbar* from his residence in Ruffi Spring Flower Apartments. He is neither elected member or representative of the resident’s association nor any member of the association has ever been quoted by him as source of information for the material published by him. Neither any of the present office bearers of the residents’ Association nor any of the residents of Ruffi Spring Flower Apartment has come forward to support the contents of the publications in question as true and correct. In the circumstances, the Respondent is also the “originator” of all such insinuating material published by him in his so-called ‘*Akhbar*’, and as stipulated in section 9 of the Defamation Ordinance 2002, the minimum limit of remedy as compensation for the appellant / Plaintiff against the originator of the defamatory material shall not be less than three hundred thousand rupees as envisage in the proviso to section 9 of the Defamation Ordinance, 2002.

17. In view of the above discussion, issue No.5, too, should have been decided by the trial Court in affirmative and quantum of damages should have been awarded. I, therefore, while setting aside the findings of trial Court on all the issues being

contrary to law and facts and keeping in view the limited circulation of the so-called “*Akhbar*” issued by the respondent, award the minimum compulsory damages of Rs.3,00,000/- as general damages to the Plaintiff. The respondent is directed to compensate the appellant for publishing and circulating false statements injuries to the reputation of appellant by payment of Rs.3,00,000/- within 60 days hereof as compensatory damages, and refrain from publishing anything about the appellant in future in his “*Akhbar*” or any other publication by him.

18. The upshot of the above discussion is that the judgment and decree of Suit No.110/2005 passed by III-Additional Sessions Judge East Karachi are set aside, the appeal is allowed and the suit is decreed in the above terms.

JUDGE

Karachi
Dated: _____

Zahid/*