

HIGH COURT OF SINDH AT KARACHI

HCA No.323 of 1998

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Zafar Ahmed Rajput

Dates of hearing: 15.04.2016 & 22.04.2016.

Appellants: Mohammad Amin and another Through Khalid Javed, Advocate.

Respondent: Mst. Abida through M/s. Farrukh Usman and Amir Maqsood, Advocates

J U D G M E N T

IRFAN SAADAT KHAN, J. This High Court Appeal has been filed against the judgment dated 10.08.1998 and the decree dated 17.09.1998 passed by the learned Single Judge in Suit No.650/1986, instituted in forma pauperis, Under Order XXXIII Rule 2 C.P.C, for the recovery of Rs.15,00,000/- by way of damages for defamation, filed by the respondent.

Briefly stated the facts of the case are that the respondent herein filed the aforementioned civil suit in the original civil jurisdiction of this Court alleging therein that she is an educated lady working as Assistant Director in Sindh Small Industries Corporation. Her father had left her mother and with a great deal of difficulty her mother brought her up and educated her as her only child. She started working from a very young age and

supporting her mother when the latter fell sick. Coming from a conservative Katchi Memon Family and being devoted to her mother who did not approve of her marrying outside the community she married the appellant No.1 on 04.07.1984. The appellant No.1 had been married before, but his first wife had died few years ago. The appellant No.1 used to insist that the respondent should give all her earnings to his mother and did not approve respondent's supporting or attending to her own mother who had fallen seriously ill and was unable to support herself. She was subjected to a great deal of mental and physical torture by the appellant No.1, his mother and his daughters from his first wife. Within three months of her marriage she fell seriously ill and was admitted in Mowloo Jumma Hospital Gari Khata, where she remained from 04.10.1984 to 19.10.1984. Neither the appellant No.1 nor any of his family members visited her in the Hospital and when she was about to be discharged, a message was sent to her that she was no longer welcome in the appellant No.1's house and was advised to go and stay with her mother. During her hospitalisation the respondent was informed that she was suffering from Urinary Tract Infection and she might have contracted through her husband. The respondent also came to know from members of the community that his first wife who died due to kidney failure and also probably contracted the same disease from the appellant No.1. It is further stated that despite several attempts to persuade him, the appellant No.1 was not willing to take the respondent to his own house and maintain her. After eleven months she filed the suit for maintenance before the competent Family Court. The appellant No.1 filed a written statement wherein he, inter alia, contended that he had divider her in terms of the

declaration of divorce dated 22.09.1985. The written statement and its enclosures including the divorce deed have been placed on record as Ex.6/8. It may be pertinent to reproduce certain parts of this declaration of divorce which read as under:

"5. That Mst. Abida was also suffering from gynaecological disease prior to the solemnization of the marriage as she had urinary tract infection of serious nature, which she never told me but the same came to my knowledge afterwards when she was given medical treatment by our family doctor on her bad health conditions.

6. That Mst. Abida was asked several times to leave her job and live like a house wife and take care of children and the house as per her promises and agreed terms but she always refused to do so and her daily practice was to go to her job early in the morning and return home very late at night say after 8 and 9 PM without any lawful and just reason, when she was asked for that routine she always pretended that she had gone to see her mother from her office and/or some of her friends."

Alongwith the written statement the appellant No.1 filed a certificate issued by the appellant No.2 to the following effect:-

"It is certified that Mrs. Abida Ameen was treated by me after her marriage for many time. She has got Urinary Tract Infection and some serious Gynaecological diseases. Her U.T.I. is leading her to chronic Renal failure. She had got many mental symptoms of Hallucination and psychosis."

The respondent has alleged that the allegations contained in the declaration of divorce deed as well as the certificate mentioned above are false and defamatory of the respondent. They were made out only with an attempt to defame and humiliate the respondent within her community and generally in the public eye.

The appellant No.1 in his written statement admitted the execution of the declaration of divorce and the certificate issued by the appellant No.2. He, nevertheless, pleaded that the contents thereof were true and in any case were not defamatory of the respondent. He emphatically denied any allegation of collusion with

appellant No.2 or malice on his part. The appellant No.2 admitted the execution of the certificate and contended that he had been treating the respondent before and after her marriage and the statement in the certificate are true.

Out of the pleadings of the parties, the following issues were framed by the learned Single Judge of this Court:

1. *Whether the allegations in the divorce deed made by the defendants of the certificate issued by the defendant No.2 were mala fide and given vide publicity to cause damage to the plaintiff?*
2. *Whether the certificate issued by the defendant No.2 in respect of the ailment to the plaintiff are false?*
3. *Whether the defendants have acted in collusion?*
4. *What should the decree be?*

The learned Judge after hearing the parties at length then decided the suit in the following manner:

"Keeping in view the facts and circumstances of the case and principles of law laid down by superior courts I am of the view that it would fair to award Rs.75,000/- against the defendant No.1 for the imputations contained in the divorce deed and a further amount of Rs.75,000/-, jointly and severally against both the defendants in respect of the imputations made in the medical certificate with 14% interest from the date of decree till payment is made. The plaintiff will also be entitled to proportionate costs. The suit is decreed accordingly".

Being aggrieved with this order the instant High Court Appeal has been filed.

Mr. Khalid Javed, advocate has appeared on behalf of the appellants and submitted that some basic facts going to the roots of the case have not been considered by the learned Single Judge. While elaborating his view point, the learned counsel has submitted that the medical certificate upon much emphasis has been placed

was produced in the proceedings before the Family Court and is a privilege document. The learned counsel has further submitted that the medical certificate produced was a document concerning a patient and doctor and is always considered to be a privilege document. Hence according to him, no adverse inference could be drawn against the appellants on the basis of a medical certificate. The learned counsel further submitted that the learned Single Judge has also erred in fixing the amount of compensation at Rs.75,000/- on the appellant No.1 and further Rs.75,000/- on the appellants jointly and severally with 14% markup without their being any basis how the Single Judge has arrived at this figure. He submitted that the amount of compensation claimed by the respondent was Rs.15,00,000/- which was based on mere conjectures and surmises and the learned Single Judge while awarding the amount of compensation had not asked from the respondent to furnish break up, basis or justification of the said claim. He, therefore, submitted that award of the compensation was arbitrary, as the same has no basis of quantification. He therefore submitted that in view of the above defects the award of compensation since has no basis hence the order passed by the learned Single Judge may be vacated. In support of the above contentions, the learned counsel has placed reliance on the following judgments:

1. *A.I.R 1939 Cal 477 [Madhab Chandra Ghose and others Vs. Nirod Chandra Ghose].*
2. *AIR (29) 1942 Madras 343 [Sedimbi Hanumantharow and others Vs. Nidumolu Seetharamayya]*
3. *PLD 1954 Sindh 70 [M. Moosa vs. Mahomed and others]*
4. *1982 PLC (C.S) 61 [Ghulam Muhammad Sagarwala vs. National bank of Pakistan and another]*

5. *PLD 1996 SC 737 [Sufi Muhammad Ishaque vs. The Metropolitan Corporation, Lahore through Mayor]*
6. *PLD 2006 Lah 401 [Shahida PARveen vs. Samiullah Malik]*

M/s. Farrukh Usman and Aamir Maqsood, advocates have vehemently refuted the arguments advanced by the learned counsel for the appellants. They submitted that the learned Single Judge through an exhaustive order has rightly come to the conclusion that the appellant has defamed the respondent and has made her life miserable and nobody would now marry with her as she is leading a lonely life after the death of her mother. They submitted that the respondent has filed cross-objections so far as the quantum of the claim awarded by the learned Single Judge is concerned hence the order may be modified to the extent of the award of compensation demanded by the respondent in the suit. They further submitted that due to the cruel treatment of the appellant just after few days of the marriage the respondent was admitted to a hospital and the appellant or any other person from his family never visited the respondent, which proves their ill attitude. They submitted that if the appellant was not happy with the respondent he could have divorced her in simple and plain terms but since the appellant was bent upon to make the life of the respondent miserable he leveled false allegations upon her while pronouncing "Talaq" and also managed to get a false and fabricated medical certificate from the appellant No.2. The learned counsel submitted that the appellant has even circulated the said divorce deed and medical certificate in the community with the intention that nobody would marry with the respondent. The learned counsel for the respondent in this regard also read out the affidavits-in-evidence of various witnesses. They, therefore, in the

end submitted that this High Court Appeal not only may be dismissed with costs but the order of the learned Single Judge may be modified to the extent that the original claim made in the Suit by the respondent may be granted. In support of their above contentions, the learned counsel have placed reliance on the following judgments:-

1. *[PLD 2015 SC 42] Liberty Papers Ltd and others Vs. Human Rights Commission of Pakistan*
2. *PLD 1996 Lah 50 [Mst. Hussain Bibi vs. Saleh Muhammad]*
3. *2008 CLD 1230 [Abdul Wahab Abbasi vs. Gul Muhammad Hajano]*
4. *PLD 2006 Lah 401*
5. *A decision reported in an Indian Journal*
6. *NLR 1996 Civil 657*
7. *PLD 2011 Kar 117 [Master Abdul Basit and another vs. Dr. Saeeda Anwar and another]*

Mr. Khalid Javed, advocate in his rebuttal has reiterated the facts and submitted that the counsel for the respondent have read out the affidavits-in-evidence of the witnesses but have not read the cross-examination, which may be examined. The learned counsel then read out those cross-examinations of the witnesses and stated that perusal of these would reveal that the same are cyclostyle in nature. He, therefore, finally submitted that since the respondent has failed to make out a case of awarding damages on account of defamation, the instant High Court Appeal may be allowed by setting aside the judgment of the learned Single Judge.

We have heard the arguments of all the learned counsel at length and have also perused the record and the decisions relied upon by them.

Perusal of the record reveals that when the respondent filed a suit for maintenance against the appellant No.1, he became annoyed and thereafter while filing the written statement in the said suit attached alongwith it a divorce deed alongwith two certificates from the appellant No.2 dated 02.08.1985 and 05.09.1985 respectively with regard to the health condition of the respondent as well as that of his own. We agree with the contention raised by the learned counsel for the respondent, as mentioned by the learned Single Judge, that the appellant No.1 if was not ready to live with the respondent could have divorced her in plain terms rather than mentioning in the divorce deed about the health condition of the respondent in paragraph-5 of the said deed, which is reproduced as under:

"5. That Mst. Abida was also suffering from gynaecological disease prior to the solemnization of the marriage as she had urinary tract infection of serious nature, which she never told me but the same came to my knowledge afterwards when she was given medical treatment by our family doctor on her bad health conditions."

The certificate issued by the appellant No.2 with regard to the health condition of the respondent is also reproduced hereinbelow:

"It is certified that Mrs. Abida Ameen was treated by me after her marriage for many times. She has got Urinary Tract Infection and some serious Gynaecological disease. Her U.T.I. is leading her to chronic Renal failure. She had got many mental symptoms of Hallucination and psychosis. Her diseases were persistent before the marriage also."

Perusal of the above certificates reveals that the appellant No.2 has mentioned that he has treated the respondent many times in his clinic after the marriage and has stated that she has Urinary Tract Infection (**U.T.I.**) and some serious gynaecological diseases and her U.T.I. is leading her to chronic renal failure and

she has also got many mental symptoms of Hallucination and psychosis and her diseases were persistent before the marriage also, whereas in the cross examination he has mentioned that she has visited his clinic on two or three occasions before marriage with the complaint of U.T.I. only hence how come the appellant No.2 has mentioned in the certificate that the other diseases, other than U.T.I., i.e. mental symptoms of Hallucination and psychosis were persistent in her before the marriage when he himself has admitted that prior to the marriage of the respondent she has come to him, if she had, with regard to the complaint of U.T.I. only. This implies that the certificate issued by the appellant No.2 was tainted with malice and the same on the very face of it appears to be fictitious, fake, concocted or issued on the instructions of the appellant No.1. It is also seen from the cross examination that while giving the said opinion not a single evidence has been produced with regard to other diseases "persistent" in the respondent other than U.T.I., which has also been noted by the learned Single Judge on typed page-9 of the impugned judgment. It is also noted that it was claimed that since the certificate issued by the doctor is a privileged document, the same could not be relied upon by the Court. Suffice to say that it was not the respondent who had produced this document rather it was the appellant No.1 who had attached this certificate alongwith the divorce deed while filing the written statement in Family Suit No.313 of 1985, which is evident from typed page-2 of his written statement furnished before the Family Court and available at page-25 of the paper book. Moreover the record further reveals that in the legal notice sent by the counsel for the respondent on 23.11.1985 to the appellant No.2 it was the then counsel of the respondent who pointed out that firstly the

certificate dated 05.08.1985 was a managed document and secondly the certificate is a privileged communication between a patient and a doctor hence the stand taken by Mr. Khalid Javed that the learned Single Judge should not have relied upon the said document since it is a privileged document, appears to be contradictory from the record since the said certificate was produced by the appellant No.1 himself, which is evident from para-17 of his written statement, available at page 46 of the paper book, wherein it has been mentioned as under:

*"17. The allegations made in paragraph (17) of the plaint are denied except institution of the Family Suit No.313 of 1985 and filing of his Written Statement by this defendant along with declaration of divorce and medical certificates."
(Underline ours)*

Needless to state that the decisions relied upon in this behalf are also of no help to him.

It is also to be seen that in the present High Court Appeal we are not dealing with the issue either with regard to the character of the respondent, the cause of death of the appellant No.1's first wife, whether the appellant No.1 was suffering from some infectious disease and the respondent got infection from him but the only issue which requires deliberation on our part whether the act of the appellants have defamed the reputation of the respondent and that whether she is entitled for compensation in this behalf . If for arguments' sake the contention of Mr. Khalid Javed is considered to be correct that the deposition of the witnesses produced by the respondent are cyclostyle in nature, equal true is the fact that the appellant No.1 and the appellant No.2 have miserably failed to justify that they were not instrumental in bringing down the modesty of the respondent. It is

also a matter of record that no response was made by the appellant No.2 in respect to a letter addressed by the counsel of the respondent dated 23.11.1985 by clearly mentioning that the respondent had attended the clinic of the appellant No.2 only twice for treatment of fever only and there was no complaint with regard to U.T.I. or other diseases as mentioned in the certificate by the appellant No.2. It was also mentioned in the said letter that the certificate issued by him is without investigation and basis. It was also mentioned in the said letter that the observations that the diseases mentioned in the certificate were "persistent" before the marriage were highly objectionable and damaging but, as stated above, no reply of the said letter was given by the appellant No.2 to dislodge the averments made in the said letter. It is also seen from the record that the appellant No.1 filed written statement dated 29.01.1987 wherein he has categorically mentioned in para-10 as under:

"10. It is denied that the plaintiff suffered from Urinary Tract Infection or that the same, if any, was caused by this defendant."

The above assertion made by the appellant No.1 in his written statement clearly proves that this is contrary to the submissions he has made in his written statement furnished before the Family Court and in his examination-in-chief. He in his affidavit-in-evidence also has clearly mentioned in para-6 that *"I deny that the plaintiff suffers from Urinary Tract Infection or that the same was caused by me"*. Whereas in paragraph-5 of the divorce deed he has categorically mentioned that *"prior to solemnization of the marriage she had Urinary Tract Infection of serious nature which she never told me but the same came to my knowledge afterward"*. Here a question would arise that which of the two statements are

correct. If his affidavit-in-evidence and written statement are considered to be true then it would become an admitted position that the respondent was not suffering from U.T.I. and the stand taken for divorcing the respondent was an incorrect statement and if the assertions made in the divorce deed are considered to be true then the statements made in written statement and affidavit-in-evidence are incorrect which, in our opinion, creates doubt about the veracity of the divergent statements made by the appellant No.1.

As per the written statement of the appellant No.2 it is mentioned that the respondent did suffer from U.T.I. as well as gynaecological disease before and after marriage and was treated by him. Again a question would be where are the supporting document? which were never produced by the appellant No.2. It is further seen from the record that the appellant No.2 had admitted that U.T.I. is a simple and curable infection, which can be treated by a course of 10 days of antibiotic and has further admitted that the investigation were not mentioned in the certificate. Here again a question would arise that the appellant No.2 being a simple MBBS, as is evident from his certificate, whether had the occasion of examining the respondent with regard to the alleged serious gynaecological disease, mental symptoms of Hallucination and psychosis, which not only require specialized expertise but special treatment as well. Moreover, the appellant No.2 has mentioned in his affidavit-in-evidence that he has treated the respondent prior to marriage with regard to U.T.I. and other gynaecological diseases hence how come he has come to the conclusion that the respondent had got many mental symptoms of Hallucination and psychosis also, which were according to him persistent before the

marriage also when according to his own assertions he had treated the respondent with regard to U.T.I. only before the marriage and has further opined that U.T.I. is a simple and curable disease, which seriously creates doubt about the veracity of the certificate dated 05.08.1985 issued by him. It is further noted from the record that the appellant No.1 has stated that his first wife died of Asthma, whereas according to the appellant No.2 the wife of the appellant No.1 died of renal failure. It is also seen that the witnesses, who were examined by the learned Single Judge, have categorically stated that the appellant No.1 has not only shown them the divorce deed but also the medical certificate by alleging that the respondent was suffering from some serious gynaecological problems and was unable to lead a happy life with him, he therefore had divorced her. It is also noted from the deposition of the appellant No.1 that he had categorically stated that he has taken the respondent to the appellant No.2 only once, whereas as per the deposition of the appellant No.2 he has categorically stated that she has visited his clinic alongwith the appellant No.1 on four or five occasions. It is also noted that the appellant No.1 has mentioned that he came to know that the respondent was facing some gynaecological problems before her marriage with him after her treatment by the appellant No.2, whereas in the other documents he has mentioned that he knew that the respondent was suffering with some ailments before marriage. In the affidavit-in-evidence the appellant No.1 has also mentioned that the main reason for the divorce of the respondent was due to the fact of her constant quarrels and disturbances, which contradicts the averments made in divorce deed and the other deposition made by him. Perusal of the statements of the

appellant No.2 also appears to be contradictory as he has stated that the respondent was suffering from U.T.I. "only" and then stated she was suffering from some serious gynaecological problems and then further added that she was suffering with mental disorder as well as suffering from vaginal infection, which clearly proves that the appellant No.2 has made substantial improvements in his statement and he himself was not sure with regard to the alleged ailments suffered by the respondent, whereas in the record apart from some urine reports there is no material available with the appellant No.2 on record to prove the so-called serious gynaecological problems, vaginal infection, mental disorder, hallucination, psychosis etc. Hence, so far as this aspect is concerned we agree with the contention raised by the learned counsel for the respondent that the certificate issued by the appellant No.2 appears to be vague and disruptive. The appellant No.2 has also admitted the fact that it was the appellant No.1 who approached him for issuance of the certificate and no specific reason was assigned by the appellant No.1 for obtaining the said certificate from him.

We, therefore, in view of the above facts and circumstances have come to the conclusion that the learned Single Judge was fully justified in allowing the suit for damages in favour of the respondent and no interference in this regard is warranted.

So far as the issue of cross objections filed by the respondent about the amount of compensation awarded by the learned Single Judge is concerned, suffice to say that there is no yardstick for determination of the amount of damages, which is to be seen /examined and granted on a case to case basis. It is an

admitted position that no working, basis and quantification of the amount of the claim has been furnished by the respondent which is always a guesswork depending upon the facts of each case. We, therefore, in the situation found the amount of the compensation awarded by the learned Single Judge - i.e. Rs.75,000/- against the appellant No.1 for the imputations contained in the divorce deed and a further amount of Rs.75,000/-, jointly and severally against both the appellants in respect of the imputations made in the medical certificate with 14% interest from the date of decree till payment is made - to be in accordance with law and no interference in this regard also is warranted. Hence, we reject the claim of the respondent made in this behalf for enhancement of the compensation.

As a sequel of above discussion, the judgment passed by the learned Single Judge is upheld and the instant High Court Appeal is dismissed.

JUDGE

JUDGE

Karachi.
Dated: _____.