

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE EJAZ AFZAL KHAN  
MR. JUSTICE MAQBOOL BAQAR  
MR. JUSTICE FAISAL ARAB

**CRIMINAL PETITION NO. 100 OF 2017**

(On appeal against the judgment dated 19.01.2017  
passed by the Lahore High Court, Lahore in Criminal  
Revision No. 71/2017)

Ayesha Bibi

... Petitioner

**VERSUS**

ADJ Lahore and others

... Respondents

For the Petitioner: In person

For the Respondent (2): In person

For the State: Mr. Ahmed Raza Gillani, Addl. P.G.

Date of Hearing: 15.02.2018

**JUDGMENT**

**FAISAL ARAB, J.**- When the petitioner could not get an FIR registered against the respondent No. 2 for violating her modesty, she filed a petition under Section 22A of the Code of Criminal Procedure to seek direction from the Sessions Court to the police. Her petition was however dismissed and so was the constitution petition filed by her in the High Court. She then challenged the order of the High Court before this Court and this Court directed her to approach the SHO in the first instance and record her statement. Resultantly, the Police registered an FIR bearing No. 806/2013 against respondent No. 2 under Section 376 PPC. At a later stage the petitioner also registered a criminal case against respondent No. 2 for assaulting her and taking away her

gold ornament. In retaliation to the criminal cases registered against him, respondent No.2 filed a civil suit against the petitioner for damages on the ground that he is being continuously harassed on account of criminal cases filed by the petitioner and as a result thereof he remains tense and mentally disturbed. The said suit is said to be pending.

2. Respondent No.2 considering that the two criminal cases lodged against him by the petitioner have tarnished his blameless character in the eyes of his family members, friends and colleagues, in addition to filing the civil suit also sought an FIR registered against the petitioner under the provision of Section 500 PPC alleging defamation. The concerned SHO refused to register the case on the ground that from the allegation narrated by respondent No.2 no cognizable offence is made out. Having failed in getting an FIR registered, respondent No. 2 filed a private complaint under Section 200 of the Code of Criminal Procedure read with Section 500 PPC seeking the petitioner's conviction for defaming him on account of initiation of the two criminal cases. The Sessions Court took cognizance of respondent No. 2's private complaint and issued notice to the petitioner. At that stage the petitioner moved an application under Section 265-K of the Code of Criminal Procedure on the ground that the private complaint is nothing but a counterblast to the pending criminal cases which she had lodged against respondent No.2. The court however dismissed her application vide order dated 02.12.2016. The petitioner being aggrieved by such dismissal, filed criminal revision before the High

Court which too was dismissed in *limine* vide impugned order dated 19.01.2017. Hence, this petition.

3. Petitioner, who appeared in person, contended that from the contents of the private complaint filed under Section 500 PPC, it is evident that no case warranting criminal action is made out against her which has been filed only to blackmail and harass her in retaliation to the criminal cases which she had registered against respondent No. 2 and the courts below ought to have considered this aspect of the matter and accordingly should have acquitted her under the provisions of Section 265-K of the Code of Criminal Procedure. Respondent No. 2, who also appeared in person, in reply contended, that on account of the false imputations made in the criminal cases registered against him by the petitioner has tarnished his reputation in the eyes of his family, friends and his co-workers.

4. Maintenance of peace in the society is one of the most important characteristics of public interest which requires effective policing. Effective policing depends upon flow of information about any crime and its perpetrator. Experience shows that many people though mindful of their civic duties are unwilling to put forward a complaint out of fear that it will involve them in litigation. Only when they feel assured that the administration of justice, which is a vital and foremost facet of public interest, requires that a complainant or an informant should enjoy immunity for what he states orally or in writing to the investigators as a matter of public policy so that they are confident in coming forward and giving

information to the police. No doubt this rule can be abused by a revengeful person but for such reason public interest cannot be compromised.

5. In a judgment of House of Lords in the case of Taylor Vs Director of the Serious Fraud Office [1999] 2 AC 177 while expressing his opinion on immunity, Lord Hope at page 218 states as follows:-

*'The public interest requires that those involved in such an investigation should be able to communicate freely and without being inhibited by the threat of proceedings for defamation. The requirement, therefore, should be accorded priority over the countervailing consideration that sometimes a malicious informant may be able to benefit from such a rule in circumstances which would appear to be unfair or unjust.'*

6. In Messr. Bapala & Co. v AR Kristmaswami Aiyer 1941 AIR (Mad) 26 it was held that a complaint made to a police officer by the complainant from its very nature if called upon in court to substantiate upon oath is absolutely privileged, this can be reflected in the following passage which is reproduced below:

*'Both Judges apply the principle of Watson v. M'Ewan (1905) A.C. 480, to a complaint to the police and Ghose, J., points out on page 580 that the reason for the privilege is stronger in the case of a complaint to the police than in the case of statements to a solicitor for the question whether a prosecution shall follow upon the complaint is taken out of complainant's hands by his own action.'*

*5. I am accordingly of opinion that the weight of authority is in favour of the view that a complaint to a Police Officer from its*

*very nature as a statement which the complainant is prepared later, if called upon to do so, to substantiate upon oath is absolutely privileged.'*

7. In Bira Gareri V. Dulhin Somaria 1962 AIR (Patna) 229

it was held as under:-

*'..... giving information to the police of a cognizable offence with the object of setting the law in motion for the police to investigate and institute the case to be taken in the conduct of a legal proceedings and statements made in such an information must be absolutely privileged.'*

8. The principle is further elaborated in the case of Thekkittil Gopalankutty Nair v Melepurath Sankunni Ezhuthaseah AIR 1971 Ker 280 which discusses when statements would be covered by the said immunity. It was held:-

*'...absolute immunity is not confined to statements made 'coram judice' but extends to statements made in the course of proceedings so closely related to judicial proceedings as to constitute a step in or towards such a proceedings and, therefore, proceedings forming part of the administration of justice. The privilege attaches not merely to proceedings at the trial, but to proceedings which are essentially steps in judicial proceedings, including statements in pleadings and communications passing between a solicitor and his client on the subject on which the client has retained the solicitor and which are relevant to the matter.'*

9. Likewise taking a case from English jurisdiction in Westcott V Westcott [2008] EWCA Civ 818 the Court while

considering the public importance of absolute privilege held as under:-

*'..The policy being to enable people to speak freely, without inhibition and without fear or being sued, the person in question must know at the time he speaks whether or not the immunity will attach. Because society expects that criminal activity will be reported and when reported investigated and, when appropriate, prosecuted, all those who participate in a criminal investigation are entitled to the benefit of absolute privilege in respect of the statements which they make.....The police cannot investigate a possible crime without the alleged criminal activity coming to their notice. Making an oral complaint is the first step in that process of investigation. In order to have confidence that protection will be afforded, the potential complainant must know in advance of making an approach to the police that her complaint will be immune from a direct or a flank attack....In my judgment, any inhibition on the freedom to complain will seriously erode the rigors of the criminal justice system and will be contrary to the public interest. In my judgment immunity must be given from the earliest moment that the criminal justice system becomes involved. Making of both the oral complaint and the subsequent written complaint must be absolutely privileged.'*

10. In the case of National Society For The Prevention Of Cruelty To Children v D (Married Woman) [1979] 2 All ER 993 the rule of immunity was emphasized in the following words:-

*'That the rule can operate to the advantage of the untruthful or malicious or revengeful or self-interest or even demented police informant as much as one who bring information from a high minded sense of civic duty. Experience seems to have shown that though the resulting immunity from disclosure can be*

*abused the balance of public interest lies in generally respect it.'*

11. Furthermore in the case of Lincoln V Daniels [1962] 1 Q.B. 237 at 257, it was held:-

*'The absolute privilege which covers proceedings in or before a court of justice can be divided into three categories. The first category covers all matters that are done coram judice. This extends to everything that is said in the course of proceedings by judges, parties, counsel and witnesses, and includes the contents of documents put in as evidence. The second covers everything that is done from the inception of the proceedings onwards and extends to all pleadings and other documents brought into existence for the purposes of the proceedings and starting with the writ or other document which institutes the proceedings. The third category is the most difficult of the three to define. It is based on the authority of Watson V. M' Ewan [1905] A.C. 480 in which the House of Lords held that the privilege attaching to evidence which a witness gave coram judice extended to the precognition or proof of that evidence taken by a solicitor. It is immaterial whether the proof is or is not taken in the course of proceedings.'*

12. No doubt Section 499 PPC allows a person to bring a separate case against a person who intentionally makes a defamatory statement to harm ones reputation. However, where a person is sued for defamation on account of giving a statement to the police on the basis of which a criminal investigation commences or is given during the course of a criminal investigation, the claim for defamation would certainly undermine the rule of immunity which is devised as a public policy consideration for proper administration of justice and thus the claim of defamation has to be

struck down as being abuse of the process of the court. The rule of immunity is attracted irrespective of the fact whether criminal action succeeds or not. However, at the end of the trial if the acquitted person demonstrates that the criminal action was tainted with malice i.e. the law was set in motion maliciously without a reasonable cause i.e. whatever the complainant has stated in the criminal proceedings was based on fabrication of evidence or a statement was attributed to someone which was not said or written by him then he can be sued for malicious prosecution, scope of which falls within the confines of Section 250 of the Code of the Criminal Procedure but nothing more as this section only deals with frivolous or vexatious accusations made in the course of proceedings and not with an allegation of defamation. Section 250 of the Code of Criminal Procedure thus can only be invoked when a case has been proved to be false on evidence. The case of Taylor v Director of the Serious Fraud Office [1999]2 AC 177 establishes the principle that a remedy in malicious prosecution is available if a person has been found to have maliciously initiated a criminal proceeding in the following words:-

*'Public interest requires that a remedy for malicious prosecution should remain available against those who would be entitled to the benefit of the absolute privilege but who have acted maliciously and without reasonable and probable cause during the investigation process. But that is a quite separate matter as it is the malicious abuse of process, not the making of the statement, which provides the cause of action..... It by no means follows that because a malicious complainant can be sued for malicious prosecution or prosecuted for perjury such a person should also be open, at an earlier stage, to a claim in defamation.'*



13. Hence Section 250 of the Code of Criminal Procedure cannot be invoked in consideration of the fact that intention to lodge the criminal case was to ruin the reputation of the acquitted person. What has been discussed above can be summarized thus; the action for defamation on account of initiating criminal proceedings is hit by the rule of immunity which is devised for proper administration of justice whereas the action for malicious prosecution as provided in Section 250 of the Code of Criminal Procedure is not so hit by the rule. We therefore convert this petition into appeal, allow it, set aside the impugned judgment and acquit the petitioner of the charges levelled against her by applying the provisions of Section 265-K of the Code of Criminal Procedure.

JUDGE

JUDGE

JUDGE

Islamabad, the

Announced on **15.03.2018** by Hon'ble Mr. Justice Faisal Arab

Approved For Reporting

**Khurram**