

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
LARKANA**

**Civil Appeal No.S-04 of 2022**

Appellant: Prof. Dr. Aneela Atta-u-Rahman w/o Atta-u-Rahman, by caste Memon, through Mr. Sarfraz Ali M. Abbasi, Advocate.

Respondent: Mashooque Ali, son of Muhammad Urs Odhano, Reporter, Daily Kaawish, at Kaawish Bureau office behind Paris Inn Hotel Larkana, through Mr. Ajmair Ali Bhutto, Advocate.

Date of Hearing: 22.12.2023.

Date of judgment:

**JUDGMENT**

**KHADIM HUSSAIN SOOMRO, J.** Through this Civil Appeal under Section 15 of Defamation Ordinance, 2002, the appellant/plaintiff has impugned the order dated 12.08.2022 passed in Suit No.03 of 2020 [Re. Prof.Dr. Aneela Atta-u-Rahman vs Mashooque Ali Odhano] by learned IV-Additional District Judge, Larkana, whereby the plaint of appellant/plaintiff was rejected under Order VII Rule-11 of C.P.C, hence the captioned appeal.

2. Succinctly, the facts leading to this appeal, as averred in the plaint, are that the appellant/plaintiff claimed for damages as Rs.50 Million against the respondent/defendant on account of defamation, wherein the appellant stated that she is the Vice Chancellor of Shaheed Mohtarma Benazir Bhutto Medical University (SMBBMU), Larkana (**The University**), rendered valuable and unblemished services to the University and its affiliated colleges and institutions working under it and due to her able, honest, loyal and dedicated services, the chronic and complicated issues of University and its affiliated institutions have been resolved and addressed. She further stated in the plaint that the University and its constituent colleges like C.M.C. Larkana, GMMMC Sukkur, BADS

Larkana, Nursing Institute and Pharmacy Department have been rendering quality education in its campuses and have developed a good reputation and confidence among the masses. All became possible due to her outstanding performance and endeavour, along with the continuous moral support of her fellows, staff and the Government of Sindh, who helped a lot in ensuring quality education in the institutions. Appellant further stated in the plaint that Respondent/defendant is a senior reporter of Daily Kaawish newspaper, which is widely circulated and has been read worldwide. She pointed out that on 12-02-2020, the respondent/defendant, with some ill will and malice, reported false news published in Daily KAWISH, Hyderabad, wherein he levelled serious allegations against SMBBMU Management on the ground that the appellant and other University officers filled 09 foreign reserved seats with the local Self Finance Scheme, and respondent/defendant further alleged due to such conversion the University (SMBBMU) sustained huge monetary/ financial loss of up to 61 Crore within 05 years. Yearly loss up to Rs.12,200,000/- (one crore twenty-two lac yearly), and such news was not only published in print media, but also it flashed through the Internet as well as on social media, thus, the said news had been read over nationally and internationally. Due to the reporting of such false and scandalous news by the respondent, the University management as a whole and the appellant in particular sustained mental torture and injury to her reputation because she has been known as a loyal, dedicated and honest person, but respondent through levelling bogus and baseless allegations tried to lower down her credibility and prestige among the masses which is a clear example of irresponsible journalism. She further stated in the plaint that on 13-02-2020, she, being aggrieved, sent a legal notice to respondent U/S 8 of Defamation ordinance-2002 through her counsel, but the respondent refused to receive the same and returned with such endorsement by

Courier Company, which is on record, but respondent/defendant did not refrain from reporting false news against her and got publishing the same in daily Kawish newspaper with intention to defame, ridicule, injure and lower down the prestige and credibility of appellant and under such nefarious designs and ill motives. The respondent again reported and got published false report through Daily Kawish, Hyderabad dated 27-03-2020 wherein he falsely reported the appellant had removed the in-charge of Larkana Quarantine Centre, namely Dr. Irshad Kazmi and the said action was taken on account of his misconduct. However, the appellant did not take any alleged action against the said Dr. Irshad Kazmi, nor did anything happen. However, the respondent tried to create misunderstanding and restlessness among the officials and the general public through his false and managed publication reports. Consequently, the appellant again sent notices U/S 8 of Defamation Ordinance-2002 to the respondent through her counsel, which were sent on 31-03-2020 by way of courier as well as through e-mail wherein the respondent was advised to pay the damages to the tune of Rs.50 Million on account of damages, besides unconditional apology but the respondent did not bother to reply to said legal notice, hence, on accrual of such cause of action, the appellant filed the Suit for recovery of damages specified in the plaint and prayed as under:-

A) This Honorable Court may be pleased to decree the suit of the plaintiff and direct the defendant to pay an amount of Rs. 50 Million to the plaintiff on account of damages for her defamation caused due to originating and reporting false, fictitious, fabricated and managed news with intention to defame and injure the reputation of Plaintiff through Daily Kaawish Hyderabad.

B) To award costs of the suit.

C) To grant any other relief deemed fit and proper in the circumstances of the case.

3. After the admission of the suit, the process against the respondent/defendant was issued. The Respondent/defendant appeared and submitted a written statement as well as an application under Order VII Rule 11 of C.P.C for rejection of the plaint, which was allowed by the learned 4<sup>th</sup> Additional District Judge, Larkana, through the impugned Order and Decree dated 12-08-2022.

4. The counsel for the appellant submitted that the appellant has filed a Suit under the defamation ordinance on account of defamation made in daily newspaper Kawish; that prior to filing a suit the appellant issued a notice under Section 8 of the Defamation Ordinance 2002 to the respondent which was duly served upon him, but he failed to reply; that on 12.02.2020 the respondent published a false news in daily Kawish Hyderabad wherein he has levelled a serious allegation against the management of Shaheed Mohtarma Benazir Bhutto Medical University (SMBBMU); that the news published by the respondent without any substantial evidence which injured the reputation of appellant as well as her institution; that the newspaper was widely circulated in every nook and corner of the Province of Sindh; that the publication of the news clip shows that due to wrong policies of the appellant the institution has suffered the financial loss; that the order passed by 4<sup>th</sup> Additional district Judge, Larkana is without cogent reason and liable to be set-aside and the matter be remanded to the trial Court to decide the same after framing issues.

5. The counsel for respondent while supporting the impugned order submits that the plaint is silent on whether the damages are of the kind of libel or slander; that the appellant failed to disclose either in official capacity she filed the Suit or due to infringement of her personal right; that the Suit is hit by misjoinder and non-joinder of the necessary party as the appellant did not join the Chief Editor of the newspaper Daily Kawish as a

defendant in the suit; that the appellant has also not mentioned the material fact and particulars as envisaged under Order-VI Rule 2 & 4 Civil Procedure Code 1908 ("**the Code**"); that the appellant has failed to show the mental loss; that he admits the publication made by him on the basis of the right which is guaranteed by the constitution; that there is no cause of action for filing the Suit, and the learned trial court has rightly rejected the plaint under Order VII rule 11 Civil Procedure Code, 1908, and the Order of the trial Court may be maintained.

6. I have heard the learned counsels for the parties and have gone through the material available on the record.

7. The appellant's plaint was rejected under Order VII rule 11 of C.P.C.; it is deemed appropriate, at the present juncture, to scrutinize the provisions described under the said provision of the Code, which is reproduced below:-

"(11) Rejection of plaint.---The plaint shall be rejected in the following cases:

(a) Where it does not disclose a cause of action.

(b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) Where the Suit appears from the statement in the plaint to be barred by any law".

8. This is an important provision of law which has often been construed in a wide-ranging series of cases. The interpretation applied thereto falls within a wide spectrum, and I will examine some of the important case laws at a later stage. Prior to doing so, however, it is of

paramount importance to analyze the precise language used in the statute. The salient features contained in the provision are the following:-

(i) The words used are "rejection of plaint". In other words, the legislature has deliberately refrained from providing that the suit should be "dismissed". A distinction has thus been drawn between a dismissal of a suit and the rejection of a plaint, and it is this distinction that needs to be elucidated.

(ii) The opening words indicate that it is mandatory for the Court to reject the plaint if one or more of the four clauses is found to be applicable. This is made clear by the use of the word "shall" in the opening phase.

(iii) The first clause clearly states that if the plaint does not disclose a cause of action, it is to be rejected. The next two clauses, namely, clauses (b) and (c), relate to the valuation of the plaint and the stamp duty to be affixed thereon and, again, do not require much discussion. It is the last clause, namely (d), in relation to which most of the litigation has taken place. Therefore, it requires a careful analysis.

(iv) Clause (d) has three constituent elements. The first part uses the important word "appears", the second part relates to statements made in the plaint (i.e. there is no reference to the written statement), and the third part states the inference to be drawn if a suit "appears" from the statement in the "plaint" to be "barred" by law. This read, in conjunction with the opening words of Rule 11, makes it mandatory for the Court to reject the plaint.

9. It is essential to examine the grounds upon which a plaint is subject to rejection. In this regard, substantial jurisprudence exists on the matter, incorporating a broad spectrum. On the one hand, there is a notable emphasis on affording paramount importance to the averments made in the plaint, to the exclusion of extraneous considerations; on the other hand, the spectrum extends to include an examination not only of the contents of the plaint but also of the attached documents thereto and, extending even further the scope, scrutiny of other manifests and materials available on the record. The subsequent elucidation presents several pivotal apex court judgments on this matter.

(i) In the case of Anees Haider and others v. S. Amir Haider and others (2008 SCMR 236), the apex court reaffirmed the doctrinal tenet that reliance on the written statement is untenable.

(ii) In the case of Haji Allah Bukhsh v. Abdul Rehman and others (1995 SCMR 459), it was observed that the averments made in the plaint are presumed to be correct.

(iii) In the case of Jewan and 7 others v. Federation of Pakistan (1994 SCMR 826), it was determined that legal sanction allows for the examination exclusively of the contents set forth in the plaint, with the defence enunciated in the written statement deemed inadmissible. However, it was well-known that, in conjunction with the plaint, any other material acknowledged by the plaintiff and produced before the Court may be deliberated. Additionally, it was highlighted that the Court lacks the entitlement to analyze any supplementary material unless it has been duly entered into the record in conformity with the established rules of evidence.

(iv) In the case of Muhammad Saleemullah and others v. Additional District Judge, Gujranwala (PLD 2006 SC 511), it was observed that Order VII, Rule 11 anticipates the rejection of a plaint only on the basis of averments made in the plaint, and the pleas raised in the written statement are not to be taken into account. It was also observed that the Court was entitled to rely on the documents annexed to the plaint.

(v) The case of Saleem Malik v. Pakistan Cricket Board (PLD 2008 SC 650), it is a little difficult to reconcile with the overwhelming weight of authority since the observation in this case was "that the court, may, in exceptional circumstances, consider the legal objection in the light of averments of the written statement but the pleading as a whole cannot be taken into consideration for rejection of plaint under Order VII, Rule 11, C.P.C"

(vi) In the case of S.M. Shafi Ahmed Zaidi v. Malik Hasan Ali Khan (2002 SCMR 338), the following finding was rendered:

" It was further observed that "it is the requirement of law that incompetent suit shall be buried at its inception. It is in the interest of the litigation party and judicial system itself. The parties are saved their time and unnecessary expenses and the courts get more time to devote it for the genuine causes."

(vii) In the case of Pakistan Agricultural Storage and Services Corporation Limited v. Mian Abdul Lateef and others PLD 2008 SC 371, it was held that the object of Order VII, Rule 11, C.P.C. was primarily to save the parties from the rigorous frivolous litigation at the very inception of the proceedings.

(viii) In the case of *Salamat Ali v. Khairuddin* 2007 YLR 2453, it was observed that although the proposition that a court, while rejecting the claim under Order VII, Rule 11, C.P.C., could only examine the contents of the plaint was correct, nevertheless, this rule should not be applied mechanically.

(ix) In the case of *Arif Majeed Malik and others v. Board of Governors Karachi Grammar School* (2004 CLC 1029), it was noted that the traditional view was that in order to reject a plaint under Order VII Rule 11 only the contents of the plaint were to be looked into. However, this view had since been modified to the extent that an undisputed document placed on record could also be looked into for the purpose as mentioned earlier.

10. After considering the ratio decidendi in the above cases, I am clear about the scope of Order VII, Rule 11 of the Code. The statutory framework does not include any stipulation mandating that the plaint be supposed to incorporate the entire veracity of facts. On the contrary, it leaves the power of the Court, which is inherent in every Court of justice and equity, to decide whether or not any law bars a Suit for the time being enforced. The sole prerequisite is that the Court, before making a decision or forming an opinion, must analyze the averments made in the plaint. Furthermore, through a requisite implication, it is evident that the contents of the written statement are not to be examined and put in juxtaposition with the plaint to ascertain the veracity or fallacy of the plaint's averments is expressly precluded. In essence, the Court is not tasked with adjudicating the correctness of the plaint or the written statement.

11. Now, reverting to the averments made in the plaint leading to the instant appeal, it is a well-settled principle of law that only the averments of the plaint and its accompaniments can be examined while deciding the question of rejection of the plaint. Let's have a glance at some of the averments and allegations mentioned in the plaint for the purpose of the just and proper decision of this appeal; the following paragraphs of the plaint are briefly produced as under:-



"1. That, the plaintiff is the Vice Chancellor of Shaheed Mohtarma Benazir Bhutto Medical University (SMBBMU), Larkana and she, being a Vice Chancellor of SMBBMU Larkana has rendered valuable and unblemished services to the University and its constituent college and institutions working under it and due to her able, honest, loyal and dedicated services, the chronic and complicated issues of University and its affiliated institutions have been resolved and addressed and with the bless of Allah Almighty, SMBBMU Larkana has come on right track and has come out from the threats of de-affiliation and de-recognition extended by PM&DC and H.E.C.

2. That, now the University and its constituent colleges like C.M.C. Larkana, GMMMC Sukkur, BADS Larkana, Nursing Institute and Pharmacy Department have been rendering quality education in its campuses and have developed a good reputations and confidence among the masses and all become possible due to outstanding performance and endeavor of plaintiff, who with the continuous moral support of her fellows, staff and off course the Government of Sindh who helped a lot in ensuring quality education in the institutions.

3. That, defendant Mashooque Ali Odhano is senior reporter of Daily Kaawish newspaper based at Larkana while Kaawish is widely circulated newspaper and been read over in whole world.

4. That, on 12-02-2020, the defendant with some ill will and malice reported false news which published in Daily KAAWISH, Hyderabad, wherein, he leveled serious allegations against SMBBMU Management viz. Plaintiff and other University officers that they filled 09 foreign reserved seats on account of Local Self Finance Scheme. It is further alleged by defendant in said report that the University (SMBBMU) sustained huge monetary/ financial loss up to 61 Crore within 05 years and yearly loss upto Rs. 1,22,00000/- (one crore twenty two lac yearly) and such news was not only published in print media but also it flashed through Internet as well social media, thus, said news had been read over nationally and internationally and due to reporting of such a false and scandalous news reported by defendant, the University management as whole and plaintiff in particular sustained mental torture and injury to her reputation because she has been known as loyal, dedicated and honest person, but defendant through leveling bogus and baseless allegations tried to lower down her credibility and prestige among the masses which is clear example of irresponsible journalism."

12. After perusal of the aforementioned paragraph of the plaint, a legal question has arisen that needs to be addressed whether the appellant/Plaintiff, as a Vice Chancellor of SMBBU, has locus standi to file the present Suit. The Act, 2008 of the University defines that the Shaheed Mohtarma Benazir Bhutto Medical University Larkana was established through a Bill, 2008, having been passed by the Provincial Assembly of

Sindh on 15<sup>th</sup> August 2008 and assented to by the Governor of Sindh on 12<sup>th</sup> September 2008 is published as an Act of the Legislature of Sindh. The Act, 2008 (as amended) defines the powers of a Vice-Chancellor vide sub-section 5 of Section 10 of the Act, 2008. Moreover, Chapter No-II, sub-section 3 of Section 3 of the Act, 2008, defines the nature of the legal entity of the University as reproduced as under:-

(3) The University shall be a **body corporate** by the name of the Shaheed Mohtarma Benazir Bhutto Medical University Larkana and shall have **perpetual succession** and a **common seal and may sue and be sued** by the said name.[ underlying for emphasis]

13. The term Body Corporate refers to an entity recognized by law as having its own legal and distinctive personality. It indicates that the Shaheed Mohtarma Benazir Bhutto Medical University Larkana would have rights and responsibilities as a legal entity. A common seal is an official stamp or symbol used by organizations to validate documents or contracts. It classically comprises the organization's name and may include other recognizing structures. The manifestation of a common seal permits the University to officially approve numerous legal documents or transactions. The University can initiate legal proceedings (sue) or may be sued in a court of law. Essentially, it means that the University has the legal competency to participate in legal proceedings, whether as a plaintiff or as a defendant, under its official name, but the University does not mean to be the Vice Chancellor for the reasons that his position under the Act is only as an officer of the University within certain powers as mentioned in the Act, 2008 (as amended till 2018) but he/she is required to act within the parameters of the said Act, and not beyond it.

14. It is essential to highlight Chapter No.III Section 7 of the Act, 2008 (amended till 218) of the University which defines a Vice-Chancellor as an officer of the University. However, Section 10(2) of the Act describes a Vice-Chancellor as an executive officer responsible for ensuring the

observance of provisions of the Act, statutes, rules and regulations. The relevant section is produced as follows:-

10. (2) The Vice-Chancellor shall be the chief executive officer of the University responsible for all administrative and academic functions of the University and for ensuring that the provision of the Act, statutes, regulations and rules are faithfully observed in order to promote general efficiency and good order of the University.  
[Underlined for emphasis].

15. The legal framework governing the University's operation may include the University's enabling legislation, its internal bylaws, and any regulations and rules established by the university governing bodies. The Vice-Chancellor is tasked with ensuring compliance with these provisions to uphold the institution's legal and operational integrity. The Act does not provide that the Vice Chancellor can sue on behalf of the University. Hence, the very initiation of filing the Suit is not in accordance with the law under which the plaintiff/appellant is subjected. Moreover, in the Suit, neither the owner of the newspaper nor the Chief Editor was made a party; hence, the Suit is also hit by misjoinder and non-joinder of the necessary party. Consequently, the suit of the appellant/plaintiff is barred by law.

16. The Registrar of the University is responsible for supervising the administrative functions of the secretariat. As the nerve centre of the University's administration, the secretariat needs to be monitored and managed in this capacity. The Registrar's role is to support the University's secretariat by ensuring that administrative processes are efficient and running well, which helps the University authorities with their operations and decision-making. The Registrar is responsible for more than just administrative tasks; he is a guardian of the University's academic records and common seal. In order to verify the legitimacy of official University documents and transactions, the common seal is

utilized. The Registrar's duties as custodian are keeping the common seal and ensuring its correct use in compliance with all applicable rules and regulations. The Act clarifies that the Registrar can perform only those functions prescribed in the Act. Similarly, the University's academic records are the responsibility of the Registrar, who must keep them accurate, discreet, and accessible when necessary. Section 12 (3) of the Act defines the role of the Registrar, which is reproduced as under:-

"(3) The Registrar shall be a full-time officer of the University and shall- a) be the administrative head of the secretariat of the University and be responsible for the provision of secretariat support to the authorities of the University; b) be the custodian of the common seal and the academic records of the University; c) maintain a register of registered graduates in the prescribed manner; d) supervise the process of election, appointment or nomination of members to the various authorities and other bodies in a prescribed manner; and e) perform such other duties as may be prescribed". [Underlined for emphasis].

17. Now turning towards the Constitution of the Islamic Republic of Pakistan 1973 (**The Constitution**), which is the supreme law of the land, Article 19 guarantees the freedom of expression. The fundamental rights of any civilized society is to communicate and learn about its shared interests in the freedom of expression. It has always been a path to truth-finding and self-actualization. It offers a way to strike a fair balance between societal development and stability and increase the populace's improved ability to participate in decision-making. The very idea of a free people's government rests on this bedrock of free expression. Achieving a reasonable balance between societal change and stability was made more accessible, and the ability of individuals to engage in decision-making was further enhanced. The idea of free government by free people rests on the bedrock of such unrestricted communication. The right to free expression is safeguarded in a democratic society by a combination of responsibilities and limitations.

18. The role of media is pivotal for the operation of a democratic system. Every aspect of community and state life must be attended to by an informed and engaged general public in a democratic system, and they have a right to be informed, whether politically, socially, economically, or culturally. They should also be able to form a broad opinion about these things and how the government handles them. This goal can only be attained if the people are given accurate information from which they can draw their own conclusions, voice their opinions, and decide for themselves and future generations. Consequently, the Press's principal role is to disseminate accurate and thorough news covering the nation's political, social, economic, and cultural life. It can serve as a tool for learning and growth. It can be a tool for social change and significantly impact public opinion. The right to productive and fair criticism has a long and ancient history, even during Khalifat members of an Islamic society to objectively critique the Khalifatul Waqt. When it came to state matters, there were a number of times in Islamic history when Khalifas (Rulers) were criticized if Khalifatul Waqt's actions were not seen as conforming to the teachings of the Quran and Sunnah. Even in the present day, all citizens have the basic right to voice their opinion on how their political government is operating, according to the democratic system. One of the foundations of every democratic society is a free press. However, the purpose of enshrining fundamental rights in the constitution is twofold: first, to safeguard actions, beliefs, and expressions that the people may support, and second, most importantly, to safeguard opinions that the people may disagree with or even find repugnant. Article 19 of the Constitution recognizes that these rights are not absolute despite the inherent importance of free speech and the Press. The clause permits the legal imposition of reasonable restrictions so long as they serve certain purposes.

19. Now reverting to another essential feature of the instant appeal, whether publication and its contents constitute defamation as defined in section 3 of the Defamation Ordinance 2002. The word "Defamation" has been defined in section 3 of the Defamation Ordinance, 2002, as follows:

"Any wrongful act or publication or circulation of a false statement or representation made orally or in written or visual form which injures the reputation of a person tends to lower him in the estimation of others or tends to reduce him to ridicule, unjust criticism, dislike, contempt or hatred shall be actionable defamation".[Underlined for emphasis].

20. Defamation is defined as the unauthorized making or disseminating of a false statement or representation intending to damage an individual's reputation (Section 3 of the Defamation Ordinance, 2002). Word unjust criticism within the context of defamation refers to criticism that is unfair or lacking in justification and if such criticism meets the criteria outlined in defamation. The appellant/plaintiff neither in the contents of the plaint denied converting the admission seats reserved for international students into seats based on a self-finance scheme nor in the legal notice sent to the respondent/defendant under Section 8 of the Defamation Ordinance 2002. I have reviewed the alleged publication by the respondent, in which criticism was made over converting the foreign seats into self-finance fixed for Pakistani students, which does not come within the ambit of section 3 of the Act cited supra. Furthermore, such conversion of the admission seats is a prerogative of the Academic Council of a University as enunciated in section 22 of the University Act, and none of the council members has filed a Suit against the respondent; hence, the appellant has no cause of action against the respondent.

21. At this juncture, I feel it appropriate to cite the Apex court's beautiful words, which repeatedly call for press freedom. It has been cautious in its approach to implementing this right. "The freedom of the Press is not absolutely unlimited and unfettered". In the case of Syed Masroor Ahsan

and others v. Ardeshir Cowasjee and others PLD 1998 SC 823 " the Apex court observed as under:-

".... This right is one of the pillars of individual liberty, freedom of speech which the Court have always faithfully upheld in terms of the Constitutional mandate. It may be added that function/duty of a free Press is to act as a watchdog and to disseminate correct and fair accounts of the various public events and of other matters in which public may be vitally interested. In the discharge of the above function/duty there may be some occasional lapses on their part which are to be condoned, provided the same do not fall within the ambit of reckless or irresponsible conduct or prompted by malice or any other ulterior motive. In my view the Press besides relying upon Article 19 of the Constitution which provides that every citizen shall have the right of freedom of speech and expression and there shall be freedom of Press subject to any reasonable restrictions imposed by law which includes contempt law, may press into service Article 18 of the Constitution which guarantees freedom of trade, business or profession...: "

22. In view of the reasoning and rationale herein contained, I am of the considered view that the appellant has failed to make out a case; hence, the present appeal is hereby dismissed, and the order of the learned trial court is maintained with no order as to costs.

**J U D G E**

Ahmed/Pa.