

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1st Civil Appeal No.S-26 of 2021

Appellants : Mst. Bibi Saira and others, Through
Mr. Shoukat Ali Makwal, Advocate

Respondent No.2 : Syed Amanullah Shah, through
Mr. Imran Khan Pathan, Advocate

Respondent No.1 : P.O Sindh through Secretary Home
Department , through
Mr. Ahmed Ali Shahani, Assistant Advocate
General

Date of hearing : 04.03.2024

Date of Decision : 22.04.2024

JUDGMENT

ARBAB ALI HAKRO, J.-Through this First Appeal, filed under Section 15 of the Defamation Ordinance, 2002 (“the Ordinance, 2002”) read with Section 96 of the Code of Civil Procedure, 1908 (“the Code”), the Defendants/Appellants Nos. 1 to 3 challenge the Judgment and Decree dated 04.6.2021, rendered by the Additional District Judge-II, Khairpur (“the trial Court”). The said decree pertains to the suit filed by the Plaintiff/Respondent (No. 2) seeking to recover an amount of Rupees Two Crore on account of damages. The trial Court decreed the suit to the extent of Rs. 5,00,000/- (Rupees Five Lacs).

2. The brief facts of the case are that Respondent No.2 filed a suit for the recovery of Rupees Two Crore as damages for malicious allegations under the provisions of the Ordinance of 2002. The grounds for this were that Respondent No.2 belonged to a respectable Syed family and was posted as DSP in the SITE area of Sher-Shah District, Karachi West. Respondent No.2's son, namely Inamullah Shah, was married to Appellant No.1, the daughter of Appellants No.2 & 3, on 10.9.2017. This marriage ended on 19.01.2018 by way of Khulla, which was granted by the Family Court

through an ex-parte decree. Afterwards, Appellant No.1 filed a suit for the recovery of dowry articles against the son of Respondent No.2, who contested the same. It is averred that on 15.5.2018, Respondent No.2 came to know through his friends and well-wishers that a statement against him was given by the appellants on 30.4.2018. This statement was posted on the Facebook ID of Defendant No.4 (Liaquat Rajper, a reporter for Sindh TV News Channel), showing pictures of Respondent No.2 and his son, levelling false, malicious, and defamatory allegations against them. These allegations were admitted by Appellants No.1 & 2 to be false during their cross-examination in the proceedings of the family suit. Again, on 03.5.2018 at about 4:45 p.m., Sindh TV News Channel, under the control of Defendant No.5 and with reference to Defendant No.4, broadcasted a false, malicious, and defamatory interview of the appellants from their Channel. In this interview, the appellants levelled baseless and defamatory allegations without proof against Respondent No.2 to damage his reputation in society and gain undue advantage and sympathy. This act badly damaged the reputation of Respondent No.2 among his relatives, friends, and within his department. Due to such an act, Respondent No.2 suffered from mental torture, depression, and physical harm and was unable to perform his duty. On 04.5.2018, Defendant No.4, in collusion with the appellants, again uploaded a defamatory video statement of the appellants on the Facebook ID of Defendant No.4 without any proof or evidence. This also caused severe damage to the reputation of Respondent No.2. It is also averred that Respondent No.2 issued a legal notice dated 09.7.2018 through his Advocate to the appellants, asking them to make an unconditional apology to him for causing physical and mental torture and to pay Rupees Two Crore. However, no reply was made, and Respondent No.2 filed a suit.

3. Upon receiving the notice, the appellants appeared and filed their Written Statement. In it, they controverted the contents of the plaint and claimed that Respondent No.2 and his son maltreated

Appellant No.1 every day, making her life miserable. As a result, she was granted Khulla through the Court and filed a suit for the return and recovery of dowry articles, which was decreed. Due to such annoyance, Respondent No.2 filed this suit, which the appellants claim is false, in order to pressure them to withdraw from the dowry articles. It was claimed that due to the illegal acts of Respondent No.2 and his son, which made the life of Appellant No.1 miserable, the appellants protested against them. This protest led to the publication of news. Following this, Respondent No.2 openly issued threats that they would kidnap Appellant No.1.

4. In so far as defendants No.4 & 5 are concerned, they, despite service of notice, did not appear before the trial Court to contest the suit. Hence, they were debarred from filing written statements and proceeded *ex parte* by the trial Court.

5. Learned trial Court out of the pleadings, framed as many as eight issues. Respondent No.2 filed his affidavit-in-evidence, and his witness, namely Rehmatullah Shah, was cross-examined by the counsel for the appellants. On the other hand, appellant No.2 filed his affidavit-in-evidence as of his witness, namely Mushtaq Ali; they were also cross-examined by the counsel for respondent No.2. The learned trial Court finally decreed the suit to the extent of Rs.500,000/- (Rupees Five Lacs).

6. At the outset, learned Counsel for the Applicants submits that learned trial Court passed impugned judgment and decree without applying its judicious mind; that from a perusal of pleadings, it does not show any method which proves any defamation or damage has been caused to the reputation of Respondent; that learned trial Court passed the impugned judgment and decree on technicalities rather on merits; that there is dispute over the dissolution of marriage tie; that learned trial Court ignored all the norms and principles of law by passing the impugned judgment and decree, which is not sustainable and liable to be set aside.

7. Conversely, learned Counsel representing Respondent No.2 has argued that the learned trial Court has rightly passed the impugned judgment and decree, which is well-reasoned and a speaking one; that there are some material documents as well as USB containing video statements, which fact was not denied by Appellants; hence defamatory allegations were proved; that learned trial Court categorically mentioned in its judgment that Respondent has proved his case against the defendants through oral as well as documentary evidence, hence no interference is required by this Court to disturb the findings of the trial Court.

8. Learned AAG, while adopting the arguments advanced by learned Counsel for the Respondent, supports the impugned judgment and decree passed by the learned trial Court.

9. Upon thoroughly examining the records, it is evident that respondent No.2/plaintiff has approached the Court claiming that the appellants, in collusion with defendant No.4 & 5, made a statement containing malicious and defamatory words. This statement was subsequently uploaded/posted by defendant No.4 on his Facebook account twice. Furthermore, the appellants gave a defamatory and malicious interview, which was broadcast on the Sindh TV News Channel by defendants No.4 & 5. This interview contained false and baseless allegations that respondent No.2, who was the father-in-law of appellant No.1, arranged her marriage to his son, Inamullah Shah, who was mentally unstable. It was also alleged that respondent No.2 committed sexual assault against her (appellant No.1) and issued threats of murder. These allegations have purportedly damaged the reputation of respondent No.2 among relatives, friends, well-wishers, society, and his department. To substantiate his version, respondent No.2 appeared as PW-1 and examined Rehmatullah Shah as PW-2. Documentary evidence was tendered, including screenshots from the Facebook account of defendant No.4, showing photographs of

respondent No.2 and his son, and a USB containing video statements of appellant No.1.

10. On the other hand, appellant No.2 admitted that he invited defendant No.4 to his house on 02.5.2018 and acknowledged that his daughter (appellant No.1) disclosed to defendant No.4 that her husband, Syed Inamullah Shah, is mentally unstable, and that her father-in-law (respondent No.2) committed acts of violence against her, leading her to attempt suicide. He admitted that these facts were displayed on the Facebook account of defendant No.4. He also admitted that he did not have his daughter (appellant No.1) medically examined at any hospital to substantiate such allegations as disclosed by his daughter to defendant No.4 and subsequently posted by defendant No.4 on his Facebook account. He further admitted that when such facts were posted by defendants No.4 & 5 on their Facebook accounts, respondent No.2 was serving as DSP at District Malir. During his cross-examination, he admitted that *"It is correct to suggest that we, the defendants, gave a statement and interview to defendant No.4, Mr.LiaquatRajper, reporter of Sindh TV News Channel from District Khairpur at District Press Club Khairpur against the plaintiff and his son on 30.4.2018, which was made viral by defendant No.4 on Facebook through defendant No.5."*

11. Defamation, a well-established principle of law, is the act of making a statement that impugns a person's reputation, leading to diminished regard among right-thinking members of society or causing them to be shunned or avoided. This principle bifurcates into two distinct torts: libel and slander. **Libel**, a defamatory statement presented in a fixed medium, is actionable per se, meaning that the law presumes damage to the claimant's reputation without the need for actual proof of such damage. On the other hand, Slander pertains to spoken defamatory statements, where the claimant typically needs to demonstrate actual harm to their reputation. Regardless of

whether the defamation is libel or Slander, the claimant must establish three key elements to succeed in a defamation case: -

1. **Defamatory Imputation:** The statement in question must be defamatory, i.e., it must harm the reputation of the claimant in the eyes of right-thinking members of society.
 2. **Reference to the Claimant:** The defamatory statement must clearly identify or refer to the claimant. It is not necessary for the claimant to be named explicitly as long as they can be identified.
 3. **Publication:** The defamatory statement must have been published or communicated to at least one person other than the claimant. The term 'publication' in this context refers to communicating the defamatory matter to a third party.
12. Defamation, as defined under Section 3 of the Ordinance, 2002, is a wrongful act involving the publication or circulation of a false statement or representation, either orally or in written or visual form. This false statement or representation, if it injures a person's reputation, lowers him in the estimation of others, or reduces him to ridicule, unjust criticism, dislike, contempt, or hatred, is actionable as defamation. The Ordinance 2002 further categorizes defamation into two forms: **Slander** and **libel**. **Slander** refers to any false oral statement or representation that amounts to defamation. On the other hand, **libel** encompasses any false written, documentary, or visual statement or representation, made either by ordinary form or expression or by electronic or other modern means of devices, that amounts to defamation.
13. Defamation, a severe legal offence, primarily hinges on publishing a defamatory statement in a widely circulated newspaper or spoken in a large gathering. The following elements are crucial for a statement or act to constitute defamation:

False Allegations: The allegations against the plaintiff must be false, baseless, and unfounded. The truth of a statement is a defence to a claim of defamation.

Defamatory Nature: The language used and the allegations made should be defamatory or derogatory in nature. This means that they should harm the reputation of the plaintiff in the eyes of right-thinking members of society.

Publication: The defamatory allegations must have been published in widely circulated newspapers or spoken in a large gathering. The term 'publication' in this context refers to communicating the defamatory matter to a third party.

Malice: The publications made, or words used must have been with Malice without any reasonable cause and justification. In this context, Malice refers to the intent to do harm or act with reckless disregard for the truth.

Direct Attribution: The allegations must have been directly attributed to the plaintiff by specifically mentioning his name. It is not necessary for the plaintiff to be named explicitly as long as they can be identified.

14. Section 04 of the Ordinance, 2002, establishes that the publication of defamatory matter is an actionable wrong, even without proof of special damage to the person defamed. This principle underscores the seriousness of defamation as a legal offence, recognizing the inherent harm that defamatory statements can cause a person's reputation. Once defamation is proved, the law presumes damage. This means the claimant does not need to provide explicit evidence of the harm caused to their reputation. The very act of publishing the defamatory statement is considered sufficient to presume damage. This provision reflects the law's commitment to protecting the dignity and respect of individuals, acknowledging that damage to one's reputation can have serious and far-reaching consequences. Section 04 of the Ordinance, 2002 provides robust

protection for individuals against defamatory statements, ensuring that those who engage in defamation can be held accountable, even without tangible proof of damage.

15. The case presents a scenario where both oral and documentary evidence have been produced by respondent No.2, which aligns with his pleadings. The evidence on record substantiates the claim that appellant No.1 used derogatory language, asserting that the son of respondent No.2 was mentally unstable, leading to an accusation that respondent No.2 committed sexual assault on her. This statement has had a detrimental impact on the reputation of respondent No.2, causing significant harm within his social circle, family, friends, and professional department. Despite extensive cross-examination of the PWs, no evidence has emerged that supports the appellants' position. This lack of counter-evidence further strengthens the case of respondent No.2, highlighting the severity of the defamatory statements made by appellant No.1 and their damaging consequences.

16. The issue raised by the appellants' counsel pertains to the non-production of a legal notice/Notice of action dated 09.3.2007 by respondent No.2 in his evidence. Upon examination of the written statement and the affidavit-in-evidence submitted by appellant No.2, it is revealed that appellant No.2 himself has acknowledged that respondent No.2/plaintiff had issued the legal notice/notice of action with malafide intentions and ulterior motives, ostensibly to exert pressure on them. This admission by the appellants effectively confirms receipt of the legal notice/Notice of action. Consequently, at this stage, there is no requirement for respondent No.2 to produce the said legal notice/Notice of Action as evidence, given that the appellants have implicitly acknowledged its existence and receipt and that it is part of the pleadings.

17. The evidence in question, which includes the contents of a statement or interview that was subsequently broadcast on a news

channel and posted on a social media account (specifically, a Facebook ID), is deemed sufficient to establish proof of defamation. This is particularly the case when the defamatory substance has not been refuted by the opposing party. The actions of the appellants constitute an actionable wrong under the Ordinance, 2002. The violation of this Ordinance has been both established and proven. Notably, the appellants failed to present any defence plea stipulated in Section 5 of the Ordinance, 2002. In such circumstances, no formal or additional proof of the defamatory material is required. The counsel for the appellants was unable to identify any discrepancies in the available record. Upon the establishment of libel, the presumption of injury or damage to one's reputation and goodwill is an axiom of jurisprudence, now codified within Section 4 of Ordinance LVI, 2002. Once defamation is substantiated, the law invariably infers detriment, injury, and diminution to the reputation, goodwill, or standing of an individual, their profession, or products, as applicable. This principle is echoed in the jurisprudential precedent set forth by this Court in the case of Syed Mehmood Ali v. Network Television Marketing (Pvt.) Ltd. and another (PLD 2005 Karachi 399), where such presumptions were upheld. It was held that:

“Initial burden, to prove that defamatory material or innuendo was pointed towards the plaintiff or his goods (i.e: Haleem) was on the plaintiff to show that the documentary was obliquely aimed at the plaintiff's concern or his Haleem. Plaintiff has successfully demonstrated that in the documentary, shop of the plaintiff was shown, customers interviewed commented about the plaintiff's Haleem, therefore, ordinary viewer reasonably would be led to believe that the documentary is about the plaintiff's Haleem. Plaintiff successfully demonstrated that, the damaging, maligning and offensive defamation telecast and aired twice, was directed, referable or aimed towards the plaintiff's concern, the insinuating innuendo was covertly angled towards the plaintiff's Haleem. Therefore, the burden to establish that the "Documentary" carried the true story or for that matter it was not aimed or focused toward the plaintiff was on the defendants, which burden was not discharged. Defendant No.2 failed to prove that the story in the documentary film shown two times as mentioned in the plaint, by the defendant No. 1, is correct in respect of the plaintiff. Defendants are accordingly liable for consequence of defamation”.

18. The learned trial court, after meticulous deliberation, has judiciously rendered the impugned decree in favour of respondent No. 2. This decision was reached following a thorough examination of the evidence and the case record, conducted with utmost diligence. The counsel representing the appellants, despite his earnest efforts, has not succeeded in demonstrating any oversight or omission in the evaluation of the evidence or the record. The impugned judgment and decree stand on a foundation of sound reasoning, impervious to exceptions or judicial interference by this Court. Therefore, it is the considered conclusion of this discourse that the instant appeal lacks legal merit and substantive validity. Accordingly, it is hereby **dismissed**. In light of the circumstances, no order as to costs is made, and the parties shall each bear their own legal expenditures.

JUDGE

Faisal Mumtaz/PS