

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Revision Application No.74 of 2020

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Date	Order with signature of Judge
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For hearing of main case

**Date of hearing: 15.12.2023**

**Date of Order: 21.12.2023**

Mr. Ravi Pinjani advocate for the applicants

Mr. Ijaz Ahmed, Advocate for the respondent No.2

Ms. Rahat Ahsan Addl. P.G

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**ORDER**

**ADNAN-UL-KARIM MEMON J-** Applicant JS Bank Limited through Authorized Officer Moizuddin Khan Senior Vice President (SVP) and Head of Legal, has filed this Criminal Revision Application under Sections 435 and 439 Cr. P.C. against the order dated 15.02.2020 passed by learned III-Additional Sessions Judge Central, Karachi, in Direct Complaint No.771/2019, whereby the said complaint filed by the applicant has been dismissed on the premise that the evidence brought on record was not worth inspiring from any iota of substance to attract Section 499 PPC.

2. Brief facts of the case are that the respondent No.1 Muhammad Malick and M/s Hum Network Limited (TV News Channel), through its Chief Executive Officer (CEO) Duraid Qureshi and its Director Shunaid Qureshi, deliberately started a defamatory campaign against the applicant J.S Bank as well as Ali Jahangir Siddiqui, Jahangir Siddiqui and J.S group. It is alleged that the respondents No.1 and 2 falsely and with common intention as part of criminal conspiracy defamed the J.S Bank, JS Group as well as the Ali Jahangir Siddiqui and Jahangir Siddiqui. The complainant being aggrieved by and dissatisfied with the defamatory remarks passed by the respondent No.1, filed Direct Complaint No.771 of 2019 before the learned III-Additional Sessions Judge Karachi Central, in which preliminary inquiry in terms of Section 203 Cr.P.C was conducted by the learned Judicial Magistrate-XVII Karachi Central and applicant Moizuddin Khan and his witness Syed Muhammad Kashif were examined, thereafter the matter was referred to the learned Trial Court for further proceedings, however, the Trial Court, after hearing the parties dismissed the Direct Complaint vide order dated 15.02.2020. The applicant being aggrieved by and dissatisfied with the aforesaid decision has filed this Criminal Revision Application on 19.03.2020, inter alia, on the ground

that the learned Trial Court failed to appreciate the malice of Respondent No.1 in making the defamatory statement in his program, which was aired throughout Pakistan even abroad, thus caused great loss to the reputation of the applicant-Bank; that such defamatory and derogatory remarks fall within the ambit of Section 499 PPC, as such the impugned order dated 15.02.2020 passed by learned Trial Court is liable to be set aside and the respondents may be prosecuted under the law.

3. The main theme of the argument of Mr. Ravi Pinjani, learned counsel for the applicant is that the findings recorded by the trial Court in the order dated 15.02.2020 are erroneous and perverse as there was sufficient incriminating evidence available against the private respondents in terms of the statement of the applicant and his witness recorded under Section 203 Cr.P.C. by the Judicial Magistrate under the direction of the Sessions Judge as such the Trial Court ought to have taken cognizance of the offenses punishable under Section 500, 120-B and 34 PPC. He further submitted that the criminal complaint was rightly and properly filed by the authorized officer of the JS Bank, as such he is competent to file a complaint even without any authorization though the authorization letter dated 26.8.2016 is available on record and the same is free from any legal infirmity. He points out that the private respondents considered themselves above the law, which is evident from the imputation made by them during the Talk Show against the applicant company and its owners. He submits that it is not responsible journalism to level false allegations against anyone including the applicant company. Learned counsel specifically quoted Sections of the Pakistan Penal Code and submitted that the definition of 'Person' has been given thereunder includes 'company' also. He also submitted that the definition of 'injury' is also provided under the Pakistan Penal Code includes 'reputation'. He further submitted that the applicant narrated all the facts in the complaint, and it makes the case against the respondents cognizable and triable under the criminal defamation law. He further submitted that during a preliminary inquiry conducted by the learned Magistrate, the prima facie offenses under Section 500, 120-B, and 34 PPC were made out as such the complaint ought not to have been dismissed. Learned counsel extensively read the portions of transcriptions in which they made false allegations against the applicant company which sustained a loss of reputation amongst the public at large including the employees working in the Company. He lastly submitted that the Trial Court should be allowed to take cognizance of the offenses and conclude the trial within reasonable time on merits.

4. The aforesaid stance has been refuted by the learned counsel representing respondents No.1 and 2 by referring to the statement dated 23.08.2021 coupled with certain documents and argued that the impugned order is reasonable and rightly passed by the learned Trial Court. Learned counsel further submitted that this application is not maintainable as the applicant has no locus standi to file the present revision application as the same has been filed with the ulterior motive to pressurize the respondents to refrain from exercising their legal rights provided and protected under the constitution and law. Learned counsel for the respondents has shown his dismay that the learned counsel for the applicant has attempted to say a lot regarding the factual aspects of the case but at the same time he failed to quote a single instance regarding the utterance made by the respondents against the applicant and M/s J.S Bank, JS Group as well as Ali Jahangir Siddiqui and Jahangir Siddiqui; and, now at the criminal revision stage, the only legal aspects of the case are required to be considered, however, the applicant has failed to address the legal issue involved in the matter and he is just beating about the bush; therefore, it would be appropriate that the same may be addressed carefully for proper appreciation of legal facet of the case. Learned counsel emphasized that to utter the word alleged in the subject talk show, is sufficient to discard the point of view of the learned counsel for the applicant, which is based on the letter dated 26.03.2019 issued by the Director General NAB Lahore as such this cannot be treated as an offense in terms of Sections 499, 500 and 501 PPC as the allegations always remain allegations until proven in the Court of law, thus no case for defamation of the applicant Bank has been made out and/or its owner as portrayed by the applicant. Learned counsel also submitted that since the complaint was filed by Moizuddin Khan SVP and Head of Legal Branch JS Bank Ltd, as such he was not the alleged victim to put forward the complaint on behalf of the owner as none from the side of M/s J.S Bank / JS Group, as well as the Ali Jahangir Siddiqui and Jahangir Siddiqui, have come forward to claim such imputation on the part of the respondents, therefore, the complaint filed by the attorney of JS Bank is not competent and entertainable under Section 200 Cr.P.C and was rightly dismissed. Learned counsel referred to the reply to the revision application and submitted that this revision application needs to be dismissed with cost as no loss has been caused to the reputation of the JS Bank in terms of financial data of the applicant-bank.

5. In exercising the right of rebuttal learned counsel for the applicant has pointed out that in the paragraphs of the complaint, which specifically described the defamatory material, against the Applicant

Company and its shareholders as such M/s JS Company is directly aggrieved party in terms of company law, therefore, they had authorized its attorney to complain on behalf of the company. He stressed that even a non-incorporated Body or Association is authorized to initiate a penal proceeding or vice versa. Learned counsel further submitted that even if a body or Association is well-known and definable under the company law, criminal law may be put in motion by or against them. Similarly, as per the provisions of P.P.C., the "injury" denotes any harm illegally caused to any person, in body, mind, reputation, or property. Learned counsel referred to the Explanations given under Section 499 P.P.C., according to which it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. learned counsel asserted that a company is a legal entity and being a body corporate, it does not have a soul, body, mind, and limbs to walk into the Court to file a complaint, in such a situation even for a criminal complaint, the Court should allow a company to present a criminal complaint in the Court represented by some corporeal or natural person connected with the affairs of the company and having complete knowledge about the issue or nature of the complaint. He argued that the person connected with the affairs of the company, in the normal course of business, may be either its manager, partner, managing partner, director, managing director, or any other person authorized by the company to file a criminal complaint on behalf of a company.

6. This stance has also been refuted by the learned counsel for the respondents on the ground that the power of attorney was issued in the year 2016 in favor of the attorney with no power to complain in the year 2019. He further submitted that the complaint filed by the applicant is based on ulterior motives on the part of Jahangir Siddiqui, whose own companies are accused in several proceedings before the Superior Courts. Learned counsel stressed that the authorization in favor of the representative of the applicant/complainant company is not proper. According to him, a company under such authorization cannot initiate a criminal case. The learned counsel for the respondents contends that a company cannot file criminal defamation proceedings in respect of alleged financial loss, if any, based on such purported imputation though the applicant company has gained a lot in the intervening period.

7. Ms. Rahat Ahsan, learned Additoinal P.G. has adopted the arguments of the learned counsel representing the applicant, for

which the learned counsel for the respondents have reservation on the ground that the prosecution office has not challenged the order.

8. I have heard learned counsel for the parties and have perused the material available on record. Presently, the applicant has challenged the legality of the order passed by the Trial Court whereby he refused to take cognizance of the offenses punishable under Sections 500, 120-B, and 34 PPC, it is to be seen that whether a prima facie case has been made out or not against the respondents; and whether the applicant was/is required to show a false statement on the part of the respondents purporting to be fact and communication thereof to a third person amounting to defamation, causing harm to the reputation of the applicant-company who is the subject of the statement. In the context of a talk show, if someone uses the term “alleged” and made some defamatory remarks, it suggests that the remarks in question are being accused of being defamatory and it is to be seen whether these remarks amount to defamation within the aforesaid criteria. Given the nature of the impugned talk report via media, where the imputation or allegation against the applicant is that the respondent-محمد مالک, while talking on electronic media (Hum TV News Channel) allegedly has spoken the following words:-

بریک

میزبان محمد مالک : پروگرام میں خوش آمدید، بریک سے پہلے ہم بات کر رہے تھے کہ ایشوز کیا ہیں لیکن ابھی مجھے ایک واٹس ایپ میسج آیا ہے کہ یہ بتا دیں کہ کس ارب پتی بینکر کو نیب نے بلایا ہے ، تو پھر آپ آدھی خبریں غائب کر دیتے ہیں تو میں ذرا ان کو شیئر کر دوں۔ Actually میں کل، ان کی مہربانی ہے، انہوں نے ہمارے سے پہلے بھی کچھ ناراض ہیں، یہ جہانگیر صدیقی صاحب ہیں جسے ایس بینک کے جو چیئرمین ہیں، مالک ہیں، سب کچھ ہیں تو انہوں نے مجھ پر، عامر متین صاحب پر، رٹوف کلاسرا صاحب پر مقدمہ کر دیا تھا پہلے، ہم نے ان کی شان میں کچھ گستاخی کر دی تھی تو ہم کل کراچی میں ہونگے جہاں ہم ضمانت کے لئے جا رہے ہیں، آپ سارے دعا کیجئے گا کہ سب ٹھیک رہے، کاشف صاحب دعا کیجئے گا۔ لیکن ہم تو ایک کیس ہے جس کے اندر جواب دے دیں گے ہم تو کیس کا جواب دے دیں گے کیونکہ ہمارے پاس تو ہر چیز facts کے ساتھ موجود ہوتی ہے لیکن ابھی انہیں لاہور نیب نے بلا لیا ہے، بہت Interesting اب انہیں جا کر پہلے اپنی پیشیاں دینی پڑیں گی۔ ایک تو ان پر الزام ہے 4 ارب کا ، جس زمانے میں حارس اسٹیل کا بڑا مشہور مقدمہ تھا اس کے بعد share کی قیمتیں اوپر نیچے ہوئی تھیں تو ایک الزام یہ ہے اس Share Pricing میں انہوں نے کچھ لوگوں کو TIPS دیں ، نہیں دیں اور اس سے کچھ پیسے جونسے ہیں شاید کمائے اور بینک کی ٹرانزیکشن، inside trading جس کو آپ کہہ سکتے ہیں at one level ، ایک وہ ہے۔ پھر یہ بینک آف پنجاب کے بورڈ آف گورنرز ، نہیں بورڈ آف ڈائریکٹرز میں بھی تھے، وہاں ان پر ایک الزام ہے کہ انہوں نے 1.75 ارب مختلف اوقات میں بینک آف پنجاب سے loan دلویا JS Bank کو، اس کی تفصیلات اس وقت میرے پاس نہیں ہیں، جو نیب کی دستاویزات اور نیب کی باتیں ہیں، ایک وہ الزام ہے ۔ تیسرا کیس ان کے صاحبزادے کا ہے جو بڑا مشہور کیس ہوا تھا asguard ایک کمپنی تھی جس

کا شیئر اس زمانے میں 11 روپے کا تھا تو 35 روپے میں نیشنل بینک اور دوسرے بینکوں کو ملاکر اس میں بہت بڑی ٹرانزیکشن کی گئی ، اس میں الزام ہے کہ آپ نے falsely ریٹ بڑھا کر اس پر پیسہ بنایا، اس پر ساڑھے 10 ارب کا issue زیر بحث ہے۔ تو یہ کیسز ہیں جس پر انہیں نیب نے بلایا ہے لیکن نیب نے ابھی اور بھی لوگوں کو بلایا ہے تو دیکھیں اس پر کیا بنتا ہے ، کیا نہیں بنتا ۔ لیکن - this is what the situation is

9. In principle due diligence before reporting news so that rumors and implications are filtered out, also recognized that the thoroughness of inquiry should be commensurate with the magnitude of disclosures, in terms of the ratio of the judgments rendered by the Supreme Court in the cases of Suo Moto Action Regarding Allegation of Business Deal between Malik Riaz Hussain and Dr. Arsalan Iftikhar Attempting to Influence the Judicial Process (PLD 2012 SC 664) and Suo Moto Case Regarding Discussion in TV TalkShow with regard to Subjudice Matters (PLD 2019 SC 1).

10. I have perused the findings of the learned trial Court while dismissing the Private Complainant of the applicant. An excerpt of the order dated 15.02.2020 passed by learned III-Additional Sessions Judge Central, Karachi, is reproduced below:-

*“I have gone through the embodiments or contents of the complaint as well as referred the evidence brought on record before this Court, one authorized person of the complainant namely Moizuddin Khan has been examined and he simply asserted that an attack on the reputation of J.S Bank as well JS Ground was made by the accused channel through his Anchor Muhammad Malick who started defamatory campaign against J.S Bank. I have also perused the statement of one Syed Muhammad Kashif as a Relationship Manager of J.S Bank who simply deposited that two remarks were made by the Anchor one pertained to J.S Bank who is involvement in “inside trading” and the second one pertained to borrowing of loan amount of Rs. 1.75 Billion from Bank of Punjab. The above said imputations, if taken to be calculated from every inception do not the ingredients of Section 499 PPC with inference of alleged defamation proved on the part of the accused. It is emphatically provided in the language of Section 499 PPC that visible representation making of publishing any imputation to harm the person about his reputation or defaming him in any capacity, constitutes the offense of defamation Nowhere in the contemplation of direct complaint as well as recorded evidence before this Court and preliminary inquiry before the learned Magistrate does it appear that the alleged defamation was either constituted or established against the accused party as mere allegation to harm the reputation of bank does not suffice in totality that offence of defamation is established. The evidence brought on record is not worth inspiring from any iota of substance and consequently, the offense is not made out, hence the direct complainant is hereby dismissed under Section 203 Cr. P.C.*

*The case laws relied on by the learned counsel for the complainant are distinguishable from the facts and circumstances of this case.”*

11. Touching the core issue, whether the statement made by the applicant and his witness Syed Muhammad Kashif as a Relationship Manager of J.S Bank during preliminary proceedings under Section 202 Cr.P.C. constitutes defamation under Section 499 PPC. The only exceptions provided in Section 499 PPC are to be looked into first, for the

simple reason that there are certain obvious features of a criminal complaint for defamation under PPC. Under the second exception of Section 499 PPC is not exempted from any opinion expressed in good faith. For comprehension Section 499 PPC is reproduced below:-

***Section 499 (Defamation).*** *Whoever by words either spoken or intended to be read, or by sign or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.*

***Explanation 2.*** *It may amount to defamation to make an imputation concerning the company or an association or collection of persons as such.*

***Second exception:- Public conduct of public savants*** *"It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further"*

12. It appears from the statement of witness Syed Muhammad Kashif that he simply deposed that the remarks made by the Anchor that J.S Bank was allegedly involved in "inside trading" and borrowing of the loan amount of Rs.1.75 Billion from the Bank of Punjab. He also stated about share price manipulation done at the hands of company namely S-Guard-9 involving Ali Jahangir Siddiqui by doing false transaction of amount of Rs.10.5 million. The findings of the learned trial Court explicitly show that the complainant and his witnesses utterly failed to bring the case against the respondents under the defamation law; even though they failed to prove the factum that the respondents made the defamatory remarks against the applicant and/or any of the Board of Directors of the JS Group. Neither the same was established nor falls within the ambit of the defamation law as nothing has been said about the applicant who complained, even it is disclosed that it was the allegations against the son of Jahagir Siddiqui that he falsely enhanced the rate and gained amount. The mere utterance of words based on the letter of the NAB and reporting in the talk show is not sufficient to claim prosecution under section 499 PPC as nothing has been brought on record that due to such allegations, the applicant-company has lost its reputation before the customers or before the employees. In principle in the defamation context, a qualified privilege permits someone to make a statement that would typically be considered defamatory, but because of particular circumstances, a particular statement made would not be considered to be defamatory. However, if the statement is made with actual malice, then the speaker will no longer be entitled to the qualified privilege. However in the present

case, it has come on record that the speaker has used the word alleged means he is not sure whether the statement so made is true or otherwise, however, the learned counsel representing the respondents relied on the letter dated 26.03.2019 issued by the Director General NAB Lahore and based on such information the purported words has been uttered, if any. In principle, the Truth is widely accepted as a complete defense to all defamation claims. Using the term “alleged” could potentially provide some protection against defamation claims, as it indicates that the information is not being presented as a fact. Prima facie without prejudice the right of the applicant under the defamation suit, if any, at this stage no criminal case based on such statement alone comes within the ambit of Section 499 PPC.

13. From the above inference, the essence of the cause of action in criminal defamation is the loss of reputation suffered by the aggrieved party. Naturally, harm to the reputation is also the main ground in criminal defamation under the PPC. Harm to the reputation is, therefore, a common ground, however, in the present case such factum is prima facie lacking.

14. The exceptions to the criminal defamation provided in the Penal Code are also indicative of the test of civil and criminal defamation. Truth necessarily is the defense in criminal defamation, but the first exception to this Section insists that in addition to truth, the imputation must be shown to have been made for the public good. Public good, therefore, is an overriding relevant consideration in criminal defamation which is concerned with the protection of society, unlike a private suit for damages or defamation.

15. 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, it is not only 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.

16. So, the learned trial Court after securitizing the contents of the complaint, the nature of allegations made therein, and material in support of alleged offenses, has dismissed the complaint because of Section 203 of the Cr. P.C. and a bare perusal whereof would show that the complaint can

be dismissed even without having a preliminary inquiry as no such embargo has been placed on the Court concerned.

17. In the entire case, there is nothing on record, that the allegations allegedly made had lowered the reputation of the applicant/complainant and or the company even though no name of the applicant has been given in the talk show rather is about the report of the NAB notice as discussed supra and the word “alleged” was used as per record made available before this Court.

18. On the other hand, rights guaranteed by the Constitution of the Islamic Republic of Pakistan under Article 19 are “Freedom of speech etc is fundamental right. The freedom of speech through electronic media falls within the ambit of Fundamental Right as enshrined in Article 19 of the Constitution of Pakistan. However, the said freedom is not an absolute right. It is subject to certain reasonable restrictions specified in Article 19 itself.

19. The right to have access to information in matters of public importance under Article 19 of the Constitution is also subject to regulation and reasonable restrictions imposed by law. The defense of Article 19 of the Constitution to an action for defamation was discussed by the Supreme Court of Pakistan in the case of Sheikh Muhammad Rashid v. Majid Nizami (PLD 2002 SC 514).

20. The plain reading of the above-referred Article shows that fundamental rights have been protected for expression and freedom of the press. Article 19 of the Constitution provides freedom of the 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 desire. The press is bound to take full care and caution before publishing any material and to keep themselves within the bounds and ambit of the provisions of the said Article. It follows that the defense of Article 19 of the Constitution is not a complete defense to an action for defamation, and on a case-to-case basis, the Fundamental Right to free speech is to be balanced against the right to reputation. Regarding the defense of “qualified privilege”, a privileged occasion is one where the person who makes the communication has an interest or duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it, such reciprocity being essential. This is called the “duty-interest test” of the defense qualified privilege, and traditionally, where such test was satisfied, i.e. where the publication of the matter was in the public interest,

then the publication was protected notwithstanding that it was defamatory/untrue. This defense is available to the press and electronic media on the principle that on matters of public importance, they are under a duty to report the same to the public who have a corresponding interest to know the same. The defense of qualified privilege can be defeated if the person proves that the person was actuated by malice, that the maker did not believe the statement to be true, or that he made the statement with reckless indifference to its truth or falsity.

21. There is no cavil to the proposition that the procedure for dealing with such a complaint is provided in Chapter XVI of the Code of Criminal Procedure. Section 203 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 Cr.P.C., 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. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the case of Abdul Wahab Khan vs Muhammad Nawaz and others 2000 SCMR 1904.

22. Having said much about the case in hand, the upshot of the above discussion is that no prima facie case under Sections 500, 501 PPC has been made out from the Complaint and deposition recorded during the preliminary proceedings under Section 202 Cr.P.C by the learned Magistrate; and, the continuance of proceedings under Section 200 Cr.P.C. before the learned trial Court would be an abuse of the process of the Court if continued, so, the Private Complaint filed by the applicant has been rightly dismissed by the learned trial Court through the impugned order, to which no exception could be made.

23. For the aforesaid reasons, this Criminal Revision Application is dismissed.

**JUDGE**