

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No. 312 of 2019

Date

Order with signature of Judge

1. For orders on office objection at A
2. For hearing of main case
3. For hearing of M.A.No. 6959/2019

Date of hearing: **21.02.2022**

Date of order: **21.02.2022**

Mr. Muhammad Vawda advocate for applicant

Mr. Talib Ali Memon APG along with SI Shah Murad of PS Gulistan-e-Jauhar, Karachi

None present for the respondent No.1

Salahuddin Panhwar, J.- Through instant Criminal Misc. Application, the applicant has challenged the order dated 22.07.2019, passed by VII-Additional Sessions Judge, Karachi East in Private Complaint No.951/2018, whereby the learned Judge took cognizance on a complaint filed by the respondent No.1, as such a criminal case under Sections 500, 501, 502, 506/B PPC is initiated against the applicant and others and bailable warrants were issued against them for their appearance before the Court.

2. Precisely, the relevant facts of the case as setup in the instant Misc. Application are that applicant is a Journalist and is employee of Jaag Broadcasting System (Pvt) Limited, which inter-alia, runs Television Channel "Samaa TV". It is further averred by the applicant that Samaa TV was approached by a student namely Shifa Imtiaz from Petroleum Technology Department of Karachi University, who levelled allegations of sexual harassment against the respondent No.1 (who was lecturer in the Petroleum Technology Department) supported with copy of complaint dated 21.02.2018 filed by her before the Registrar of Karachi University as well as audio/phone recordings and messages sent by respondent No.1 to her. It is further submitted in the instant application that two other students namely Komal Shahid and Shehla also disclosed that respondent No.1 had also sexually harassed them. Applicant contacted respondent No.1 to get his version, but he

refused to give the same. The applicant presented all these facts to her Executive Producer, who authorized broadcasting of various news tickers. It is further stated that on 16.03.2018, Registrar of University of Karachi addressed a complaint to PEMRA against Samaa TV for broadcasting news against respondent No.1 on the ground that complaint against him was still subjudice before Inquiry Committee constituted by the University. On the next day i.e. on 17.03.2018, the respondent No.1 had also addressed an application for registration of the FIR against applicant as well as the students of the University, but the SHO refused to register the FIR. On the complaint of Registrar, Karachi University, PEMRA vide order dated 07.05.2018, imposed fine of Rs.300,000/- on Samaa TV, which order was challenged by preferring C.P.No.D-3783/2018, wherein, vide order dated 17.05.2018, it was ordered that no adverse action shall be taken against the petitioner till next date of hearing.

3. On 19.03.20218, after non-registration of FIR, the respondent No.1 filed C.P.No.D-2182/2018 inter-alia for cancellation of licence of the TV channel and for registration of the FIR. However, vide order dated 10.05.2018, the petition was disposed of on the premise that counsel for the petitioner agreed to file suit for injunction and damages under the provisions of Defamation Ordinance, 2002. Instead of availing remedy under the provisions of Defamation Ordinance, 2002, the respondent No.1 filed a Criminal Misc. Application No.697/2018 before learned Ex-Officio Justice of Peace/VI-Additional Sessions Judge, Karachi East. On such application, report was called from the SHO of concerned P.S and after hearing the learned counsel for the parties, vide order dated 15.08.2018 dismissed the application. Thereafter, the Shafia Imtiaz (effected student) filed a complaint before Provincial Ombudsman Sindh, the Protection against Harassment of Women at the workplace, on which notice was issued to respondent No.1 who filed his written defence, complainant and her witnesses Zohaib Abdul Malik and Muhammad Azlal filed their affidavits-in-evidence whereas other witnesses of complainant namely Komal Shahid and Umesh Kumar were examined on oath, complainant and her witnesses were duly cross-examined by the counsel for the respondent No.1, whereas, respondent filed his affidavit in evidence and he was cross-examined by the counsel for the complainant. After hearing learned counsel for the parties, respondent No.1 was penalized under Section 4(4)(c) of the Protection against Harassment of Women at the Workplace Act 2010 and major penalty of removal from his service together with penalty of

Rs.50,000/- as compensation to the complainant were imposed. The respondent No.1 preferred Appeal before Governor Sindh against the order of Ombudsman, which appeal was dismissed vide order dated 22.04.2019. Again, the respondent No.1 filed private Complaint No. 951/2018 before VII-Additional Sessions Judge, Karachi East. The learned trial Court after recording statement of complainant, directed the concerned Magistrate to hold inquiry and submit his report, who after recording statements of witnesses of the complainant, submitted his report and after hearing counsel for the respondent No.1, learned VII-Additional Sessions Judge, Karachi East passed the impugned order dated 22.07.2019. Hence this Criminal Misc. Application.

4. Several notices were issued to the respondent No.1 for his appearance, but it has come on record that he has shifted from his residential place and his whereabouts are not known. Since instant matter pertains to the year 2019, therefore, I considered it appropriate to decide the matter on merits.

5. Heard and perused the record.

6. The complaint of the respondent No.1 is based on the allegations of defamation and criminal intimidation. With regard to first allegation is concerned, record reflects that one student of the Karachi University made a complaint against her teacher as well as she approached the Samaa TV and informed about the sexual harassment caused to her and other students as well and in support of her allegations, she produced complaint made by her to Registrar of the University as well as audio/phone recordings and messages sent by the respondent No.1. After obtaining permission from the Executive Producer the news were on aired on Samaa TV. The applicant though contacted the respondent No.1 for his version/statement, but he refused to give the same and initially the respondent No.1 filed an application before concerned SHO for registration of FIR but after SHO refused to register the same, hence, he filed Constitution Petition before this Court, which was disposed of with observations that the respondent No.1 agreed to file suit for Injunction and Damages under the provision of Defamation Ordinance, 2002, however, the respondent No.1 instead of availing the remedy under the Ordinance, 2002, approached the learned Ex-Officio Justice of Peace for the same relief. Learned Ex-officio Justice of Peace after calling report from the concerned SHO and after hearing counsel for the parties dismissed the application. It is would be pertinent to mention that after dismissal of his

application by the Ex-officio Justice of Peace, effected student i.e. Ms. Shifa approached the learned Provincial Ombudsman Sindh, the Protection against Harassment of Women at the workplace, which was proceeded and after examination of the complainant, her witnesses and the respondent No.1, learned Ombudsman penalized the respondent No.1 as detailed above. However, the findings of the learned Ombudsman are relevant for just decision of the case, which are that:

“21. Undeniably, accused in his evidence has admitted the allegations levelled by the complainant though he had denied the same in his written defence. The overall demeanour of the accused clearly reflects that he was in habit to pressurize and compel the female students to visit his office on one pretext and the other and the students would remain in touch with him against their wishes only to save and protect their future. The allegations agitated by the complainant against the accused have been fully corroborated by her witnesses. Thus, in order to ensure the restoration of peaceful environment of the University and to curb the acts of hostile attitude and causing sexual harassment, the accused can no longer be permitted to further continue his services as the same shall be harmful to the educational system of the University of Karachi as well as transparency of the examination system. Accordingly, it is appropriate time to curb the element of sexual harassment with iron hands in order to ensure the peaceful and protective environment at educational institution so that the students should get their education without any hostile and compelling academic atmosphere.”

7. Such decision was challenged by the respondent No.1, but the appeal of the respondent No.1 was dismissed and attained finality. It would be advantageous to mention here that the respondent No.1 admitted in his evidence the allegations levelled against him by the complainant. In the private complaint the respondent No.1 alleged of causing harassment by telecasting the allegations against him but has not brought the true story on record. It has come on record that although journalist contacted the respondent No.1 and offered him to give his statement/version but he refused to give the same.

8. Admittedly, Article 19 of the Constitution guaranteed the freedom of speech, but it also imposes certain limitations. Article 19 does not provide license to any person to make personal attempt on an individual to disgrace his dignity and reputation. The Print and Electronic Media are in no way vested with unfettered liberty and impunity to publish and telecast any material which is prejudicial to the interest of any person or harm or cause damage to reputation, honour and prestige of a person. Any Agency is not

free to telecast anything, but its freedom is subject to a moral code of conduct and such reasonable restrictions as may be legitimately imposed under the law is public interest and glory of Islam. In case titled as **Sheikh Muhammad Rashid v. Majid Nizami Editor in Chief, the Nation and Nawa-e-Waqat, Lahore and another (PLD 2002 Supreme Court 514)**, while dilating upon the scope and limits of Article 19 of the Constitution has observed as under:-

"In the original Article word 'defamation' was available which was substituted by the word 'commission of' vide section 4 of the Constitution (Fourth Amendment) Act, 1975 (LXXI of 1975). Although the scope of freedom of press has been enlarged after the omission of the word 'defamation' from Article 19 yet it does not licentiate the press to publish such material which may harm or cause damage to the reputation, honour and prestige of a person. The Article provides the freedom of press subject to any reasonable restrictions which may be imposed by law in the public interest and glory of Islam, therefore, the press is not free to publish anything they desired. The press is bound to take full care and caution before publishing any material in press and keep themselves within the bounds and ambit of the provisions of the Article."

9. However, the media as a whole is playing a vital role in reshaping our social life, creating awareness amongst the masses about their rights and responsibilities. The criticism is essential for improving the society and where a statement is published for public good and to safeguard the interest of its maker and there was no malicious motive involved, no offence of defamation is made out.

10. Reverting back to the case in hand, the trial Court had taken cognizance on a private complaint regarding commission of offences under Sections 500, 501, 502, 506/B PPC, however, under the first exception of Section 499 PPC, it is provided that if the allegations are true and the same are made in the greater public interest, no offence is made out. First exception under Section 499 PPC reads as under:

First Exception - Imputation of truth which public good requires to be made or published: It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

11. In the present case, the news which broadcasted by the TV channel were based on the statements of the students, which were later on proved to be true and were admitted by the respondent No.1 himself as reflected from

the judgment of learned Provincial Ombudsman Sindh, the Protection against Harassment of Women at the Workplace. Admittedly, profession of teacher is very honourable, however, discussion on the conduct of a teacher cannot be denied in public especially when allegation of sexual harassment has been made by the students with proof. In our society, the victims of sexual abuse do not even speak a word about the abuse for many years because sometimes she herself has no idea that she is a victim of abuse. The victim may keep believing that she is at fault and the victim may live with that shame for years or for decades. Most women who suffer abuse do not speak up about it or against it for a simple reason: "the shame" or the social stigma attached with the sexual harassment and abuse, hence highlighting of such incidents on the Channel could be termed as "defamation", but would come within the first exception provided under Section 499 PPC.

12. With regard to allegation of extending threats to the respondent No.1, the witnesses who were examined by the complainant in his private complaint have given totally contradictory story, therefore, it is clear that filing of the private complaint was nothing but a ploy to counterblast the proceedings initiated by the students against him, which were proved against him and in the result he was fired from his job.

13. Thus, I am of the view that trial Court without applying its judicial mind, issued process in haste and slipshod manner without considering the fact that whether prima facie evidence is available in the case or not.

14. For the foregoing reasons, vide order dated 21.02.2022, the impugned order dated 22.07.2019 was set aside, accordingly proceedings before the trial court were quashed. These are the reasons for the short order.

Sd/- 29.03.2022
JUDGE

Sajid--