

JUDGMENT

Before Shaukat Aziz Siddiqui, J

STATE through Advocate-General of Islamabad---Petitioner

Versus

MATI ULLAH JAN and 4 others---Respondents

Criminal Original No. 40 of 2018, decided on 21st February, 2018.

SHAUKAT AZIZ SIDDIQUI, J.---Proceedings under this contempt petition has been initiated against the Respondents for hosting/telecasting a program in which code of conduct as well as restrictions of the Constitution especially under Article 19 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as 'the Constitution') have been violated.

2. Brief facts relevant for disposal of titled petition are that on 05.02.2018, Respondent No.1 hosted a program "Apna Apna Gareban" attended by Mr. Riasat Ali Azad, President District Bar Association, Islamabad and Mr. Abdul Qayyum Siddiqui, Senior Correspondent, Geo TV, in which name of undersigned was repeated time and again with mala fide intention, ulterior motive and in order to mislead the viewers. A unilateral opinion without verification was expressed and an attempt to malign the superior Courts of the country was made.

3. On 07.02.2018, notices were issued to the Respondents with the direction to appear in person before the Court to explain that why contempt of Court proceedings may not be initiated against them for hosting malicious program with stinking approach and why PEMRA may not be directed to initiate proceedings for the cancellation of the license of "Waqt News". In response thereto Respondents Nos. 1, 3, 4 and 5 appeared along with their counsel Mr. Safeer Hussain Shah, Advocate, on 12.02.2018, but matter was adjourned to 16.02.2018, as Respondent No.2, owner of the news channel, failed to put appearance. On the later date C.D. of the above said program was played in open Court, in presence of all the Respondents. On completion Respondents were asked to comment about the program, to which Respondents Nos. 2 to 5, admitting that the program included contemptuous remarks against the judiciary, showed their intention to submit unconditional apology in writing and sought an opportunity in this regard, whereas. Respondent No.1 asked for few days time in order to consult his lawyer to make any statement as to whether he intends to contest the proceedings or to tender unconditional apology, hence, on his request matter was adjourned to 19.02.2018. On the said date Respondents submitted their written stance through which an attempt to justify the proceedings of the above referred talk show was made and ingredient of unconditional apology was shady, hence, on court's concern, Respondents sought time to rephrase the same which request was allowed. On 21.02.2018 an unconditional apology was submitted by the Respondents which for ready reference is reproduced hereunder:-

"Undertaking Submitted On Behalf of the Respondents Nos.2 to 5.

Humbly Submitted:

In lieu of the humble undertaking given before this August Court, meticulously recorded vide order dated 16-02-2018 in the case titled The State v. Matiullah Jan and others bearing Criminal Original No. 40 of 2018, the undersigned (Respondents Nos. 2 to 5, namely (i) Mrs. Rameeza Majeed Nizami, Owner/CEO, Waqt News, (ii) Muhammad Ali Javed, Producer Talk Show Programme "Apna Apna Gareeban", Waqt News, (iii) Sardar Hameed, Bureau Chief, Waqt News and (iv) Zeeshan Mehmood, Associate Producer Talk Show Programme "Apna Apna Gareeban", Waqt News), hereby submit that for the kind perusal of this Honorable Court, the following with utmost humility;

1. That the Undersigned regrettably admit that proper, thorough and detailed investigation should have ensued before airing of the programme in order to present a true and accurate picture and lament that certain material factors were overlooked, consequences whereof unforeseen, and not duly comprehended, as such the Undersigned rue the omission.

2. That the Undersigned tender an unconditional apology before this August Court for the contents of the programme relating to the August Courts, which was entirely unintentional, and a deeply regrettable lapse. It was never the intention of the Undersigned in any manner, to bring the dignity and supremacy of the August Courts into question and any perception to this effect is regretted, repentantly.

3. That the Undersigned solemnly undertake to be extremely cautious in future with respect to any Programme to be aired on the Waqt News Channel and to ensure that it does not fall within the fold of the contempt of the August Courts.

4. That the Undersigned hold strong beliefs that the Sanctuaries of Justice (Courts) are a creation of the Constitution and their mainstay rests in the public confidence and it is contritely contended that the Undersigned assuredly will never commit to anything that would surmount to or be calculated as a deliberate or mala fide attack on such confidence.

5. That the Undersigned categorically and unambiguously undertake to ensure proper conduct for future, in the same profess manner that has been inherited from the respected and admired founders of this prestigious channel and newspaper.

6. That the Undersigned have nothing but the utmost respect and regard for the August Courts and the orders, directions and observations passed by the Honorable Courts during the course of hearings or with respect to final judgments or orders and can never even imagine committing contempt of the honourable Courts, in any manner, whatsoever;

7. That the influential print and electronic media group has long been cited as one having critical appearance and importance in the media houses of the country. The news correspondent network of the channel is one of the largest in the country. The sensationalism and rating-oriented approach has always been a journalistic taboo for the flag bearers of Waqt and Nawa-i-Waqt:

8. That the Undersigned most submissively present that the entire purpose of discussing the issue of illegal encroachments was to highlight the plight of those affected by actions of a few and was never meant to target or offend any profession in general or

vague terms and any perception to such an effect is lamented. since the Undersigned would never bring into ridicule the noble profession of law and the esteemed members of the Islamabad Bar Association and for this very reason the admirable President of the Bar was called upon to present and clarify the issue.

9. That the Undersigned hold the Islamabad Bar Association in high esteem and do believe that the actions of few shall not be an admonishing factor for the entire Bar Association and assure most humbly that any perception to the contrary, was not intentional.

10. That the group has been gaining acceptance nationwide as a flag-bearer of Ideology of Pakistan as well as a highly credible newspaper that always tries to report in an impartial and honest manner.

11. That the Nawa-i-Waqt Group enjoys a leading position as an opinion maker within Pakistan's independent national media, both in news as well as in views, on account of its forthright and bold approach to objective journalism and the tenets of Islam, the ideology of Pakistan, and the 'pre-1947 two-nation theory of the Indian subcontinent'. This newspaper had supported the Pakistan Movement for the creation of Pakistan. Since 1940, it has attained high credibility among the public.

12. That its core mission is to empower its readers and viewers through its content. The newspaper and television channels of the Nawa-i-Waqt group provide a unique perspective to the news.

13. The Nawa-i-Waqt Group always promoted national unity, integration and truthful reporting of the news in the supreme interest of Pakistan. It firmly believes in the independence of press and media, both in print and electronic forms.

14. That the August Courts are a symbol of magnanimity and good grace and are admired, across the board, without distinction for they are saddled with the onerous responsibility and task of imparting justice to all without any fear, favor or ill will.

15. That the August Court is humbly requested to view the present proceedings on the golden principles of forgiveness/remission and pardon, enshrined in Islam, which are the hallmarks of the Islamic system of dispensation of justice.

Statement on Behalf of the Respondent No. 1.

Humbly Submitted;

Respectfully sheweth,

In lieu of the order by this Honorable Court dated 19-02-2018 in the case titled The State v. Matiullah Jan and others bearing Criminal Original No. 40 of 2018, the Undersigned submit for the kind perusal of this Honorable Court, the following statement with utmost humility;

1. That I have been a journalist for the last over 22 years with over 20 years of experience in covering Supreme Court proceedings. I have the honour of being a Chevening Scholar with Masters in International Journalism (Broadcast) from City University, London. Before that I also did my Masters in Defense and Strategic Studies from Quaid-e-Azam University, Islamabad. During my journalistic career I have also worked for Dawn News, REUTERS and prepared and read news dispatches from BBC World Radio (Urdu) while at London. I also anchored English News for ARY London. I also had the honour of getting National Award for being the best news reporter correspondent for Pakistan Television. I also worked for prestigious think tanks and research institutes like the Institute of Strategic Studies Islamabad (ISSI) as a Research Fellow and with international media development organization Inter News as a Media Law Advisor working on PEMRA laws. Apart from my journalistic work I have the honour of being a visiting faculty for Pakistani universities and journalism schools apart from representing Pakistan on international foras in Europe and East Asia. During my over years of association with the prestigious Nawa-i -Waqat group I have anchored television shows and contributed regularly for op-ed pages on national and international issues both for English and Urdu dailies.

2. I belong to a respectable family of lawyers, teachers and army officers. My father Lt. Colonel (retired) Abdurrazzaq Khan Abbasi who was a double gold Medalist in MA Philosophy and MA Political Science from Peshawar University and was also a law graduate of Punjab University. Moreover he also did his Masters in Chinese language with distinction from Peking (now Beijing) University China for which he remained head of China desk in the ISSI for 8 years.

3. That the Undersigned regrettably admit that further investigation should have been conducted before airing the programme on the important issue of illegal occupation of football ground by lawyers to present complete picture and also actions taken by this honorable Court on the subject mater. Moreover, someone more informed than President of Islamabad District Bar Association could have been invited to the live show for the complete picture. This oversight was unintentional and consequence thereof being unforeseen is regrettable.

4. That I have firm belief and faith in the judicial system of Pakistan and always keep the judiciary in the highest esteem. I can never ever imagine or do any act to be little or lower the esteem of the honourable Courts and its judges. I have all the respect for the Chief Justice of Pakistan Justice Saqib Nisar and Honourable Justice of Islamabad High Court Justice Shaukat Aziz Siddiqui.

5. That the purpose of airing the Programme "Apna Apna Gareeban" dated 05-02-2018, with respect to the issue of encroachment on the F-8 Football ground, was entirely bona fide and was not meant in any manner as a disrespect or an attempt to malign the August Superior Courts or the Learned Sessions Courts but to only highlight the issue of illegal encroachment, in pursuance to the Suo Motu taken by the August Apex Court and was meant to remain within the fold and dictates of fair reporting;

6. That no ill will or mala fide/malicious intent was involved in airing of the

programme in question and the same was only meant to set out the facts and to present a true depiction of the factual aspects surrounding the controversy, in sheer bid to lay the requisite information in the public domain in as responsible a manner, as possible.

7. That the Undersigned solemnly undertakes to be cautious in future with respect to any Programme to be aired on the Waqt News Channel and to ensure that each and every single programme to be aired will be seen with a critical eye in order to unequivocally ensure as far as possible, that nothing is aired, which may even be perceived in any manner to fall within the fold of the Contempt of the August Courts.

8. That the Undersigned has conducted the programme dated 05-02-2018 Apna Apna Gareeban without having any mala-fide, malice, ill will or ulterior motive. The undersigned humbly states that he has never tried or has done anything to mislead the viewers or violate the norms of decency and morality. The undersigned has always been observing the code of conduct and the constitutional requirements. With a long career and journalistic struggle behind the undersigned cannot ever imagine maligning or blackmailing institutions with any motivation through professional work. The undersigned enjoys great respect dignity and honour among his fellow colleagues for struggle against the menace and evils of society.

9. That the Undersigned most submissively present that the entire purpose of discussing the issue of illegal encroachments was to highlight the plight of those affected actions of a few and was never meant to target or offend any profession in general or vague terms and any perception to such an effect is lamented, since the Undersigned would never bring into ridicule the noble profession of law and the esteemed members of the Islamabad Bar Association and for this very reason the admirable President of the Bar was called upon to present and clarify the issue. The Undersigned hold the Islamabad Bar Association in high esteem and do believe that the actions of few shall not be an admonishing factor for the entire bar association and assure most humbly that it was not intentional.

10. That my organization has been gaining acceptance nationwide as a flag-bearer of Ideology of Pakistan as well as a highly credible newspaper that always tries to report in an impartial and honest manner.

11. That the August Court is humbly requested to view the present proceedings on the touchstone of fundamental rights and principles of justice enshrined in Islam and the constitution of Pakistan. The undersigned is at the mercy of the court for magnanimous view of the averments made above with the humble prayer to discharge the notice for which the undersigned will be highly grateful."

Normally, the contemnors would have been proceeded against, on account of the aforesaid acts had they not placed themselves at the mercy of the Court by submitting unconditional apology, but since they have admitted the allegations and tendered unconditional apology, by stating that they would remain careful in future, therefore, following the ratio decidendi of the cases reported has Zulfiqar Ali v. The State (1999 SCMR 2810) and Raja Munawwar and others v. The State (1990 SCMR 215), this Court by showing grace and kindness discharged notice dated 07.02.2018, and dropped the contempt proceedings initiated against the Respondents.

4. However, moot question in the instant case is as to whether the tendering of unconditional written apology by the contemnors and placing themselves at the mercy of the Court and letting them go would be sufficient to curb the practice of intentional efforts to malign the institution of Judiciary by the electronic media, while making the cases pending before the Courts and its decisions, topic of their discussion, absolutely it is not, thus it would be worth observing that to avoid such practice first of all it is the prime responsibility of PEMRA to play its role while keeping a watchful eye on the programmes, especially the talk shows, which are being telecast on the news channels on daily basis, and instead of being awakened by the Courts or any other institute they themselves are required to act in accordance with their rules and regulations to avoid violation of terms and conditions contained in the PEMRA Ordinance, 2002 and Electronic Media (Programmes and Advertisement), Code of Conduct, 2015 so as to make sure that violation of provisions of Article 19 of the Constitution of Islamic Republic of Pakistan has not been made by any of the news channels.

5. It is also not out of place to observe that now a days in the name of freedom of speech guaranteed by the Constitution, certain violations of the restrictions imposed by the organic law of the country itself are violated which in no way can be termed to be authorized by the Article 19 of the Constitution. For convenience, sale Article 19 is reproduced hereunder:-

"19. Freedom of speech, etc. Every citizen shall have the right to freedom of speech and expression and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the cry of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence."

Perusal of the Article above shows that so far the constitutional protection with regard to liberty of speech is concerned, suffice it to say that no doubt, Article 19 of the Constitution guaranteed the freedom of speech, but it also imposes certain limitations. The Article *ibid* does not provide license to any person to make personal attempt on an individual or an institution to disgrace his dignity and reputation. The Print and Electronic Media are in no way vested with unfettered liberty and impunity to publish and telecast any material which is prejudicial to the interest of any person or institute or harm or cause damage to reputation, honour and prestige of a person or an institution. Any broadcasting Agency is not free to telecast anything for promotion of the company or corporation or on the instruction of some quarter or according to its desire, but its freedom is subject to a moral code of conduct and such reasonable restrictions as may be legitimately imposed under the law in public interest and glory of Islam. Reference may usefully be made to the case law reported as "Sheikh Muhammad Rashid v. Majid Nizami Editor in Chief, the Nation and Nawa-e-Waqat, Lahore and another" (PLD 2002 Supreme Court 514). Even in case of fair comments, the TV channels must make sure that the comments are based upon facts, true and certified.

6. In addition to that role of the State through their relevant institutions, to control such practices, is also of vital importance as State is not supposed to remain oblivious of such violation/invasions and could not detract from its obligation to regulate the right to speech when it came in conflict with the right and dignity of the others. Constitution, though secured the right to free speech, but had not left the same unchecked and had provided for reasonable restriction as postulated under Article 19 *ibid*. State had a compelling interest in regulating the right to speech

when it came in conflict with the rights of other individuals, or other societal interest. In a civilized and democratic society, restrictions and duties co-existed in order to protect and preserve the right to speech. It was inevitable to maintain equilibrium by placing reasonable restriction on freedom of expression. Unless the restriction struck a proper balance between the freedom of expression guaranteed by Article 19 of the Constitution and the social control permitted thereby, it must be held to lack the attributes of reasonableness. Government should, therefore, strike a just and reasonable balance between the need for ensuring the people's right of freedom of speech and expression on the one hand and the need to impose social control on the business of publication and broadcasting. This Court in the case of Faiz Ahmed Cheema v. Federation of Pakistan, through M/o Interior and others reported as (PLJ 2017 Islamabad 162) has already held that freedom of assembly, movement and expression is right of every citizen guaranteed by the organic law of the country i.e. Constitution of Islamic Republic of Pakistan as enshrined under Part-II, Chapter I thereof, but these rights are not unbridled and are subject to such reasonable restrictions as may be legitimately imposed under the law.

7. In view of above, it can safely be concluded that term freedom of speech is not so free that any person is entitled for freedom of speech by compromising the dignity and respect of the Constitutional Institutions of the country.

8. These are the reasons for my short order dated 21.02.2018, which is reproduced hereinbelow:-

"For detailed reasons to be recorded later on, unconditional apology tendered by the respondents hereby accepted, consequently, by showing grace and kindness, notice dated 07.02.2018 is discharged and contempt proceedings initiated against the respondents are hereby dropped.

2. It is expected that as per undertaking rendered by the respondents, they shall remain within the limits prescribed by the organic law of the country i.e. Constitution of the Islamic Republic of Pakistan and other laws of the land."

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