

IN THE HIGH COURT OF SINDH AT KARACHI
M.A. No. 29 of 2020

Appellant : Roshan Ali Kanasro,
through Mr. Shakeel Ahmed, advocate.

Respondent No.1 : Pakistan Electronic Media Regulatory Authority
(PEMRA)

Respondent No.2 : Council of Complaints.

Respondent No.3. : Abb Takk News TV Channel

Date of hearing : 02nd September 2020.

Date of Judgment : 25th September 2020.

SALAHUDDIN PANHWAR, J: Instant appeal is against the decision dated 19.06.2020, whereby, the respondent No.2 Council of Complaints in Sindh in its 67th meeting held on 18.05.2020, after hearing both the parties, disposed of the complaints filed by the appellant and advised the respondent No.3 M/S. APNA TV Channel Pvt. Limited (ABB TAKK) to follow the journalistic ethics in reporting and ensure compliance of such direction.

2. Relevant facts are that appellant who is working as Director, Planning, Development, Monitoring & Implementation Cell, Department of Culture, Tourism & Antiquities, Government of Sindh, Karachi, has made as many as 15 complaints against the respondent No.3 M/S. APNA TV Channel Pvt. Limited (ABB TAKK) for allegedly defaming and humiliating him in 21 episodes of the talk show/program "Benaqab", which was based on a letter purportedly written by one Waliullah Bhutto, a Government Contractor of Department of Culture, Tourism & Antiquities, Government of Sindh and the appellant was not contacted by the respondent No.3 to clarify his position; that by telecasting such defamatory, malicious, false and

incriminating breaking news, the respondent No.3, not only maligned the appellant but also tried to extend favour to one Ghulam Murtaza Daudpota, who is also co-accused in the NAB Reference No. 19/2019 filed against the appellant and others and is pending adjudication before the learned Accountability Court-III Sindh at Karachi by showing him as complainant and in this regard the respondent No.3 also interviewed co-accused Ghulam Murtaza Daudpota in their talk show, which issue is already pending before this Court in C.P.No.D-7707/2019; that Respondent No.3 on their TV Channel have telecasted the false and fabricated information that several inquiries are pending against the appellant without any proof and thus the respondent No.3 tried to interfere in the investigations and the proceedings of the Courts of law; that the appellant made complaints to the respondent No.1 but no response was given by them to the appellant, therefore, appellant filed C.P.No.D-1035/2020, whereby this Court directed the respondents No.1 and 2 to decide the complaints of the appellant within one month vide order dated 17.03.2020; that the respondents No.1 and 2 neither complied the directions of this Court nor restrained respondent No.1 from telecasting such false and fabricated news/ talk show on the channel and finally disposed of the complaints of the appellant.

3. Heard learned counsel for the appellant at length.

4. Learned counsel for appellant has argued that appellant has made as many as 15 complaints against M/s. APNA TV Channel Pvt. Limited (ABB TAKK) (respondent No.3) for defaming and humiliating by defamatory, malicious, false breaking news in 21 episodes of talk shows; that appellant was not contacted by respondent No.3 to clarify his position which is in violation of the PEMRA Ordinance 2002; that false and fabricated

information that several inquiries are pending against appellant were also telecast without any proof; that appellant made complaints to respondent No.1 but no response was given hence C.P. No.D-1035/2020 was filed whereby this Court vide order dated 17.03.2020 directed respondents No.1 and 2 to decide the complaints of appellant within one month; that the respondents No.1 and 2 neither complied the directions of this Court nor restrained respondent No.3 from telecasting false and fabricated news/ talk show and finally disposed of the complaints of the appellant by impugned decision which is not in accordance with law. Learned counsel has further argued that respondent No.1 has failed to appreciate irrefutable evidence submitted in form of CDs of 21 episodes including breaking news and program Benaqab and to take action against respondent No.3 regarding abuse, violation and defeat of the provisions of PEMRA Ordinance 2002 and the Rules made thereunder, the Electronic Media (Programmes and Advertisements) Code of Conduct 2015 as well judgment of apex court in suo moto case No.28/2018 reported as 2019 PLD SC 1 and norms and ethics of journalism and complaints were disposed of without imposing any penalty/ punishment though appellant proved his case beyond any reasonable doubt as also reflecting from findings and observations contained in impugned order.

5. At the outset it would be conducive to reproduce here the decision passed by respondent No.2, which was conveyed by respondent No.1 to the appellant, which reads as under:-

“Subject: DECISION OF AUTHORITY IN PURSUANCE TO RECOMMENDATIONS OF 67TH COC MEETING IN THE MATTER OF COMPLAINTS LODGED BY MR. ROSHAN ALI KANASRO AGAINST ABB TAKK CHANNEL.

Whereas, M/s APNA TV Channel (Pvt) Ltd. (Abb Takk) hereinafter referred to as Channel” was awarded license to

establish and operate international scale satellite TV broadcast channel station containing certain terms and conditions including but not limited to compliance with the code of conduct.

2. And Whereas, several complaints received from Mr. Roshan Ali Kanasro, Director Planning, Development, Monitoring and implementation Cell, Department of Culture, Tourism and Antiquities, Government against Abb Takk channel allegedly for airing defamatory, humiliating and false incriminatory accusation during talk show/program "Benaqaab" and through breaking news". The details of complaints are as under:

S.No.	Complaint Date	Complaint Mode of Broadcast	Date and Time of Broadcast
1	27.01.2020	Breaking News Program "Benaqaab"	23.01.2020 at 3:24 PM 25.01.2020 at 7:10 PM
2.	11.02.2020	Program "Benaqaab"	05.02.2020 at 7:00 PM
3.	13.02.2020	Breaking News	10.02.2020 at 3:15 PM
4.	18.02.2020	Breaking News	15.02.2020 at 3:36 PM
5.	22.02.2020	Breaking News	21.02.2020 at 2:11 PM
6.	02.03.2020	Breaking News	01.03.2020 at 2:11 PM
7.	07.03.2020	Breaking News Program "Benaqaab"	01.03.2020 at 6:21 PM 04.03.2020 at 7:10 PM
8.	01.04.2020	Program "Benaqaab"	31.03.2020 at 7:10 PM
9.	16.04.2020	Exclusive Abb Takk	14.04.2020 at 8:18 PM
10.	20.04.2020	Breaking News	16.04.2020 at 5:10 PM
11.	20.04.2020	Program "Benaqaab"	16.04.2020 at 7:10 PM
12.	21.04.2020	Breaking News	20.04.2020 at 5:13 PM
13.	30.04.2020	Breaking News	28.04.2020 at 8:13 PM
14.	08.05.2020	Breaking News	27.04.2020,30.04.2020, 05.05.2020 & 06.05.2020

3. And Whereas, subsequently summon letters were issued to the complainant and channel to appear before the Council of Complaints, Sindh and present /defend its status in the matter. Complainant Mr. Roshan Ali Kanasro alongwith his legal counsel Mr. Kamran Khan Memon, Advocate and on behalf of M/s Apna TV Channel (Pvt) Ltd (Abb Takk), Mr. Salim Raza, Group General Manager and Mr. Imtiaz Chandio, Bureau Chief were appeared before the Council.

4. And Whereas, the Council of Complaints, Sindh in its 67th meeting held on 18th May, 2020 heard the representatives of both complainant and channel at length and reviewed the relevant record thoroughly besides perusing the video footage of News Bulletins / Abb Takk Exclusive and programmes (Benaqaab) aired by the channel on various dates. The Council perused the matter, after detailed deliberation unanimously recommended in exercise of its powers conferred under PEMRA Ordinance, 2002 as amended by PEMRA (Amendment) Act 2007 read with Rule 8(4) & 8(5) of the PEMRA (Council of Complaints) Rules 2010, which has also been approved by the Competent Authority:

- *COC after detailed deliberation on the complaints and heard the arguments of both the representatives of the complainant and channel to a certain extent of reported content. COC is of the view that the referred channel did not ensure the genuine balance in their reporting. No TV Channel should be allowed to play as judge, jury and executor specifically without taking the view point of the other side and giving them ample opportunity to defend themselves so as to avoid unnecessary character assassination. It is an agreed journalistic principle that parties of a controversy must be given an opportunity to give their version as well. This was not done by the channel and only one sided story was continued to be broadcast.*
- *M/s APNA TV Channel (Pvt.) Ltd. (Abb Takk) is advised to avoid such practices and follow the journalistic ethics in reporting.*

M/s APNA TV Channel (Pvt.) Ltd. (Abb Takk) is therefore directed to ensure compliance with the above decision.”

6. Since the appellant has filed instant appeal with grievance that no punishment has been awarded by respondent though there is violation of rules as well judgment of honourable Apex Court, therefore, before attending the merits of instant appeal, I would say that there can be no denial to the fact that all relevant laws were appropriately discussed by the honourable Apex Court in the Suo Motu Case NO.28 of 2018: In the matter of (PLD 2019 SC-1) and before settling down the *parameter (s)* it was viewed as:

“13. A balance therefore must be struck between the right to freedom of speech and information on one hand and the right to fair trial, to be dealt with in accordance with law and of due process on the other. No person must be deprived of his fundamental right to be tried by an impartial judiciary and unbiased judge and an objective and fair trial unless a certain allegation is proved against strictly in accordance with law. We find that the Code of Conduct, particularly Clause 4(3)

thereof (*reproduced later in this opinion*), encompasses these principles. In Clause 4(3) *ibid* a balance has been struck with regards to programmes on sub judice matters. While on one hand such programmes are allowed to be aired thereby protecting the freedom of speech and the right to information; **the requirement that they ought to be aired in an informative and objective manner and that no content should be aired which tends to prejudice the determination by a court, tribunal or any other judicial or quasi-judicial forum, ensures that the right to fair trial, to be dealt with in accordance with law and of due process are duly safeguarded.....**

It further says as (last para of Rel. P/26):

“... The law in Pakistan by virtue of the Code of Conduct in fact places greater trust in its media and journalist community by trusting that they will provide objective information about pending proceedings while taking precautions that they do not pass subjective or prejudicial comments in such regard”.

From above, it can *safely* be said that an *informative* and *objective* programme (content) is not prohibited. The responsibility to ensure this *squarely* lies with the *licensee*, as observed in the said case at Page-29 as:-

“... A plain reading of Clauses 20 and 24 of the Code of Conduct makes it crystal clear that responsibility of ensuring compliance with the Code of Conduct is primarily that of the licensee, including its employees and officials. Licensee are also required to arrange regular training of its employees to ensure that they perform their duties better (*Clause 20(2) of the Code of Conduct*), Section 20(f) of the Ordinance read with Clause 17 of the Code of Conduct requires the licensee to appoint an in-house-monitoring committee (*Monitoring Committee*) under intimation to PEMRA to constantly ensure compliance of the Code of Conduct, while Clause 19 places on the licensee, the responsibility to ensure that any opinion expressed in a broadcasted programme is distinguished and presented in a manner that it is not mistaken as a fact by e average viewer / audience. Finally, Section 26(5) of the Ordinance provides that the Council of Complaints may recommend to PEMRA appropriate action of censure or fine against a broadcast station or licensee for violation of the Code of Conduct. **The foregoing appears to be an adequate mechanism to prevent violations of the Code of Conduct by the media as long as such measures are practically and effectively adopted and enforced.**

7. Before chalking out the *parameters*, the honourable Apex Court held that remedy, provided by section 26 of the Ordinance, is adequate and proper, however, while chalking out the *parameters*, the honourable Apex

Court added the remedy, provided by Section 33 of Ordinance, to be of same strength.

8. Now, it would be appropriate to reproduce the *parameters*, so sketched by honourable Apex Court in the referred case, which are:-

- i) The Code of Conduct ensures that the freedom of speech and the right to information (*Article 19 and 19A of the Constitution*) are protected, and at the same time provide that the discussion of *sub judice* matters must be conducted in a manner which does not negatively affect another person's fundamental right to be dealt with in accordance with the law (*Article 4 of the Constitution*) and the right to fair trial and due process (*Article 10A of the Constitution*).
- ii) ...
- iii) Any discussion on a matter which is *sub judice* may be aired but only to the extent that it is to provide information to the public which is objective in nature and not subjective, and no content, including commentary, opinions or suggestions about the potential fate of such *sub judice* matter which tends to prejudice the determination by a court , tribunal, etc, shall be aired;
- iv) While content based on extracts of court proceedings, police records and other sources are allowed to the extent that they are fair and correct, any news or discussions in programmes shall not be aired which are likely to jeopardize ongoing inquiries, investigations or trials;
- v) ...
- vi) ...
- vii) ...
- viii) ..
- ix) If any licensee is found to have violated or failed to observe the Code of Conduct in its true letter and spirit, particularly Clause 4 of thereof, and / or Article 4 , 10A and 204 of the Constitution, strict and immediate action should be taken against such licensee in accordance with Section 33 of the Ordinance. The Supreme Court or any High Court retains the power to take cognizance of the matter and shall exercise its powers under Article 204 *ibid* where such Court is of the opinion that it is appropriate in the facts and circumstances of the case for it to do so; and

x) ...

9. The above *guidelines* allow me aiding that legal course, provided by the sections 26(5) and 33 of the Ordinance have been found as *appropriate* and *adequate* in matters of violations. Here, a referral to section 33, being relevant, is made hereunder:-

“33. Offences and penalties.- (1) Any broadcast media or distribution service operator or person who violates or abets the violation of any of the provisions of the Ordinance shall be punishable with a fine which may extend to ten million rupees;

2) Where such broadcast media or distribution service operator or person repeats the violation or abetment, ...

3) Where the violation, or abetment of the violation of any provision...

Prima facie, the matter appears to be between *licensee* and its *grantee*. It is the council of complaints which has to determine whether there had been any violation or otherwise?. I would further add that such course is subject to a complaint (*in writing*) by the *Authority* or its *authorized* officer as is evident from section 34 of the Ordinance which reads as:-

“34.Cases to be initiated on complaint.- No court shall take cognizance of any offence under subsection (1) or (2) of the section 33 of this Ordinance except on a complaint in writing by the Authority or any officer authorized by it.”

10. Thus, it can *safely* be said that the domain is with Authority to find an act as *violation* , liable for an action within meaning of section 33 of Ordinance or otherwise else the legislature would have allowed an exception to above provision.

11. Now, I would revert to section 26 of the Ordinance and shall insist that *personal* hurt or its determination, per Ordinance, is not with the

Council of complaints or *Authority* even. Here, referral to relevant sub-sections of Section 26, being helpful to make point, are made hereunder:-

(2) Each Council shall receive and review complaints made by persons or organizations from the general public against any aspects of programmes broadcast or distributed by a station established through a license issued by the Authority and render on such complaints;

(3)..

(4)...

(5) The Councils may recommend to the Authority appropriate action of censure, fine against a broadcast or CTV station or license for violation of the code of programme content and advertisements as approved by the Authority as may be prescribed;

12. The above further affirms that the council of complaint (s) are not authorized to examine '*question of personal hurt*' but an action would only be available when 'any of the aspects of the broadcast violation of the code of programme content and advertisements, as prescribed / approved by the Authority *itself*. The prescribing / approving such four corners, being a different issue, needs not be touched in the matter.

13. Now, I can *safely* conclude that a complaint with grievance of *personal hurt* or damages is not available to be entertained by the council of complaints but only such complaints to be entertained where *any of the aspects* of program, broadcasted / aired, is either against approved / prescribed four corners or is in violation of law and rules. I would further add that such decision, if any, can only harm or prejudice the rights of *licensee* or *its grantee* and none other, therefore, filing of instant appeal by the present appellant for seeking punishment to the *channel* on grievance of *personal hurt* i.e

“for **defaming and humiliating** by defamatory, malicious, false breaking news in 21 episodes of talk shows’

is, *prima facie*, not maintainable because such *adjudication* is not permissible by the *Council of complaints* or the *Authority* even but a competent court *alone* which has been authorized to entertain such *claims* and award cost or punishments. The appellant also fails to pin point any, *prima facie*, violation of rules and law as well that of *parameters*, so sketched by honourable Apex Court which, *too*, makes the instant appeal as not sustainable.

14. While parting, I would add that even in referred case a *balance* has been demanded which must be maintained even while making an *informative* programme on matters where the *dignity* of a man may be harmed / prejudiced because any overstepping shall give the right to such person (*aggrieved*) to resort to all available legal remedies because a man, facing inquiry / investigation or trial even, does not stand parted with presumption of innocence. In the case of Liberty Papers Ltd. & others v. Human Rights commission of Pakistan PLD 2015 SC 42 it was observed as:-

10. Under the provisions of the Constitution of the Islamic Republic of Pakistan, 1973, reputation of a person has received the highest protection in Article 4(2)(a). Further under Article 14 the dignity of man and, subject to law, the privacy of home, shall be inviolable right of each and every citizen. The defamation of any person or citizen through spoken or written words or any other means of communication lowers the dignity of a man fully guaranteed by the Constitution, thus, not only is it the constitutional obligation of the State but all the citizens and persons living within the State of Pakistan to respect and show regard to dignity of every person and citizen of Pakistan otherwise if anyone commits an act of malice by defaming any person, would be guilty under the Constitution and would cross the red line of prohibition imposed by the Constitution, attracting serious penal consequences under the law and the person violating the same has to be dealt with under the law.

11. No lenient treatment shall be shown to anyone in this regard nor anyone can plead the unbridled right of expression and right to have access to the information **when the subject matter is disgraced, his / her dignity brought to almost naught** because the rights with regard to expression and access to information are regulated by law, rules and regulations under which the license is granted under the press and Publication laws.

12. It is true that media as a whole is playing a vital role in reshaping our political and social life, creating awareness amongst the masses about their rights and responsibilities **as well as against corruption**. While performing such noble duties, the medial is equally required like any other citizen to abide by the provisions of the Constitution, the code of ethics, the rules and regulations and not to resort to mud-slinging by violating standards of true professional ethics as irresponsible and derogatory reporting of news would diminish its own credibility in the eyes of the readers and viewers.

Thus, while enjoying liberty of *informative* and *purposeful* programme, the licensee (it shall include its employees too) must not only ensure complete adherence to their responsibilities but must also be conscious in choosing the '*terms*' for an addressee who may be facing an inquiry, investigation or trial even because the determination of the *guilt* is the absolute function of the competent Court and not of *media*. Accordingly, instant Misc. Appeal is dismissed in limine alongwith listed applications.

Office shall communicate this order to the respondents.

JUDGE