

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Crl. Rev. Appl. No. 149 of 2022**

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Date	Order with signature of Judge
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1. For order on office objection
2. For hearing of main case.
3. For hearing of MA No.6853/2022

**20.11.2023**

Mr. Talha Jawed, advocate for the applicant  
Mr. Aftab Hussain advocate for the respondent  
Mr. Talib Ali Memon APG

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Applicant Irfan Mustafa has filed this Criminal Revision Application under Sections 435 and 439 Cr. P.C. against the order dated 19.05.2022 passed by learned XII Additional Sessions Judge East, Karachi, in Direct Complaint 1185/2022.

2. Per learned counsel, the applicant had filed a direct complaint against respondent No.1 who was an ex-employee of the applicant and has launched a contemptuous and defamatory campaign after his termination from service and has addressed as many as eight-e-mails as referred in the complaint to the complainant and others by leveling frivolous, and baseless allegations and has misrepresented the facts with malafide intention to damage the image, reputation, and goodwill of the complainant and his business as such proposed accused has maliciously tarnished the complainant's reputation by derogatory and slanderous remarks, therefore, acts of the proposed accused are liable to be prosecuted under Section 499 and 500 of the PPC 1860. He has further contended that the circulation of email to all members of the company has been established and admitted by the private respondent and the possible effects of such circulation have caused a loss of possible income of the applicant company along with a loss in standing in society at large. He added that such imputation was extremely defamatory and was designed to harm and degrade his reputation willfully and it was an attempt to spoil his repute in business and the public at large. He added that 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 it is the constitutional obligation of the State but all the citizens and persons living within the State of Pakistan to respect and show regard to the 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. On the issue of private complaints, he submitted that the case against the respondent was made out under section 499 and 500 P.P.C. However the learned Judge while dismissing the complaint against the respondent under section 499/500 P.P.C., did not advert to the statement of complainant on oath and directly dismissed the complaint without holding preliminary inquiry proceedings under section 202 Cr. P.C. which was not called for as such the learned trial court committed material illegality which could be cured at the revisional stage. In support of his contention, he relied upon the cases of Muhammad Jawad Hamid and another v Mian Muhammad Nawaz & others **2019 P Cr. L.J 665**, Mir Shakil ur Rahman v Messrs Creek Developers Pvt. Ltd and another **PLD 2019 Sindh 670**, Ms. Zeba Bakhtiar v Arshad Sami Khan & others **1998 SCMR 922**, Abdul Hafeez v Usman Farooqui & others **2008 PSC (Crl) 959** and Liberty papers Ltd and others v Human Rights Commission of Pakistan **PLD 2015 SC 42**. He prayed for allowing the Criminal Revision Application.

3. learned counsel representing the respondents has supported the impugned order and argued that the order of the trial Court is justified since there is no evidence against the respondent. He further submitted that the mere statement of the complainant is not sufficient to make out a prima facie case for the offense of 'defamation' and in the present case, the applicant has no material to lodge a criminal complaint under section 200 Cr. P.C., as such no prima facie case to proceed further, was made out on the face of the record and this was the reason that the complaint filed by the applicant was dismissed which is not liable to be reopened at the revisional stage based on the point that the applicant was not heard.

4. Learned Addl. P.G. has supported the impugned order passed by the learned trial Court.

5. I have heard learned counsel for the parties and have perused the material available on record.

6. There is cavil to the proposition that the procedure for dealing with such complaints is provided in Chapter XVI of the Code of Criminal Procedure. Section 200, Cr.P.C., in the said Chapter, indicates that when cognizance of a complaint is taken, the complainant is to be examined on oath and the substance of the examination is to be reduced in writing which is to be signed by the complainant and also by the Magistrate. Section 202 further indicates that the Court may, for reasons to be recorded, postpone the issue of process for compelling the attendance of the person complained against and it may either inquire into the case itself and direct an inquiry or investigation to be made by a police officer or by such, other person as it thinks fit to ascertain the truth or falsehood of the complaint. Section 203, Cr.P.C., then provides that the Court may dismiss the complaint if, after considering the statement on oath (if any), of the complainant and the result of the investigation or inquiry (if any) under section 202, there is in its judgment no sufficient ground for proceeding. The object behind section 202, Cr.P.C., appears to be to ensure that before a person is called upon to answer a criminal charge, the Court must be satisfied that there is a prima facie case against him for which process may, be issued by the Court. The complainant must produce all such evidence before the Court which would enable it to decide whether the process be issued or not. However, the provisions of section 202 are enabling provisions and not obligatory. The obligation to make out a prima facie case would entail the establishment of a case against the accused at first sight on the evidence available before the Court. A 'prima facie case' only means that there is ground for proceeding. It is not the same thing as 'proof' which comes later when the Court has to find whether an accused is guilty or not guilty. Although there can be no cavil that the Court upon the material placed before it by the complainant in support of the allegations may issue process to the accused named in the complaint if a case is made out against him/her on first impression nevertheless, the Court would be duty bound to exercise such discretion with great care and caution. Unless evidence produced before the Court is such that, if unrebutted, the conviction may be based thereon, the Court would be justified to decline the issue of process to the person complained against.

7. The order passed by the learned trial court indicates that the material produced by the applicant before the Court fell short of establishing that the email caused a loss of reputation to the applicant. In principle, 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 it is the constitutional obligation of the State but all the citizens and persons living within the State of Pakistan to respect and show regard to the 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.

8. In the matter of releasing an email, normally the malafide cannot be attached to the person released email unless it is established and proved that while issuing the email the author either allowed *indecent* words, though contained in such email or deliberately *added* such indecent words he also continues with an obligation to ensure guaranteed protection towards '*dignity*'. Reference is made to the case of *Muhammad Rashid v. Majid Nizam* (PLD 2002 SC 514), wherein it is held:

*“7. In the wrong of defamation the law presumes malice in the sense of a wrongful act done intentionally by publishing a defamatory matter but there a lawful excuse for the publication of such matters as in the ordinary case of privileged communication or of fair comments upon a matter of public interest, the onus is upon the plaintiff to establish the fact of malice in order to maintain the action. It means that malice must be proved as a fact irrespective of the mere inference arising from the libelous character of the publication. The state of mind of the publisher who publishes defamatory matter, is, therefore, material, where the occasion is privileged or a plea of fair comments on a matter of public interest is properly raised, in that case, the plaintiff has to prove actual malice in the ordinary meaning of the words, that is to say, spite or ill-will or any indirect or improper motive. When the plaintiff fails to prove malice by cogent evidence then he can be non-suited on this ground. The burden of proving express malice both by extrinsic and intrinsic evidence lies on the plaintiff to show that the publications were actuated by some indirect or improper motive.”*

9. It appears from the record that the applicant has also obtained an interim injunction in Defamation Suit No. 11 of 2022 vide order dated 09.02.2022. Besides the offense under Section 500 PPC is punishable with imprisonment that may extend five years and as such triable by a

Sessions Court . The legislature in its wisdom desires an expeditious trial of the offense with the right of appeal to be filed to this Court and this appears to be a dominant purpose for insertion of Section 502 –A PPC with no bearing upon the procedure, otherwise provided for the institution of a complaint. The aforesaid construction is supported by the law declared by the Supreme Court in the case of Muhammad Altaf Khan v Bashir & others **2022 SCMR 356**.

10. In view of the above facts and circumstances of the case, no case for indulgence of this Court is made out, as the applicant has already availed the remedy before the learned trial Court in defamation Suit No. 11 of 2022 and on the aforesaid proposition as discussed supra the complaint filed by the applicant before the Additional Sessions Judge XII Karachi East was rightly dismissed vide order dated 19.05.2022.

11. In view of the above, the Criminal Revision Application is dismissed along with listed application(s).

**J U D G E**

Shahzad Soomro