

IN THE HIGH COURT OF SINDH KARACHI

Suit No. 511 of 1995

Major (Rtd) Bashir Ahmed Khan Tariq Plaintiff

versus

Government of Pakistan & others Defendants

Mr. S. Ali Ahmed Tariq, Advocate for plaintiff.
Mr. Nisar Ahmed Naushad Babber, A.A.G. a/w
Inspector Aftab Ali Shaikh, ASF HQ Legal.

Date of hearing : 17.10.2024

Date of Judgment : 01.11.2024

JUDGMENT

Omar Sial, J: This Suit, seeking recovery of Rs. ten million as compensation against damages, was filed on 25.07.1995 by Major (Rtd.) Bashir Ahmad Khan Tariq ("Tariq"). Tariq claimed that on 28.07.1994, he reached the Karachi Airport to catch a Lufthansa flight headed to Frankfurt but was prevented from entering the Departure Lounge by a man named Naeem Ahmad, Defendant No. 5. Tariq approached two officials of the Airport Security Force, Defendant No. 3 Aziz, who was the Security Officer and Defendant No. 4 Waheed Satti, who was an Inspector. The ASF personnel told him that the friction and scuffle between him and Naeem Ahmad was on a personal account, and thus, they declined to interfere. Based on the story narrated by Tariq, he managed to get into the airport building but was again stopped by some other ASF personnel who asked Lufthansa personnel not to issue Tariq a boarding pass. The boarding pass was issued, and Tariq boarded the flight to Frankfurt. Nearly a year later, he filed this Suit seeking recovery of damage on account of mental anguish.

2. The ASF personnel (Defendants 1 to 4) did not deny the incident. However, they explained that a scuffle occurred between Tariq and Naeem because Tariq did not repay a debt of Rs. 600,000 to Naeem. Both individuals had asked the ASF to intervene, but the ASF told them they could not legally arrest anyone as it was a personal matter between them. ASF denied that they had again stopped Tariq at the flight counter. However, they said that Tariq started creating commotion inside the airport and was restrained from doing so by the ASF staff. He was allowed to board his flight.

3. Naeem Ahmad (Defendant No. 5) also did not deny the incident. He claimed that Tariq owed him money and was attempting to escape from the country. A scuffle between the two and some family members had occurred outside the airport, after which Tariq summoned the ASF personnel to arrest Naeem. The ASF personnel declined to accede to his request because it was a private issue between the two individuals.

4. On 01.06.1998, the following issues were settled.

1. Whether Plaintiff was illegally and wrongfully harassed at the International Departure Lounge by Defendant No.5 and Defendant No. 3 and 4 on 20th July 1994. If so, its effect?
2. Whether the illegal detention and harassment at the Airport caused damage to the Plaintiff by way of mental torture and loss of reputation at the hands of Defendants No.3, 4, and 5?
3. Is the amount claimed due and payable by the Defendants jointly and severally?
4. Is there any personnel dispute between Plaintiff and Defendant No.5. If so, its effect?
5. Whether the Defendants committed any unlawful act?
6. Relief

5. At trial, Tariq appeared as his witness (PW-1). He acknowledged that Naeem Ahmed (Defendant No. 5) had a monetary dispute with the company Tariq worked for and that there had been past interactions with him. He acknowledged that the company had also registered an F.I.R. against Naeem Ahmed. He also acknowledged the incident at the airport on 28.07.1994. He confirmed that after the scuffle, he had gone to the ASF office at the airport, but they had declined to assist on the ground, saying that "it was not their job." When asked about proof of damages, which he claimed, Tariq only extolled his virtues. Still, he did not produce an iota of evidence that the scuffle at the airport and ASF personnel saying that they did not interfere with the dispute because it was a personal matter between two individuals had caused mental torture, agony, or damage to his reputation or status.

6. Apart from himself, he brought forth two other witnesses, namely, (i) Muzaffar Mahmood Minhas (PW-2) and (ii) Mian Muhammad Ahmed Khan (PW-3). Muzaffar Mahmood Minhas claims to have visited the airport to see off Tariq and other family members traveling to Frankfurt. At the airport, he narrates that Naeem, known to him and had had business dealings with him, tried to prevent Tariq from leaving. To dissuade Naeem from causing such obstruction, Minhas held him back and another, namely Naseer Ahmed Humayun. He further claims that once inside the airport, the ASF officials attempted to hinder Tariq from traveling at the behest of Naeem. However, in his cross-examination, he admits that knowledge concerning what occurred inside the airport is based on hearsay, and he did not witness the same. Further, he also admits having previously filed a complaint against Naeem with SSP Sukkur.

7. Mian Muhammad Ahmed Khan (PW-3) contends he was traveling to Frankfurt with Tariq and three other ladies. However, he has not exhibited or provided copies of his travel documents to evidence such an assertion. He narrates that Naeem prevented Tariq from entering the departure lounge, but he was desisted by Mian Muhammad Ahmed Khan (PW-3) and Naseer Ahmed Humayun. He

further states that once inside the airport, the ASF officials unsuccessfully attempted to prevent the boarding of Tariq. When they failed, Defendant No. 3 looked upon Tariq “*with frowned eyes.*”

8. ASF officials led their evidence through Muhammad Ilyas. The officials have not denied the scuffle, but their witness has firmly maintained that the ASF officials did not interfere in the scuffle between Tariq and Naeem, as it was not their prerogative. Further, in his cross, he categorically stated that the ASF officials did not hinder Tariq's travel plans.

9. Naeem's side to lead evidence was closed via Order dated 20.09.2004. He preferred an application for an opportunity to lead his evidence, but the request was denied via Order dated 20.12.2006. Accordingly, his written statement, having not been tested on the mantle of evidence, has no legal standing.¹

10. Be that as it may, Tariq must discharge his burden of proof and substantiate his claim for damages for Rs. 10,000,000/-. All the contesting parties agreed that there was a scuffle at the entrance of the departure lounge. Muzaffar Mahmood Minhas (PW-2) and Tariq (PW-1) have stated on oath that they had business dealings with Naeem. Minhas confirms that there was a dispute concerning certain payments made and claims that Naeem was over-compensated as opposed to Naeem's contention that certain sums of his money stood out against Naeem. Therefore, as per Tariq and his witnesses, this was a business deal gone awry. I do not see how that damaged the reputation of Tariq, if any. In fact, both his witnesses in their cross-examination have affirmed that they continue to hold Tariq in high regard. No other evidence was brought on record to show that Tariq suffered from mental anguish due to the incident, that his reputation was lowered due to the incident, or that damage was caused to him because of it.

11. I do not see even a cause of action accruing to Tariq, let alone any harm to his reputation. His witnesses' (PW-3) testimony that

¹ 2 PLD 1972 SC 25, Khair ul Nissa v. Mohd. Ishaque

Defendant No.3 looked upon Tariq “with frowned eyes” tells of the injury being complained of. If a mere frown or glance were to provide a cause of action, our docket would be saddled with millions of such frivolous causes.

Issue No.1.

12. Given the above record and discussion, I hold that Tariq has put forth no evidence to substantiate his claim of damage caused to him due to the scuffle at the International Departure Lounge. The scuffle between Tariq and Naeem was related to their business dealings and cannot be equated to illegal or wrongful harassment on the part of ASF personnel. Further, Naeem was outnumbered by Tariq and his relatives to have succeeded in dissuading Tariq from proceeding abroad. The only involvement of Defendants No. 3 and 4 vis-à-vis the situation was that they refused to interfere. Their refusal was in accord with their statutory mandate as provided for in section 6 of the Airport Security Force Act, 1975. It was not for them to exercise their power for and against anyone in relation to private disputes. Hence, issue no. 1 is answered in the negative.

Issue No.2

13. He and his witnesses have brought forth no evidence concerning Tariq's alleged detention. At best, they suggested that he was being desisted, and attempts were made not to allow him to board his flight. This has been categorically denied by the ASF witness. Further, it is an admitted fact that Tariq did indeed travel abroad. His reputation, too, stands intact, as per the testimony of the witnesses who were with him at that time. Hence, this issue is also answered in the negative.

Issue No.3

14. Since no cause of action has accrued to Tariq and no harm has been caused to him, no claim for damages is made.

Issue Nos.4 and 5

15. It is admitted that Tariq and Naeem had business dealings that had deteriorated over time. As per Tariq's version, it was because Naeem had been overcompensated. As per Naeem, Tariq owed him money. Even though Naeem was not examined on oath, it is only logical that an underpaid person would approach the other party instead of someone over-compensated. This admitted position lends credence to the defense case that this was merely a situation in which the parties had, at best, a heated exchange owing to the enforcement of their contractual rights and obligations in relation to each other.

Issue No.6

16. Given the foregoing, I believe the Defendants committed no act that entitles Tariq to claim damages. Accordingly, the suit stands dismissed with no order as to costs.

JUDGE