

IN THE FEDERAL SHARIAT COURT

(REVISIONAL JURISDICTION)

PRESENT

MR. JUSTICE DR. SYED MUHAMMAD ANWER

Criminal Revision No.03-I/2023

Molvi Liaqat Ali son of Allah Wadhayo Arain, resident of Ward No.16, New Town, Town and Taluka Mahrabpur, District Naushahro Feroz.

.....Petitioner

versus

1. Mohammad Ishaque son of Jamal Din Malak,
2. Imran son of Mohammad Ishaque Malak,
3. Atta Mohammad son of Siraj Din Mughal,
4. Babar son of Atta Mohammad Mughal,
All residents of Ward No.13, New Town, Town and Taluka Mahrabpur, District Naushahro Feroz.
5. The State

.....Respondents

For the Petitioner: Ch. Muhammad Shahzad, Advocate for petitioner

For the respondents: Mr. Muhammad Imran Asghar Baloch, Advocate for respondents No.1 to 4

For the State: Mr. Khadim Hussain, Additional P.G, Sindh

Date of Institution: 11.04.2023

Dates of Hearing: 13.03.2024 & 14.03.2024

Date of Judgment: 14.03.2024

JUDGMENT

DR. SYED MUHAMMAD ANWER, J: Through the instant criminal revision petition, the petitioner Molvi Liaqat Ali challenged order of the learned Additional Sessions Judge, Kandiaro, dated 24.02.2022, whereby his direct complaint of Qazf has been dismissed. Feeling aggrieved thereof, the criminal revision petition was first wrongly filed before the High Court of Sindh, Bench at Sukkur, wherefrom it was transferred to this Court on the point of jurisdiction vide order dated 03.04.2023.

2. Brief facts of the case are that the petitioner Molvi Liaqat Ali filed a criminal complaint under Section 200 Cr.P.C stating that persons of his community namely Liaquat Ali Arain, Nizamuddin Rajput, Rafique Arain, Ahmed Ali Bhutto, Abdul Rasheed Ugai and others informed him that on 24.10.2021, respondents Ishaque Malik, Imran Malik, Atta Muhammad Mughal and Babar Mughal collected a mob at Station Road, in front of Police Station Mehrabpur, and leveled allegation of Zina against him because of sectarian differences, and videos of such derogated speeches were also uploaded on social media, due to which he has been defamed and disgraced in his community (Mehrabpur Town). The complaint was adjudicated upon by the Additional Sessions Judge, Kandiaro and dismissed the same vide impugned order dated 24.02.2022. Hence, the instant criminal revision petition.

3. Learned counsel for the petitioner at the very outset contends that the case was fit for hearing on merits, but the learned Trial Court dismissed the complaint in a slipshod manner observing that the case is based on hearsay evidence and had ignored the fact that because of such serious allegations the petitioner (complainant), who is Imam Masjid in that vicinity since decades, has suffered great degradation of his reputation amongst his community, even otherwise, it has been wrongly determined by the learned Trial Court that the petitioner (complainant) has not produced evidence, although same was to be produced during the trial, therefore, accepting the instant revision petition, the case may kindly be remanded to the learned Trial Court to decide the matter on merits after giving full opportunity of hearing to the parties.

4. Conversely, learned counsel for respondents No.1 and 4 opposed the instant criminal revision petition on the grounds that there are material contradictions in the statements of witnesses, even the petitioner (complainant) himself is not the eyewitness of the alleged incident. He further argued that the petitioner (complainant) has also failed to produce the video recording of the derogatory

speeches allegedly made against him and shared at social media platforms, as such, the learned Trial Court has rightly dismissed the complaint. Similarly, Mr. Khadim Hussain, Additional Prosecutor General, Sindh also opposed the instant revision petition.

5. Arguments heard. Record perused.

6. The learned counsel for petitioner stressed that the learned Trial Court has failed to understand that it was not the stage where a material available on record is to be assessed in depth, but a *prima facie* case is to be made out to proceed further with the mater, even the burden of proof in a preliminary inquiry is quite lighter on the complainant as compared to the burden of proof on prosecution at the trial. In this regard, he has relied upon judgment passed by this Court reported as **2012 P.Cr.L.J 853 FSC (Mst. Nasreen Akhtar vs. Hasnain Mehdi & 6 others)**. In this judgment it was held:

“Burden of proof at the stage of complaint and in preliminary inquiry for the issuance of process is quite lighter on the complainant as compared to the burden of proof on prosecution at the trial, i.e., to prove the case beyond reasonable doubt. At preliminary stage, complainant is not required to discharge burden of proof, in this heavy manner.”

In another case regarding the purpose behind the preliminary proceeding under Sections 200 and 202 of the Code of Criminal Procedure, the Apex Court has decided as under:-

“The purpose behind this exercise is to find out truth or falsehood of the accusations made in the complaint to be examined on the basis of evidence to be adduced by the complainant.” **(PLD 2002 SC 687 Azmat Bibi and another vs. Asifa Riaz)**

In another case the Apex Court has decided this point in a judgment is as under:-

“The burden of proof in a preliminary inquiry for the issuance of process is quite lighter on the complainant as compared to the burden of proof on prosecution a the trial of an offence as the prosecution is to prove the case beyond reasonable doubt and at the preliminary stage the complainant is not required to discharge above heavy burden of

proof. The Court cannot overstretch the proceedings as to covert the preliminary inquiry or the averments made in the complaint to a stage of full-fledged trial for the case” **(PLD 2007 SC 9 Noor Muhammad vs. State)**

This aspect of the issue was decided by this court in a Criminal Appeal No. 206/I of 1996 in a similar matter in which Federal Shariat Court had direction that “**first** statements of the rest of the witnesses, whose name have been mentioned in the scheduled of witnesses annexed with the complaint, be recorded and **thereafter the complaint be proceeded with, in accordance with law.**”

7. Whereas, learned counsel for respondents No.1 to 4 maintained that the learned Trial Court properly appreciated the evidence available on record while passing the impugned order and there is no element of mis-reading or non-reading of the evidence.

8. However, during the course of arguments, the learned Additional Prosecutor General, Sindh conceded that the petitioner (complainant) is competent to file the instant criminal complaint on the basis of the information given to him by the eyewitnesses of the occurrence, wherein the alleged allegation of imputation of Zina was made against the petitioner (complainant). Likewise, when the learned counsel for respondents No.1 to 4 as well as the Additional Prosecutor General, Sindh was asked as to whether the petitioner (complainant) had been given due opportunity of hearing before passing of the impugned order? In response whereof, they both answered in negative, Moreover, they failed to satisfy this Court about lacuna apparent at the face of record.

9. This Court is mindful of the fact that Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973 extends the right to fair trial to every citizen of

Pakistan, which is one of the fundamental rights and cannot be disregarded at any cost. For ready reference, Article 10A of the Constitution is reproduced as under:

“10A. *For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.”*

The principles of fair trial and due process also includes the opportunity of full audience to both the parties which was not granted to the petitioner by the trial court who was the complaint in this instant case.

10. In view of above settled position, the learned Trial Court was required to investigate the veracity and sufficiency of evidence, *prima facie*, which could lead to accuracy in the proof of facts and circumstances. The next step was evidence appreciation, which could only be ensured by the learned Trial Court itself through the process, proceedings and trial in accordance with the relevant law and procedure. Apparently, the learned Trial Court has decided the matter in haste without recording of evidence and hence without extending the right of audience to the petitioner (complainant), passed the impugned order dated 24.02.2022, which suffers from illegality. Hence, the instant criminal revision petition is hereby **accepted** and the impugned order dated 24.02.2022 is **set-aside**. The case is **remanded** to the learned Trial Court to decide the same on merits within the period of six (06) months by giving the petitioner (complainant) full and complete opportunity of hearing as well as submission of his evidence (if any) and production of witnesses.

(JUSTICE DR. SYED MUHAMMAD ANWER)
JUDGE

Khalid/*

Approved for reporting.

(JUSTICE DR. SYED MUHAMMAD ANWER)
JUDGE