

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No. 295 of 2021

Applicant : Shahab Usto
son of Ziauddin Usto
Through Mr. Ravi Pinjani advocate

Respondent-2 : Yousuf M. Gill
son of Hayat Gill
Through: Nemo

The State : through, M/s. Sharafuddin Kanhar
& Ms. Najma Latif Golo, A.P.G.

Date of hearing : 23.09.2026.

Date of Order : 08.10.2026.

ORDER

Jan Ali Junejo, J:-- Through this Criminal Revision Application under Sections 435 & 439 Cr.P.C., the applicant, Shahab Usto son of Ziauddin Usto seeks the setting aside of the order dated 08.11.2021 (hereinafter referred to as the "Impugned Order") passed by the learned Additional District & Sessions Judge-XI, Karachi (South), in Private Complaint No. 1680 of 2021 (Re: Shahab Usto Vs. Yousuf M. Gill), whereby the learned Judge dismissed the Private Complaint filed by the applicant.

2. The genesis of the present matter emanates from a complaint filed by the Applicant under Section 200 Cr.P.C., wherein he alleged that he is a resident of Shikarpur and an Advocate of the High Court. He instituted the proceedings alleging that the historical Sir Henry Holland Eye Hospital, Shikarpur, along with the properties bearing City Survey Nos. 44/11, 44/12, 44/13, 44/14, 46/12 and 46/13, constituted trust property granted by the Government of Sindh for the purpose of running a charitable hospital. It was further alleged that the accused, namely Church Missionary Trust Association (CMTA), treated the said property as its own and purportedly entered into an Agreement of Sale dated 15.05.2020 and executed an unregistered Power of Attorney dated 08.06.2020 in favour of Dr. Muzaffar Ali Isani for the sale, transfer and

encumbrance of the property. The Applicant further alleged that the accused had attempted to commercialize the hospital property and that previous judicial and administrative proceedings had questioned their title and authority over the subject property. In order to protect the property from its alleged conversion into residential/commercial use, the Applicant instituted Constitutional Petition No.1590 of 2021 before the High Court of Sindh, wherein an ad-interim order dated 06.04.2021 was passed restraining the CMTA from creating any third-party interest in the subject property. During the said proceedings, Yousaf M. Gill, claiming to be the President of CMTA, filed comments and objections wherein allegations were made that the Applicant was a habitual litigant who filed constitutional petitions as a pressure tactic to extort money and had demanded Rs.5 million for settlement and withdrawal of the petition. Similar allegations were subsequently repeated in a counter-affidavit, along with allegations against the Applicant's brother concerning the subject property. The Applicant contends that the said allegations were false, malicious and unsupported by evidence, were intended to damage his reputation and professional standing, and constituted offences punishable under Sections 500 and 501 PPC, thereby giving rise to the present Criminal Revision Application.

3. Learned counsel for the applicant contended that the learned Trial Court failed to appreciate that the complaint specifically pertained to defamatory and libelous allegations made by Respondent No.2 in pleadings filed before the High Court, which, according to the Applicant, were false, malicious and intended to lower his reputation and professional standing. He submitted that such allegations were not made in good faith or in the public interest and did not fall within any of the exceptions to Section 499 PPC; therefore, they were neither privileged nor immune from prosecution under Sections 500 and 501 PPC. He further contended that the learned Trial Court failed to record findings on material submissions raised by the Applicant and relied upon distinguishable

case-law, including foreign judgments having only persuasive value and 2018 SCMR 1791, which, according to him, was distinguishable on facts. Learned counsel maintained that the assertion of absolute immunity for statements made in judicial proceedings was legally misconceived, as defamatory statements made in bad faith to malign, pressurize or scandalize an opponent do not enjoy absolute privilege. He further submitted that the allegations against the Applicant, including those concerning his alleged demand for money and his brother's purported criminal involvement, were made with mala fide intent to mislead the High Court and compel the Applicant to withdraw the constitutional petition, despite the fact that his brother had subsequently been exonerated. It was argued that the Applicant's complaint disclosed a separate cause of action for defamation, which required proper adjudication after affording him an opportunity to cross-examine Respondent No.2, and that the learned Trial Court prematurely dismissed the complaint without appreciating the Applicant's statement, the enquiry report and the material available on record. Learned counsel, therefore, submitted that the impugned order suffered from misreading and non-appreciation of the record, was arbitrary and legally unsustainable, and resulted in miscarriage of justice; hence, the same was liable to be set aside and the complaint proceeded with in accordance with law.

4. Learned Assistant Prosecutor General, Sindh, supported the impugned order and strongly opposed the application. He prayed for dismissal of the instant revision application.

5. I have heard the learned counsel for the respective parties and perused the available record with their assistance.

6. The controversy before this Court essentially revolves around the question whether the statements and allegations attributed to Respondent No.2 in the pleadings filed before the High Court in the pending constitutional proceedings could, in the circumstances of the case, constitute an offence of defamation so as to warrant

cognizance upon the private complaint. From the record, it is evident that the alleged imputations were made in the course of judicial proceedings and were connected with the subject matter of Constitutional Petition No.1590 of 2021. The mere fact that the Applicant considered such allegations to be false, derogatory or prejudicial to his reputation would not, by itself, be sufficient to constitute an offence under Sections 499 and 500 PPC. The surrounding circumstances, purpose and context in which the statements were made are also relevant for determining whether the essential ingredients of the alleged offence were *prima facie* disclosed.

7. It is also pertinent that the allegations attributed to Respondent No.2 were contained in pleadings submitted before a competent Court in response to the proceedings instituted by the Applicant. Such statements cannot be examined in isolation from the litigation in which they were made. The law recognizes that statements made in judicial proceedings, when connected with the matter under adjudication, are subject to protection in appropriate circumstances. The Applicant's assertion that the statements were made with *mala fide* intention, without more, does not by itself establish the requisite ingredients of defamation. At the stage of considering the complaint, the Applicant was required to demonstrate sufficient material showing that the alleged imputations, viewed in their proper context, attracted the penal provisions invoked by him.

8. The contention that every statement made in judicial proceedings, if alleged to be defamatory, necessarily gives rise to an independent criminal prosecution for defamation cannot be accepted as an absolute proposition. The pleadings in question were filed in proceedings concerning the very subject matter referred to in the complaint, and the allegations complained of were made in connection with the respective parties' stance before the High Court. Whether or not the assertions were ultimately proved to be correct

in those proceedings does not, in itself, convert them into a criminal offence of defamation. The Applicant's disagreement with the contents of such pleadings, or his assertion that the same were intended to prejudice his reputation, cannot substitute the legal requirements necessary to establish the alleged offence.

9. The argument that the learned Trial Court was required to record a separate finding on every contention raised by the Applicant also does not, in the circumstances of the present case, furnish sufficient ground for interference in revision. What is required is that the order must disclose due consideration of the material questions arising for determination. The impugned order, when read as a whole, reflects the basis upon which the learned Trial Court declined to proceed with the complaint. Merely because every argument advanced by the Applicant has not been reproduced or dealt with separately does not render the order illegal or perverse, particularly where the ultimate conclusion is supported by the nature and context of the allegations complained of.

10. As regards the contention that the Applicant ought to have been afforded an opportunity to cross-examine Respondent No.2, such an opportunity would arise in accordance with law only if the complaint was otherwise maintainable and sufficient grounds existed for proceeding further. The right of cross-examination cannot, by itself, be invoked to compel continuation of a criminal complaint where the material available on record does not disclose the requisite ingredients of the alleged offence. Likewise, the question whether the Applicant's brother had been exonerated in an earlier criminal case does not, by itself, establish that the statement made in the judicial pleadings constituted defamation punishable under the PPC.

11. I have also considered the contention regarding the alleged mala fide intention of Respondent No.2 to pressurize the Applicant or to compel withdrawal of the constitutional petition. However,

such allegations of motive, unsupported by independent material sufficient to establish the commission of the alleged offence, cannot form the sole basis for setting aside the reasoned order of the learned Trial Court. The Applicant's assertion that the allegations were false or made with an ulterior motive essentially raises disputed questions which, in the facts and circumstances of the case, do not furnish sufficient basis for criminal prosecution.

12. It is settled that revisional jurisdiction is not to be exercised merely because another view of the material may be possible. Interference is warranted where the impugned order suffers from illegality, material irregularity, jurisdictional defect or perversity resulting in miscarriage of justice. Upon examination of the impugned order and the material available on record, I find no such infirmity warranting interference by this Court. The learned Trial Court has exercised its jurisdiction in accordance with law and has assigned reasons for dismissing the private complaint.

13. Consequently, the Applicant has failed to point out any illegality, irregularity or perversity in the impugned order dated 08.11.2021, nor has he been able to demonstrate that the learned Trial Court committed any jurisdictional error or misread the material available on record. The instant Criminal Revision Application, being devoid of merit, is accordingly dismissed and the impugned order dated 08.11.2021 is maintained.

JUDGE