

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

1st Civil Appeal No.S-07 of 2021

Roshan Ali Mahar s/o Hakim

v.

Ghulam Ali Dahar and Four (4) Others

Appellant : Roshan Ali s/o Hakim Mahar. Nemo.

Respondent No.1. : Ghulam Ali s/o Muhammad Aachar Dahar. Nemo.

Respondent No.2 : Mir Hazar s/o Sikandar. Nemo.

Respondent No.3 : Ali Akbar son alias Ali Sher s/o Arbab. Nemo.

Respondent No.4 : Lal Dino s/o Arbab. Nemo.

Respondent No.5 : Mst. Shazia w/o Bashir Mastoi. Nemo.

Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh.

Date of Hearing : 29.03.2024

Date of Judgment : 01.04.2024

J U D G M E N T

JAWAD AKBAR SARWANA: This Appeal arises out of Defamation Suit No.3/2019 filed by the Appellant/Plaintiff (Roshan Ali Mahar)(“RAM”) under the Defamation Ordinance, 2002, wherein Appellant-RAM claimed damages from the Respondent Nos.1 to 4 for allegedly filing against him a false, fabricated, concocted, bogus and frivolous F.I.R. The Appellant-RAM contended that the cause of action under the Defamation Ordinance, 2002, first accrued to him on May 2015 when Respondent No.1 filed a false FIR No.53/2015 and thereafter accrued day to day. The learned Vth-Additional District Court Judge, Shikarpur (“trial court”), rejected the Plaint under Order 7 Rule 11 CPC because the Plaint did not identify any of the ingredients of Section 3 of the Defamation Ordinance, 2002. The

Appellant-RAM, aggrieved by the Judgment dated 08.11.2021, filed this 1st Civil Appeal No.07/2021.

2. On perusal of the record in the Appeal file, it appears that Appellant-RAM and his Counsel have been irregular in their attendance before this Court. Specifically, none has appeared on behalf of the Appellant and this has been the case on 20.01.2022, 14.02.2022, 20.05.2022, 02.03.2023, 18.05.2023, 03.11.2023 and 08.12.2023. On 29.03.2024, once again, no one is present on behalf of the Appellant, and no intimation is received.

3. I have perused the appeal file, and no cause of action is made in the facts and circumstances of the case against the Respondents. Filing of an FIR, false or otherwise, neither constitutes "publication" nor in itself meets any of the ingredients of defamation. The Appellant-RAM has, at best, framed a suit for alleged malicious prosecution in his plaint, but such an action cannot be maintained under the special law, i.e., the Defamation Ordinance, 2002. The Appellant-RAM has miserably failed to identify the ingredients for filing a suit for defamation under the Defamation Ordinance, 2002. The dismissal of an earlier application under Order 7 Rule 11 CPC filed by Respondent on the ground that the suit was barred by limitation, which was dismissed by the District Judge vide Order dated 19.11.2020, does not come in the way of the subsequent judicial determination by the District Judge that the Plaint could not be sustained for other reasons under Order 7 Rule 11 CPC.

4. No case is made out in the Appeal, which calls for any interference with the impugned Judgment of the trial court. There is no illegality or jurisdictional defect in the impugned Judgment dated 08.11.2021 passed by the Vth-Additional District Judge, Shikarpur. In view of the foregoing, the Appeal is dismissed.

J U D G E