

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Crl. Misc. NO. 1296-B of 2021.

Masood ur Rahman Abbasi.

VERSUS

The State, etc

Petitioner by : Syed Adnan Abbas Shah, Advocate.

Respondents by : Syed Muhammad Tayyab, Dy. Attorney General.
Mr Ayaz, Deputy Director, FIA.
Mr Inam, A.D/I.O. FIA with record.
Mr M. Sohail Sajid, complainant in person.

Date of Hearing : 16-12-2021.

Athar Minallah, C.J.- The petitioner, Masood ur Rahman Abbasi son of Abdul Majeed Abbasi (hereinafter referred to as the "**Petitioner**"), was arrested in June 2021 pursuant to the registration of a criminal case by the Federal Investigation Agency (hereinafter referred to as the "**Agency**") i.e. FIR. No. 44, dated 30.06.2021 (hereinafter referred to as the "**FIR**"). The FIR was registered under sections 500, 505, 506, 109 of Pakistan Penal Code, 1860 (hereinafter referred to as the "**PPC**") and sections 10, 11, 20 of the Prevention of Electronic Crimes Act 2016 (hereinafter referred to as the "**Act of 2016**") at the Police Station Cyber Crime Circle, FIA, Islamabad. The complaint was filed by respondent no.2, namely Muhammad Sohail Sajid, who is a private citizen.

2. Perusal of the FIR shows that the case was registered against the Petitioner in the context of footage of a portion of a recorded speech, which had been uploaded and circulated on the social media. It appears from the transcript of the speech, reproduced in the FIR, that the Petitioner had criticised the Hon'ble Chief Justice of Pakistan using strong and undesirable language. Prima facie, some portions appear to be defamatory while the language used was indeed not temperate. However, it is not the case of the Agency that the Petitioner was involved in uploading the footage of the recorded speech on social media platforms. It is also not the case of the Agency that the Petitioner had intentionally and publically exhibited, displayed or transmitted any information through any information system, knowing it to be false or to harm the reputation of the complainant i.e. respondent no.2. Likewise, the latter has also not alleged that he had been defamed or his reputation was harmed in any manner.

3. Mr Ayaz, Deputy Director and the Investigating Officer of the case have appeared. They were asked to justify how, in the facts and circumstances of the case in hand, the offences mentioned in the FIR were attracted. They were not able to give any plausible explanation in this regard, so much so that they even conceded that some offences were not attracted. They were also not able to satisfy the Court regarding the locus standi of the complainant i.e. respondent no.2 to file a complaint on behalf of the Hon'ble Chief Justice of Pakistan. There is

nothing on record to show that the Petitioner may have said something against respondent no. 2 to justify registration of a criminal case under person specific offences relating to defamation or causing harm to a natural person's reputation. Prima facie, the offences mentioned in the FIR are not attracted in the facts and circumstances of the case in hand. However, since this is a bail matter, therefore, it would be appropriate not to make any further observations regarding the legality of the FIR. Nonetheless, it is definitely a case of further inquiry. It cannot be ruled out that the Agency may have been influenced by utterances made against the holder of the highest judicial officer of the country because the registration of the case, prima facie, appears to be an abuse of the offences under the Act of 2016.

4. There is yet another crucial factor in such cases i.e. the onerous duty of the courts to ensure the right to due process and a fair trial of a person who has allegedly committed an offence in relation to a judicial officer. The allegations in the case in hand are in the context of objectionable and strong language used by the Petitioner against the holder of the highest judicial office in the country i.e. the Hon'ble Chief Justice of Pakistan. This Court, in the case titled "*Muhammad Shafique Butt and another vs. The State, etc.*" [2015 YLR 877], was confronted with a bail matter wherein the accused were alleged to have publically displayed banners with defamatory material against an Hon'ble sitting judge of the august Supreme Court. The relevant portions of the judgment are reproduced as follows;

"Any perception of impartiality or bias, even if not a reality, would certainly prejudice the right to a free trial of any accused. Confidence in the court and assurance of a fair trial is a prerequisite for the dispensation of justice, and pivotal for creating public confidence and trust in the judiciary. Independence of Judiciary entails that the trial or adjudication is through Courts which are competent, independent and impartial. The duty of the Courts to maintain this public confidence and independence can only be achieved when it not only ensures a fair trial but also creates an environment and perception of a fair trial.

"The Courts are always faced with a daunting challenge to be seen as conducting a fair trial, where the criminal charge involves allegations against an accused which related to a sitting Hon'ble Member of the Bench. Not only actual bias but the perception of bias would also raise questions regarding the impartiality of the Court and thus prejudice a fair trial. Bias is the overriding factor for ascertaining a Court's impartiality. Questions regarding bias may be raised, if the Court makes it evident through its conduct, observations, opinions or otherwise that it has a stake in the proceedings. It would be perceived or appear that the bias will ultimately weigh while concluding the trial, therefore raising questions

about impartiality. With regard to criminal charges, it is an established law that a person is presumed to be innocent until proved guilty and the guilt can be proved only on the touchstone of proof beyond a shadow of doubt."

"The Courts are conscious that public confidence and trust solely depends on the assurance of a fair trial. This onerous task becomes far greater when confronted with a situation when the trial involves an accused charged with allegations against an Honourable Judge. It is probably the wisdom of the legislature that no specific offence falling within the prohibitory clause has been included in the PPC; rather, under a special law i.e. Contempt of Court Ordinance, 2003 it has been exclusively left to the courts to convict/punish an alleged contemnor for maligning, ridiculing or bringing into disrepute the courts or a judge. The bar of conduct has also been raised to such an extent for a judge that no perception could be created of bias or impartiality. Bias or impartiality is a disqualification for any person holding the revered position of a judge who is bestowed with the power to adjudicate disputes, protecting lives and also taking lives by

awarding death sentences. Amongst all the codes of conduct that have been prescribed, probably the one most illustrative and placing a stringent bar is mentioned in the Hedaya, a compilation of the opinions of Shariah by Imam Abu Hanifa and other Mujtahideens, the relevant portion being as follows:

"He must not give judgment at a time when his understanding is not perfectly clear and unbiased- The Kazeer must not give judgment when he is hungry or thirsty, because such situations diminish the intellect and understanding of the person affected by them. Neither must he give judgment when he is in a passion, or when he has filled his stomach with food, because the Prophet SAW has said "Let not a magistrate decide between disputants when he is angry or full".

Such a degree of conduct is solely for the purposes of ensuring a fair trial and due process. Bias, therefore, even if it is in favour of one's own institution, vitiates the proceedings, as the trial is no longer fair and the Judge appears to be "acting as a

Judge in his/her own cause". In order to assure the present accused or any other litigant, it is imperative to demonstrate that the trial is not only fair but ought to be seen as fair. The judges of District Courts must have the confidence and belief that each one of them, while dispensing justice, has the same status as any other Honourable Judge of the Supreme Court or a High Court. It is their duty to ensure fair trial without being influenced or swayed by the persons involved in the cause before them. While presiding a Court they must be conscious that they are not subordinate to anyone. Independence of judiciary is measured by the conduct of the presiding judge in guaranteeing the right to fair trial and giving decisions without fear or favour."

5. It is noted that the judicial branch of the state has a pivotal role in the society. A judge is not immune from being criticised. The judiciary, because of the nature of functions assigned to it under the Constitution and the lofty position it enjoys in the society, is open to criticism. The independence of a judge is not affected in any manner because of public criticism. But unthoughtful criticism, using strong and intemperate language or utterances that are defamatory in nature, ought to be avoided. An independent judge, despite the harshness or tone of the criticism, cannot be provoked to react in such a manner that results in his or her becoming the subject matter of a criminal case because of the profound consequences in the

context of due process and fair trial. Magnanimity, empathy and compassion, even otherwise, are the essential attributes of an impartial and independent judge. The principles highlighted in the aforementioned judgment of the Court manifest that extension of the concession of bail becomes essential to ensure the right to due process and fair trial of an accused when the latter is alleged to have committed an offence, directly or indirectly, involving the interest of a judicial officer. This itself would be a legitimate ground unless there are compelling reasons to refuse the grant of bail.

6. The above are the reasons for the short order, dated 16.12.2021, which is reproduced as follows.-

"For reasons to be recorded later, the instant petition is allowed and the petitioner is admitted to bail, subject to furnishing bail bonds in the sum of Rs.5,000/- (Rupees five thousand only), with one surety in the like amount to the satisfaction of the learned trial court."

Needless to mention that the observations recorded in the instant petition are based on tentative assessment, which will obviously not prejudice the proceedings before the learned trial Court.

(CHIEF JUSTICE)

Asad K/*

Approved for reporting.