

THE HIGH COURT OF SINDH, KARACHI

Suit No. 1621of 2022

[Jamia Binoria Aalamia & anothers versus Daily Juraat & another]

For Plaintiffs : Jamia Binoria Aalamia & another
through Mr. Mohammad Jibran Nasir,
Advocate.

For Defendants : Nemo.

Dates of hearing : 11-11-2022

Date of decision : 24-04-2024

ORDER

Adnan Iqbal Chaudhry J. - This is a suit against defamation. By CMA No. 16063/2022 the Plaintiffs pray for a temporary injunction to restrain the Defendants from republishing the impugned news stories i.e. the application does not seek a prior restraint against publication but a restraint against repetition.

2. The Plaintiff No.1 is a Society under the Societies Registration Act, 1860 for the promotion of Islamic education and community. The Plaintiff No.2 is the President of the Plaintiff No.1 and the son of late Molana Mufti Muhammad Naeem who is said to be the founder of the Plaintiff No.1. The Defendant No.1 is described as the 'Daily Juraat', a newspaper, and not as a legal person. Nevertheless, the Editor of said newspaper is arrayed as the Defendant No.2.

3. The suit is not under the Defamation Ordinance, 2002, but a suit against a tort under section 9 CPC. That distinction has been highlighted by the Honorable Supreme Court in *Zulfiqar Ali Cheema v. Farhan Arshad Mir* (PLD 2015 SC 134) by observing that: "It may also be pertinent to mention here that from the reading of the Ordinance as a whole (the Defamation Ordinance, 2002) it does not again preclude a person from initiating an action for damages under the general law of the land i.e. under the law of Torts by filing a suit for damages under CPC."

4. Despite service, no one entered appearance for the Defendants and no written statement or counter-affidavit was filed.

5. It is averred by the Plaintiffs that *“the Defendants started a malicious and targeted campaign towards the Plaintiff No.1 as an organization and towards the Plaintiff No.2 and his late father as individuals by publishing a series of false and unverified reports with fabricated facts accusing the Plaintiffs jointly and severally of having embezzled money, patronizing terrorists and gangsters and spearheading land grabbing of land belonging to religious seminaries, mosques and ordinary people across Karachi.”*

6. As regards the contention that the impugned news stories also defame the deceased father of the Plaintiff No.2, the general principle of law is embodied in the maxim *actio personalis moritur cum persona* i.e. personal rights of action die with a person.¹ Learned counsel for the Plaintiffs did not attempt to draw any exception to that rule. Therefore, I consider the application only for the Plaintiffs.

7. To substantiate the averment of a vilification campaign by the Defendants, the Plaintiffs have filed with the plaint numerous news stories published against them in the Daily Juraat from August 2022 onwards. Some of them are as follows:

- (i) New story dated 12.08.2022 with the heading that the Plaintiff No.1 is involved in unlawfully occupying and selling land of masjids in the Site area; and that due to his connections in the local administration, no legal action was being taken against the Plaintiff No.2 (Annexure B/1);
- (ii) Another news along the same lines was published on 13.08.2022 (Annexure B/2);

¹ See *Zahid Hussain Awan v. United Bank Ltd.* (2018 MLD 1369).

- (iii) News story dated 14.09.2022 with the heading that an attempt by the *qabza* group of the Plaintiff No.1 to illegally occupy a masjid in Clifton was unsuccessful (Annexure B/3).
- (iv) News story dated 15.08.2022 with the heading that the Plaintiff No.1 had illegally occupied 5 acres in the Site area (Annexure B/4);
- (v) News story dated 16.08.2022 with the heading that the *qabza* group of the Plaintiffs had illegally occupied certain seminaries (Annexure B/5);
- (vi) News story dated 18.08.2022 with the heading that the *qabza* group of the Plaintiff No.1 had illegally occupied a masjid in Malir (Annexure B/6);
- (vii) News story dated 19.08.2022 with the heading that the Plaintiff No.1 was allegedly involved in selling a masjid in the Site area (Annexure B/7);
- (viii) News story dated 20.08.2022 with the heading that the *qabza* group of the Plaintiff No.1 had illegally occupied a masjid in Gulshan-e-Iqbal (Annexure B/8);
- (ix) News story dated 22.08.2022 with the heading that the *qabza* group of the Plaintiff No.1 had sold a masjid in Malir for Rs. 500,000/; and the Plaintiff No.2 has threatened the actual owners with dire consequences if they pursue legal action (Annexure B/9);
- (ix) News story dated 23.08.2022 with the heading that due to its *qabza* group the Plaintiff No.1 has a bad reputation in the circle of religious scholars; and that the Plaintiff No.2 is part of the mafia behind such *qabza* groups (Annexure B/10);

(xi) News story dated 24.08.2022 with the heading that the *qabza* group of the Plaintiffs is also involved in making objectionable videos to blackmail people (Annexure B/11);

(xii) News story dated 25.08.2022 with the heading that against the *qabza* group of the Plaintiff No.1 there were protests in the city (Annexure B/12);

8. Apart from the above, there are other news stories by the Defendants alleging that the Plaintiffs are a mafia involved in other criminal activities. Along with CMAs, the Plaintiffs have placed on record further news stories published against them in the Daily Juraat to show that the vilification campaign continues.

9. The impugned news stories portray the Plaintiffs as a '*qabza* group', a term generally used to describe persons who occupy or exploit the land of others with force and/or influence for self-use or for onward sale. It is alleged that under the garb of a religious educational society, the Plaintiffs take over masjids and their administration by force. All the news stories also carry a photograph of the Plaintiff No.2 to add to the sting. For persons who claim to be engaged in the promotion of Islamic education, such publications would 'tend to lower the plaintiffs in the estimation of right-thinking members of society generally'², and on a *prima facie* view of the matter are libelous.

10. Learned counsel for the Plaintiffs submitted that the impugned news stories were false and the Defendants had no material to justify the same. In that regard he drew attention to letters annexed with the plaint, said have been issued by the management of some of the masjids allegedly occupied by the Plaintiffs, which letters contradict the impugned news stories. Since the Defendants have not come forth

² The test laid down by Lord Atkin in *Sim v. Stretch*, (1936) 2 All ER 1237.

to defend the action, the Court can only presume that they have no defense to offer.

11. The freedom of speech and press enshrined in Article 19 of the Constitution of Pakistan is not an absolute right but is subject to certain reasonable restrictions specified in Article 19 itself. As discussed by this Bench in the case of *Mohsin Abbas v. Air Waves Media (Pvt.) Ltd.* (PLD 2020 Sindh 400), the fundamental right to free speech is to be balanced against the right to reputation.

12. The impugned news stories do not carry the version of the Plaintiffs, nor is it stated that a version was sought from them but refused. It appears that the Plaintiffs had sent a rebuttal dated 25-10-2022 to the Defendant (Annexure H/1), but instead of publishing that rebuttal the Defendant ridiculed the same by a news story dated 27-10-2022 (Annexure H/2). Therefore, the Plaintiffs also demonstrate *prima facie* that the impugned news stories do not meet the test of 'responsible journalism' discussed in the case *Mohsin Abbas*.

13. In view of the foregoing, the Plaintiffs have a *prima facie* case for a temporary injunction; the balance of convenience is in their favor; and irreparable harm may ensue to them should the impugned news stories be re-published. Therefore, CMA No. 16063/2022 is allowed by restraining the Defendant No.2 from republishing or causing republication of the following news stories that appeared against the Plaintiffs in the Daily Juraat:

dated 12.08.2022 (Annexure B/1); dated 13.08.2022 (Annexure B/2)
dated 14.09.2022 (Annexure B/3); dated 15.08.2022 (Annexure B/4)
dated 16.08.2022 (Annexure B/5); dated 18.08.2022 (Annexure B/6)
dated 19.08.2022 (Annexure B/7); dated 20.08.2022 (Annexure B/8)
dated 22.08.2022 (Annexure B/9); dated 23.08.2022 (Annexure B/10)
dated 24.08.2022 (Annexure B/11); dated 25.08.2022 (Annexure B/12)
dated 26.08.2022 (Annexure B/13); dated 28.08.2022 (Annexure B/14)
dated 30.08.2022 (Annexure B/16); dated 31.08.2022 (Annexure B/17)
dated 01.09.2022 (Annexure C/1); dated 02.09.2022 (Annexure C/2)
dated 04.09.2022 (Annexure C/3); dated 06.09.2022 (Annexure C/4)
dated 07.09.2022 (Annexure C/5); dated 08.09.2022 (Annexure C/6)
dated 09.09.2022 (Annexure C/7); dated 11.09.2022 (Annexure C/8)
dated 12.09.2022 (Annexure C/9); dated 16.09.2022 (Annexure C/11)
dated 17.09.2022 (Annexure C/12); dated 19.09.2022 (Annexure C/13)

dated 20.09.2022 (Annexure C/14); dated 22.09.2022 (Annexure C/15)
dated 23.09.2022 (Annexure C/16); dated 25.09.2022 (Annexure C/17)
dated 26.09.2022 (Annexure C/18); dated 27.09.2022 (Annexure C/19)
dated 28.09.2022 (Annexure C/20); dated 28.10.2022 (Annexure AA/2)
dated 30.10.2022 (Annexure AA/4); dated 01.11.2022 (Annexure AA/6)
dated 02.11.2022 (Annexure AA/7); dated 03.11.2022 (Annexure BB/1)
dated 07.11.2022 (Annexure BB/2); dated 05.11.2022 (Annexure BB/3)
dated 04.11.2022 (Annexure BB/4); dated 09.11.2022 (Annexure BB/5).

JUDGE

Karachi

Dated: 24-04-2024