

Muhammad Musharaf Hassan.

The State, etc.

13.03.2024. Mr. Fazal Abbas Kamyana, Advocate for the petitioner.

Through instant criminal revision, Muhammad Musharaf Hassan, the petitioner, has prayed for setting aside the order dated 09.01.2024 passed by the learned Additional Sessions Judge, Lalian, District Chiniot, whereby the respondent No.2 was not summoned by the learned Additional Sessions Judge to face trial in a private complaint filed by the petitioner under sections 500, 501, 34 PPC against the respondents Nos.2 & 3.

2. The petitioner/complainant filed a private complaint against respondents No.2 & 3 with the allegation that respondent No.3, Abid Hassan, is the real brother of the petitioner, who filed suit for declaration titled “Abid Hassan. Vs. Muhammad Musharaf Hassan, etc.” on 17.04.2021 before the Senior Civil Judge, Chiniot, which was entrusted to Mr. Muhammad Tariq Khan, Civil Judge 1st Class, Lalian by using defamatory language against the petitioner. The learned Additional Sessions Judge, Lalian, after recording cursory evidence of the petitioner through an impugned order dated 09.01.2024, summoned respondent No.3, but respondent No.2 was not summoned. Being aggrieved by the order of learned Additional Sessions Judge, Lalian, dated 09.01.2024, the petitioner has filed the instant petition.

3. Heard. Record perused.

4. The record placed on the file reveals that respondent No.2 filed suit for a declaration titled “Abid Hassan. Vs. Muhammad Musharaf Hassan, etc.” on behalf of respondent No.3. It is an admitted fact that respondent No. 2 is a practicing advocate, and during his professional activities, he drafted a plaint on the instructions of his client. Any pleading that a counsel

draft is purely based on the client's instructions. His client verifies the truth of the contents of the pleading. The concerned advocate merely signs at the bottom of the pleading to identify the client. Respondent No. 2 is not the plaintiff of the suit for declaration, and he has acted purely based on the instructions given to him by his client. If the petitioner's allegations are accepted, then a situation would arise where no advocate can draft any pleading on the client's instructions out of fright of being leveled as a person making a defamatory statement. Respondent No. 2 cannot be trialed when a *prima facie* case is not made out to prosecute him. The learned Additional Sessions Judge, Lalian, has rightly concluded that respondent No.2 has acted merely as counsel of respondent No.3. He cannot be held responsible for any derogatory allegations levelled in the plaint of respondent No.3. There is no malice, and even otherwise respondent No. 2 has acted in good faith and would be protected by Exception 9 to Section 500 of P.P.C. In the totality of facts & circumstances, the trial Judge correctly did not summon respondent No.2 as accused to face the trial along with his other co-accused. From the contents of the petition, the petitioner did not point out any reason, much less compelling, to interfere in the impugned order. This means that the trial judge has recorded the cogent grounds. Such order, containing valid reasons, cannot be interfered with by this Court in the exercise of limited revisional jurisdiction under sections 435, 439 Cr.P.C., unless and until the same is illegal, perverse, and without jurisdiction. Since this court has observed no such patent illegality or legal infirmity, the impugned order dated 09-01-2024 deserves to be and is hereby maintained in the obtaining circumstances of the case.

5. The upshot of the above discussion is that the instant petition is without substance and is hereby **dismissed**.

(Aalia Neelum)
Judge

Approved for reporting

This order has been
dictated, pronounced,
prepared, and signed
on 13.03.2024

*Ikram**