

IN THE HIGH COURT OF SINDH AT KARACHI

Miscellaneous Appeal No. 128 of 2024

Present

Mr. Justice Muhammad Jaffer Raza

Asim Iqbal Appellant.

Versus

Mateen Sadiq & another Respondents.

Mr. Muhammad Ali Lakhani, Advocate for the Appellant a/w
Mr. Farmanullah Advocate and the Appellant Asim Iqbal.

Mr. Mr. Ghazi Khan Khalil, Advocate for the Respondents a/w
M/S Ameer Nausherwan, Zeeshan Ahmed Kalhoro, Kumail Abbas and
Aftab Ali Advocates.

Mr. Ahmed Khan Khaskheli, A.A.G.

Date of Hearing: 25.04.2025.

Date of announcement: 30.04.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The instant Miscellaneous Appeal has been filed under Section 15 of the Defamation Ordinance, 2002 (“**Ordinance**”) impugning the order dated 29.07.2024 passed in Defamation Suit No.183/2023, whereby the plaint filed by the Appellant was rejected under Order VII Rule 11 CPC.

2. Succinctly stated, the Appellant filed Suit No.183/2023 against the Respondents for damages on account of defamation before the learned trial Court. Thereafter, the Respondents filed an application under Order VII Rule 11 CPC and the same was allowed vide Impugned order dated 29.07.2024.

3. Learned counsel for the Appellant has argued that the Impugned order is beyond the permissible scope of Order VII Rule 11 CPC as expounded by the Hon'ble Supreme Court in the case of *Haji Abdul Karim v. M/s. Florida Builders Pvt. Ltd¹*. Learned counsel has stated that the letter dated 29.04.2023 (“defamatory letter”), written and signed by the Respondents, was defamatory in nature, which gave rise to the cause of action against the Respondents. It is specified that in the instant judgment the term “defamatory letter” is used for the purposes of identifying the said letter **only** and is **not** a determination on whether the said letter was defamatory.

4. The learned counsel in compliance of the provisions of Section 8 of the Ordinance issued legal notice dated 22.05.2023 to the Respondents and thereafter preferred the above-mentioned suit. The learned counsel has stated that the application filed by the Respondents under Order VII Rule 11 CPC was primarily filed on the ground that the defamatory letter, which is the subject matter of the above-mentioned suit, was written by the Respondents in their official capacity and therefore their employer should have impleaded as Defendant in the said suit. Learned counsel has argued that even if the above was a permissible defence under Section 5 of the Ordinance, even then a rejection of the plaint was not warranted under the permissible scope of the above noted provision.

5. Conversely learned counsel for the Respondents has argued that Sections 6 and 7 of the Ordinance are squarely applicable to the case at hand as the defamatory letter which is the subject matter of the above-mentioned suit is covered by “*absolute privilege*” as defined under Section 6 of the Ordinance. In the same vein the learned counsel has also placed reliance on Section 483 of the Companies Act, 2017 (“**Act**”) and states that the alleged defamatory letter, written to the Securities and Exchange Commission of Pakistan (“**SECP**”) qualifies as “*judicial proceeding*” and therefore can be classified as “*absolute*

¹ PLD 2012 SC 247

privilege". He has further argued that no evidence in respect of the said defence needs to be recorded and the plaint can be rejected without appreciating the contents of the written statement. Learned counsel has further contended that the ground of absolute or qualified privilege, being legal in nature, can be taken at any stage.

6. Further the learned counsel has argued that the defamatory letter does not give rise to cause of action against the present Respondents as the defamatory letter was issued under the instructions of their employer. Therefore, the Respondents could not be sued personally for their acts and omissions which were done in their "official capacity". Learned counsel has further advanced the said argument and averred that the application filed by the Appellant under Order I Rule 10 CPC seeking impleading of the employer of the Respondents as party further buttresses his contention. Lastly, he has relied upon the case of **M. Moosa v Mahomed and others**².

7. In rebuttal, learned counsel for the Appellant has argued that Section 483 of the Act is specific to proceedings under Section 193 and 228 of the Pakistan Penal Code, 1860 ("**PPC**") and therefore is not attracted to present case. Learned counsel has argued that the defamatory letter was sent in reply to the letter issued by SECP dated 18.04.2023. It is argued that the notice to SECP was sent by the Appellant as counsel for his client and the Respondents used this as an opportunity to defame the Appellant and tarnish his reputation. Lastly, learned counsel has contended that if the Impugned order is set aside, he will during the course of evidence, cross-examine the Respondents vis-à-vis their above noted contentions.

8. I have heard the learned counsels and perused the record. The scheme under the Ordinance, being special law, is peculiar. Prior to institution of the suit the Plaintiff is mandated to issue a notice under Section 8 of the Ordinance within the time stipulated in the said provision. At this juncture it will be relevant to reproduce Section 8 of the Ordinance which reads as follows: -

² PLD 1959 (W.P.) Karachi 378

“8. Notice of action. – No action lies unless the plaintiff has, within two months after the publication of the defamatory matter has come to his notice or knowledge, given to the defendant, fourteen days notice in writing of his intention to bring an action, specifying the defamatory matter complained of.”

9. Further, the defences available to the Defendant in a suit under the Ordinance have been clearly defined in Sections 5, 6 and 7 of the Ordinance, which are reproduced below: -

“5. Defences.— In defamation proceedings a person has a defence if he shows that—

- (a) he was not the author, editor, publisher or printer of the statement complained of;*
- (b) the matter commented on is fair and in the public interest and is an expression of opinion and not an assertion of fact and was published in good faith;*
- (c) it is based on truth and was made for public good;*
- (d) assent was given for the publication by the plaintiff;*
- (e) offer to tender a proper apology and publish the same was made by the defendant but was refused by the plaintiff;*
- (f) an offer to print or publish a contradiction or denial in the same manner and with the same prominence was made but was refused by the plaintiff;*
- (g) the matter complained of was privileged communication such as between lawyer and client or between persons having fiduciary relations; and*
- (h) the matter is covered by absolute or qualified privilege.*

6. Absolute privilege. – Any publication of statement made in the Federal or Provincial legislatures, reports, papers, notes and proceedings ordered to be published by either House of the Parliament or by the Provincial Assemblies, or relating to judicial proceedings ordered to be published by the Court or any report, note or matter written or published by or under the authority of a Government, shall have the protection of absolute privilege.

Explanation. – In this section legislature includes a local legislature and Court includes any tribunal or body exercising the judicial powers.

7. Qualified privilege. – Any fair and accurate publication of parliamentary proceedings, or judicial proceedings which the public may attend and statements made to the proper authorities in order to procure the redress of public grievances shall have the protection of qualified privilege.”

10. At this juncture it will be expedient to bifurcate the grounds taken by the learned counsel for the Respondent for rejection of plaint and frame points of determination accordingly. The following points of determination are framed for effective adjudication: -

- i. Whether the defamatory letter qualifies as a “judicial proceeding” within the meaning of Section 483 of the Act?
- ii. Whether the defamatory letter was written by the Respondents in their personal or official capacity?

POINT NO.1

11. Prior to adjudicating this question, it will be germane to reproduce Section 483 of the Act. The same reads as follows: -

483. Powers of the Commission in relation to enquiries and proceedings.—(1) The Commission, an authorised officer or the registrar, as the case may be, shall, for the purposes of a proceeding or enquiry in exercise of its or his powers and discharge of functions, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any witness and examining him on oath or affirmation;

(b) compelling the discovery or production of any document or other material object;

(c) receiving evidence on affidavit; and

(d) issuing commissions for the examination of witnesses and documents.

(2) Any proceeding before the Commission, an authorised officer or registrar, as the case may be, shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and the Commission, an authorised officer or registrar shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V of 1898). (Emphasis added)

12. Bare perusal of the above reproduced section reveals that whilst powers of the civil court have been vested in the commission for the purposes outlined in subsection (1) of Section 483 in respect of any “proceedings” or “enquiry”, the same attain the status of a “judicial proceeding” only within the meaning and for the purposes of Section 193 and 228 of the PPC. The defamatory letter visibly does not fall in the said category and in that respect, it is held that the said letter cannot be classified as part of a “judicial proceeding”. Therefore, reliance of the learned trial court on the above noted provision, at least for the purposes of rejection of plaint, was unfounded and with respect, incorrect.

13. For the purposes of the present appeal it will be beneficial to discuss another ancillary aspect of what has already been held above. Even if the defamatory letter is held to be a part of a “*judicial proceeding*” the Impugned order is unclear as to whether the same attracts absolute or qualified privilege within the meaning ascribed to them under the Ordinance. I will leave it to a more opportune moment to adjudicate whether either privilege can be a ground for rejection of plaint. For the purposes of the instant judgment, the same is immaterial in light of what has already been held in paragraph No.12 above. Consequently, the reliance of the learned counsel for the Respondent on the judgement in the case of **M. Moosa** (supra) is misplaced.

POINT NO.2

14. Bare reading of the question framed indicates that the same requires evidence to be recorded. The Appellant ought to be given an opportunity to examine the Respondents and put forward necessary questions to them to determine the capacity in which the defamatory letter was written. The conclusion by the learned trial court in reference to the said letter being written by the Respondents in their “Official Positions” could not have been made prior to recording of evidence.

15. It is therefore held that the learned trial Court went over and above the permissible scope of Order VII Rule 11 CPC and failed to appreciate the dicta laid down in the judgment of **Florida Builders** (supra). Bare perusal of the Impugned order reflects that the learned trial Court has not distinguished between rejection of the plaint and dismissal of the suit.

16. In light of what has been held above, the instant appeal is allowed within no order as to costs. The matter is remanded back to the learned trial Court who is further directed to conclude the proceedings in the above-mentioned suit within a period of six (06) months from today.

The pending CMAs are disposed of accordingly.

J U D G E

Nadeem Qureshi “PA”