

# IN THE HIGH COURT OF SINDH AT KARACHI

*Present:*

**Mr. Justice Amjad Ali Sahito**

## **Criminal Revision Application No.89 of 2023**

Applicants : i. ARY Communication Limited  
ii. Ch. Ghulam Hussain  
iii. Salman Iqbal  
through M/s. Ravi Pinjani & Hamza  
Hidayatullah, Advocates

Respondents : Independent Newspapers Corporation  
(Private) Limited and others

through Mr. Atta Hussain, Advocate  
Mr. Zafar Ahmed Awan, DPG

Date of hearing : 05.03.2025

Date of order : 21.03.2025

## **ORDER**

**AMJAD ALI SAHITO, J** – Through the instant revision application, the Applicants seek to set aside the impugned orders dated 12.12.2023, 14.03.2023, and 08.04.2023, passed by the learned X-Additional Sessions Judge, Karachi South in Direct Complaint No. 3346/2022. By way of the said orders, cognizance was taken against the Applicants/Accused persons for an offence punishable under Sections 500, 501, and 502 of the Pakistan Penal Code (PPC), directing that the complaints be placed on the regular file of the Court, and bailable warrants were issued against the Applicants. Being aggrieved, the Applicants have preferred the present revision application.

**2.** Brief facts of the case are that Respondents/Complainants filed complaints under Section 200 Cr.P.C. R/W Section 500, 501, 502, & 502-A PPC against the applicants/accused praying for taking cognizance against them for defaming the complainants through media campaign by using written and spoken defamatory language etc. on different dates and different programs.

**3.** To ascertain the factual position, the statement of the representative of the complainants has been recorded U/s 200 Cr.P.C. wherein he has almost reiterated the same instances as stated in the memo of the complaint. Thereafter, the matter was assigned to the learned XIV Judicial Magistrate, Karachi South for holding preliminary enquiry, who after having recorded the statements of witnesses namely Wajid Ali and Sheikh Muhammad Miftahuddin returned the same to this Court for further proceedings. After hearing the learned counsel for the complainant and perusing the record the learned trial court took cognizance of the offence.

**4.** Per learned counsel for the applicant, while passing the impugned orders the learned Judge did not consider question of maintainability of private complaint in terms of Section 198 Cr.P.C. and PEMRA Ordinance, 2002; that defamation complaint is not maintainable under the PEMRA Ordinance 2002; that the private complaint is not maintainable by the respondents in terms of the mandatory bar prescribed under section 198 Cr.P.C; that the Respondent is not an aggrieved party to file a complaint against the applicants, as such, the same is liable to be dismissed; that if any complaint is against the applicants, the Respondent should have filed the same before the PEMRA instead of Court of law which is beyond its jurisdiction.

**5.** He further argued that jurisdiction to try media persons under sections 500, 501, 502, and 499 PPC is ousted by the PEMRA Ordinance, 2002 and Council of Complaints Rules and Code of Conduct; that Respondents No.1 & 2 (complainants) are incorporated companies and separate legal entities having their own independent existence, hence, they could not file a complaint; that Section 26 of PEMRA Ordinance provides that if any complaint against any aspect of programmes being broadcasted is to be made before the PEMRA Council of Complaints; that Respondents No 1 & 2 already approached PEMRA and under Article 13 of the constitution and the doctrine of election, the applicants cannot be vexed twice for the same allegations. Lastly

prayed that the impugned order may be set aside and the instant application may be allowed. In support of his contentions, he has relied upon the cases as follows:

- i. *PLD 2001 Lahore 98 (Shabana Mustafa vs. Dr. Muhammad Khalid and others)*
- ii. *PLD 2023 Supreme Court 431 (PEMRA through Chairman and another vs. Messrs ARY Communication Private Limited (ARY Digital) through Chief Executive Officer and another)*
- iii. *PLD 2018 Supreme Court 828 (Trading Corporation of Pakistan vs. Devan Sugar Mills Limited and others)*
- iv. *2024 SCMR 518 (Chief Executive Officer NPGCL GENCO-III TPS Muzafargarrah vs. Khalid Umar Tariq Imran and others)*
- v. *PLD 1996 Karachi 306 (Haleem Shah vs. The State)*

**6.** Learned counsel for the respondents/complainant mainly contended that instant application was filed through attorney; that a power of attorney holder has no locus standi in criminal proceeding; that an accused in a criminal cases cannot delegate his personal liability to a non-advocate; that it is well-settled law that personal presence of an accused before the Court is mandatory and the attendance cannot be substituted through a power of attorney holder, hence this case cannot be proceeded further; that Section 540 Cr.P.C. states that Court may dispense with attendance of the accused in exceptional circumstances but not in ordinary cases; that defamatory statements in the television show were not limited to Mir Shakeel-ul-Rehman but targeted the credibility of Geo News Group and Jang Group as the applicant attempted to discredit their reputation; the assertion of the applicant that only Mir Shakeel-ul-Rehman is the only aggrieved party and Respondent has no right to file any complaint is factually incorrect; that if a crime is committed by means of electronic media then aggrieved party can seek criminal prosecution under Cr.P.C.; that PEMRA Ordinance, 2002 does not bar filing of a complaint under Section 200 Cr.P.C. Lastly submitted that the instant application may be dismissed.

**7.** Learned DPG supported the impugned order.

**8.** I have heard the learned counsel for the respective parties and have gone through the material available on the record.

**9.** The case of the Complainants/Respondents No.1 & 2 is that the Board of Directors of M/S Independent Newspapers

Corporation Pvt. Ltd. and M/S Independent Media Corporation Pvt. Ltd. (hereinafter referred to as "Both the Companies") separately authorized Muhammad Saleem, through distinct board resolutions dated 10.05.2022, to initiate legal proceedings against the accused persons, namely Salman Iqbal (Anchor and CEO of M/S ARY Communication Pvt. Ltd.), Arshad Sharif (Anchor of the program "Power Play" telecasted on ARY News), Sabir Shakir (Host of the program "The Reporter"), and Chaudhary Ghulam Hussain (Co-host/Guest of the program "The Reporter").

**10.** The Complainants allege that the aforementioned accused individuals made statements in their respective programs that resulted in damage to the reputation and integrity of Both the Companies. The Complainants, Respondents No.1 & 2, assert that they have established a longstanding and hard-earned reputation for being independent, impartial, objective, and pragmatic sources of information, education, and entertainment for millions in Pakistan and across the globe.

**11.** Furthermore, the Complainants are recognized as pioneers in the media industry and recipients of various prestigious awards. It has also been stated in the complaint that Mir Shakil-ur-Rehman, Editor-in-Chief and Group Chief Executive of Complainants No.1 & 2, is a highly respected media personality, having previously held the position of President of the Council of Pakistan Newspapers and also serving as the Founder Chairman of the Pakistan Broadcasters Association.

**12.** It is alleged that in July 2005, Accused No.2 & 3 (Applicants No.2 & 3), under the direction of Accused No.1, Salman Iqbal, acted with malicious intent to defame the Complainants and their Group Chief. They selectively extracted and presented sentences from an interview conducted on 25.07.2017, misrepresenting them in their aired programs, particularly in "The Reporter." Additionally, the accused made defamatory comments against the Complainants without substantiating their claims with any evidence. The complaint lists multiple instances in which the accused allegedly made such defamatory statements.

**13.** The Complainants assert that the worldwide broadcast of these programs has caused significant reputational damage to them. In support of their claims, they have produced documents marked as exhibits P/1 to P/14. The statements made by the accused are alleged to be false, defamatory, and injurious to the Complainants' reputation.

**14.** Following the filing of the complaint, the authorised person's statement, along with those of other witnesses, was recorded. Upon review, the learned trial court took cognizance of the offence and initiated legal proceedings accordingly.

**15.** The learned counsel for the applicants initially raised an objection regarding the maintainability of the private complaint filed by the Attorney/representative under the provisions of Section 198 of the Code of Criminal Procedure (Cr.P.C.). So also rise by the learned counsel for the respondents that the revision application was filed by attorney.

**16.** There is no dispute regarding the legal principle that any person may invoke the criminal law machinery by either lodging a report under Section 154 of the Code of Criminal Procedure (Cr.P.C.) or by filing a complaint under Section 200 Cr.P.C. However, Section 198 of the Cr.P.C. prescribes certain exceptions wherein a complaint may be instituted by an individual other than the **aggrieved person**.

- A. If the Aggrieved Person is a Woman Restricted by Customs (Pardanashin) – A legal representative or close relative may file a complaint with the court's permission.
- B. If the Aggrieved Person is a Minor (Under 18 Years Old) – A guardian, parent, or legal representative may file the complaint.
- C. If the Aggrieved Person is Mentally Incapacitated (Idiot or Lunatic) – A guardian or close relative can file the complaint.
- D. If the Aggrieved Person is Unable to Complain Due to Sickness or Infirmary – A family member or interested person may file the complaint with the court's permission.
- E. If the Aggrieved Person is a Husband Serving in the Armed Forces (Section 494 PPC - Bigamy) – He may

authorize another person under Section 199-B Cr.P.C to file the complaint.

**17.** The term "**attorney**", in its broadest legal sense, refers to an individual who does not speak or act on their own behalf but rather represents their **principal**. According to **Black's Law Dictionary (Fourth Edition)**, the term *attorney* is defined as:

*"In the most general sense, this term denotes an agent or substitute, or one who is appointed and authorized to act in the place or stead of another."*

Similarly, as per **Merriam-Webster Dictionary**, an *attorney* is defined as:

*"One who is legally appointed to transact business on another's behalf."*

**18.** Since the "**Criminal administration of justice**" recognizes only those as a witness or complainant who either have seen; heard or at least perceived any fact towards the offence hence an "**attorney**" being not speaking of his own knowledge, would not fall within the meaning of witness/complainant. Thus, an attorney cannot legally, under such status of attorney, file the FIR or a criminal complaint.

**19.** Thus, while an attorney cannot generally file a criminal complaint, only the exceptions mentioned above allow specific individuals to file complaints on behalf of aggrieved persons in restricted circumstances as per Section 198 Cr.P.C.

**20.** In the present case, the complaint was filed by Muhammad Suleman, who was duly authorized by the Board of Directors of both companies through separate board resolutions dated May 10, 2022, to initiate legal proceedings against the proposed accused, namely Salman Iqbal, Chief Executive Officer of M/s ARY Communication (Pvt.) Ltd.; Arshad Sharif, Anchor of the program *Power Play*; Sabir Shakir, Host of the program *The Reporter*; and Chaudhary Ghulam Hussain, Co-host/Guest of the program *The Reporter*.

**21.** With respect to the plea raised by the learned counsel for the applicants, asserting that only words were uttered against Mir Shakil-ur-Rehman, and therefore, only Mir Shakil-ur-Rehman qualifies as an aggrieved person entitled to file a complaint under Section 200 of the Code of Criminal Procedure, this contention is devoid of legal force. The complaint was duly instituted by Muhammad Suleman, who had been expressly authorized by M/s Independent Newspaper Corporation (Pvt.) Ltd. (Jang Group) and M/s Independent Media Corporation (Pvt.) Ltd. (Geo Group). Upon a thorough examination of the script of the program, which is available on record, it is evident that the applicants/accused made multiple utterances against Jang Group and Geo Group. In such circumstances, where statements are directed against a corporate entity or media group, Section 198 of the Code of Criminal Procedure provides certain exceptions, permitting an authorized individual to file a complaint on behalf of the entity.

**22.** With regard to the objection raised by the learned counsel for the respondents, contending that the instant application, having been filed through a Power of Attorney, is not maintainable, I have carefully scrutinized the record. The record unequivocally demonstrates that one of the applicants/co-accused, Chaudhary Ghulam Hussain, has sworn an affidavit explicitly affirming that the instant revision application was prepared and filed under his instructions. Consequently, the objection raised by the learned counsel for the respondents is without merit and is therefore unsustainable.

**23.** The learned counsel for the applicants submits that the jurisdiction to adjudicate matters involving media personnel under Sections 500, 501, 502, and 499 of the Pakistan Penal Code is excluded by the provisions of the PEMRA Ordinance, 2002.

**24.** The **Pakistan Electronic Media Regulatory Authority Ordinance, 2002** ("PEMRA Ordinance") may contain penal provisions and provide a forum for lodging complaints against electronic media; however, it does not supersede the general penal laws. **Sections 26 and 27** of the PEMRA Ordinance, 2002,

pertain exclusively to violations or infringements, if any, related to the terms and conditions of a license issued under the ordinance. Under **Section 27**, PEMRA is empowered to prohibit any broadcast media or distribution service, while **Section 28** allows for the suspension of a license, and **Section 29-A** provides for the imposition of fines. In order to establish criminal liability for offences specified in the PEMRA Ordinance, a complaint must be lodged under **Section 34** of the said Ordinance. Furthermore, general provisions of law are not expressly barred. Therefore, an **FIR** or a complaint under Section 200 of the Code of Criminal Procedure (Cr.P.C.) may be registered for offences falling under the Pakistan Penal Code (P.P.C.), alongside proceedings under the PEMRA Ordinance where applicable. If the same set of facts constitutes offences under multiple legal provisions or different statutes, resulting in distinct offences, the principle of **double jeopardy** would not be applicable. Consequently, separate prosecutions and punishments for such distinct offences would not be legally precluded. In the case of **Muhammad Nadeem Anwar v. Securities and Exchange Commission of Pakistan through NBFCs Deptt; Islamabad (2014 SCMR 1376)** Honable Supreme Court of Pakistan has held that;-

*9....."Bare reading of afore-quoted provision of law is clearly suggestive of the fact that both are under different enactments of law having different procedure and forum for initiating proceedings thereunder although both the sets of offences have been committed by the accused in one go that is to say that the accused-petitioner acted in such a manner which constituted offences punishable under two separate and distinct laws i.e. one under the NAB Ordinance and the other under the Companies Ordinance. Both are different and distinct pieces of legislation, therefore, acts and omissions of the petitioner committed by him cannot be said to be same offences." Reference may be made to a decision of this court in the case of Adam v. Collector of Customs, Karachi (PLD 1969 SC 446) in which this court has held that;-*

*"Therefore, no question of double jeopardy arises when simultaneously or subsequently a trial is held to determine the guilt who has been concerned in the offence in respect of goods which are the subject-matter of the adjudication proceedings. And since the proceeding for adjudication by the custom authorities and the criminal prosecution of the offender in the court are not inter-dependent, they can*



*proceed simultaneously and neither can remain under suspension for the sake of other*

*In another case **Mian Haroon Riaz Lucky v. The State (2021 SCMR 56)** Honable Supreme Court has held that “an FIR under section 462-C PPC can be lodged and investigation despite the presence of Gas (Theft Control and Recovery) Act”*

**ABDUL BARI--Versus--AKHTAR RASHEED, STATION HOUSE OFFICER, POLICE STATION AIRPORT, QUETTA and 5 others. (2022 M L D 805 [Balochistan])**

*8. The petitioner pressed that the act for which they have been nominated as accused have already been dealt under the provisions of PEMRA Ordinance 2002, thus no further proceedings could be held against them, not supported by any provision of law. The decision of the Authority dated 25th October 2017 on recommendations of Council for Complaints (Karachi and Lahore) imposed fine on Geo News in exercise of powers under Section 29 (6) PEMRA Ordinance 2002. It was for violation of terms and conditions of license. No criminal liability was dealt by the Authority.*

**INDEPENDENT MEDIA CORPORATION (PVT.) LTD. Through Muhammad Azhar and 4 others. V. GOVERNMENT OF BALOCHISTAN through Chief Secretary and Secretary Law, Quetta and 9 others--Respondents (PLD 2019 Balochistan 27)**

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**25.** Based on the foregoing discussion and the judicial precedents cited supra, it is my considered view that no special law can declare a *malum prohibitum* as a non-offence unless it is expressly omitted from the statutory framework. As long as **Sections 499, 500, 501, 502, and 502-A** of the **Pakistan Penal Code, 1860** remain in force, an aggrieved person retains the right to seek

redress through the courts of competent jurisdiction for the initiation of criminal proceedings in cases involving publication, broadcast, or telecast that allegedly cause harm.

**26.** Furthermore, a **complaint** merely constitutes a statement of allegations intended to set the legal process in motion. The proceedings under Sections 203 and 204 of the Code of Criminal Procedure (Cr.P.C.) are contingent upon the presence or absence of sufficient grounds, as determined by the court on the basis of a **prima facie** case. The prosecution or complainant is required to establish the case **beyond reasonable doubt**; however, at the preliminary stage, the complainant is not burdened with proving the allegations to such an extent.

**27.** The primary objective of **preliminary proceedings** is to ascertain the truthfulness or falsity of the accusations set forth in the complaint, which must be evaluated based on the evidence presented by the complainant. At this stage, the accused does not possess the right to participate, as the court is only required to take **cognizance** of the matter and issue a **summons**. The fundamental purpose of these proceedings remains the assessment of whether the allegations merit further legal action, subject to evidentiary scrutiny.

**28.** In the instant case, the statement of the complainant under Section 200 Cr.P.C was recorded, wherein he has almost reiterated the same instance as stated in the memo of the complaint. Thereafter, the matter was assigned to the learned XIVth Judicial Magistrate, Karachi-South for holding the preliminary inquiry, who after having recorded the statement of witnesses namely Wajid Ali and Shaikh Muhammad Miftahuddin returned the same to the learned trial court. The learned trial court perused the statement of the representatives of the complainant under Section 200 Cr.P.C and the statement of the witnesses recorded under Section 202 Cr.P.C took cognizance of the offence and subsequently issued bailable warrants.

**29.** The learned counsel for the Applicants/Accused has failed to establish any illegality or procedural irregularity in the impugned

orders passed by the learned trial court. Consequently, the instant application stands **dismissed**. However, if the Applicants believe that there is no material evidence against them, they are at liberty to file an application under Section 249-A or 265-K of the Code of Criminal Procedure (Cr.P.C.) before the learned trial court seeking premature acquittal, and should they choose to do so.

**JUDGE**