

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT, MINGORA BENCH**  
**(DAR-UL-QAZA), SWAT**  
**(Judicial Department)**

**Cr.A No. 278-M/2019**

***Muhammad Saeed and others v. Haidar Ali and others***

Present: Mr. Khurshid Ali Walikhel, Advocate for  
the appellant.

Syed Sultanat Khan, Advocate for the  
respondent.

Date of hearing: 10.11.2022

**JUDGMENT**

**Dr. Khurshid Iqbal, J.-**

1. This appeal is directed against the order dated 06.12.2018, by which the learned Additional Sessions Judge/ Izafi Zilla Qazi-VI, Swat, dismissed the complaint of Muhammad Saeed, Jamil Hassan and Muhammad Israr, the appellants, u/s. 500, PPC, filed against Haidar Ali and three others, the respondents herein. Leave to appeal was granted by this Court vide order dated 18.06.2019.

2. Facts shortly are that the respondents in representative capacity of residents of village Karakar, Mian Kalay, submitted an application against the appellants for legal action against them. The main allegation of their application was that the appellants have become a threat to the life and property of the residents of the village and that they have been interfering in their rights of drinking and irrigation

water, the enjoyment of their ancestral property in the village and *Shamilat* alongwith protected forest area. In paragraphs-2 and 3 of their application, they alleged that the appellants are highly influential, enemy of the State and belong to land and *qabza mafia* group. The appellants, then, moved a private complaint against the respondents u/s. 500, PPC, in which they alleged that the accusation leveled against them by the respondents amounts to the offence of defamation as defined in section 499, PPC, and punishable u/s. 500, PPC. The learned Additional Sessions Judge/Izafi Zilla Qazi-VI, Swat, dismissed the complaint as not maintainable, vide his order passed on 12.02.2016. The appellants, then, moved an appeal before this Court, which was allowed and the case remanded to the learned trial Court for further proceedings according to law. The learned trial Court forwarded the complaint to the local police, who conducted an inquiry and submitted its report. Further proceedings with the matter, copies of the relevant papers were provided to the respondents u/s. 265-C, Cr.P.C. and charge was framed against them, to which they pleaded not guilty and claimed trial. Thereafter, the respondents submitted an application for their acquittal u/s. 265-K, Cr.P.C. The


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application was allowed and the respondents were acquitted vide the impugned order dated 06.12.2018.

3. The main ground of this appeal is that whether the respondents have committed the offence in hand and that the learned trial Court has passed the acquittal order against the law and facts.

4. I have heard arguments of Mr. Khurshid Ali Walikhel, learned counsel for the appellants and Syed Sultanat Khan, learned counsel for the respondents and perused the record.

5. The offence of defamation is defined in section 499, PPC, as under:

 "499. Defamation.--- Whoever by words either spoken or intended to be read, or by sign or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said except in the cases hereinafter excepted, to defame that person.

[...]

Eight Exception.--- Accusation preferred in good faith to authorized person. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

Ninth Exception.--- Imputation made in good faith to person for protection of his or other's interests. It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the

interest of the person making it, or of any other person, or for the public good.”

Following are the ingredients of defamation:

- i. “The making or publishing of an imputation concerning any person;
- ii. Such imputation must have been made:
  - a) By words either spoken or intended to be read; or
  - b) By signs; or
  - c) By visible representations, and
- iii. Such imputations must have been made with the intention of harming or knowing, or having reason to believe, that it will harm the reputation of the person concerning, whom it is made.”

The main essential of the offence of defamation is *mens rea* or intention. The learned trial Court dismissed the complaint on the basis of ninth exception to section 499, PPC.



6. Coming to the facts of the case, the record reveals that while there are certain allegations against the appellants to the effect that they are enemy of the State and belong to land and *qabza mafia* group, however, the main allegation relates to dispute over interference by the appellants in the rights of the residents of the locality in respect of drinking water, irrigation and the use of *Shamilat* land of the village including protected forest. In the second round, the learned trial Court forwarded the complaint to the local police, which submitted its report on 28.03.2018. The

inquiry report reflects that in fact the dispute between the parties is over the use of drinking water, irrigation and *Shamilat* land. The parties have registered criminal cases against each other, some of which are still pending adjudication. The following remarks of the inquiry report are worth perusal:

"فریقین کے مابین پانی اور آرائشی کے تنازع کافی عرصہ سے چلا آ رہا ہے۔ اور مختلف عدالتوں میں کئی سول مقدمات زیر سماعت ہیں۔ اور دونوں فریقین کے مابین پانی کے پائپ لائن کو کاٹنے کے سلسلے میں 2017 میں کراس فوجداری مقدمات درج رجسٹر ہو چکے ہیں۔ مستغیث فریق محمد سعید کے خلاف مقدمہ علت نمبر 507 مورخہ 05.05.2017 جرم PPC 430/427/147/149 تھانہ غالیگے جبکہ فریق مخالف حیدر علی، بخت انسر، محمد قیوم، بحر کرم کے خلاف مقدمہ علت نمبر 506 مورخہ 05.05.2017 جرم PPC 430/427/147/149 تھانہ غالیگے درج رجسٹر ہو چکے ہیں جو عدالت جناب جوڈیشل مجسٹریٹ صاحب دوم سوات میں زیر سماعت ہیں۔ مزید اندریں بارے مقامی لوگوں سے معلومات کی گئی جس میں سے چند معززین علاقہ کے بیانات قلمبند کر کے شامل کاروائی ہے جن سے یہ بات عیاں ہوئی ہے کہ فریقین کے مابین کافی عرصہ سے تنازعات چلے آ رہے ہیں اور علاقے کے مشران کے بیانات بھی قلمبند کئے گئے ہیں۔ فریق مخالف کے درخواست نمبری Diary No. 12215 مورخہ 28.07.2015 اور اسسٹنٹ کمشنر صاحب بریکوٹ کے چھٹی انگریزی نمبری 2455-GB-2AC, Barikot مورخہ 19.08.2015 کے نقولات شامل کاروائی کی گئی۔ مستغیث فریق محمد سعید، جمیل حسن، محمد اسرار کے نسبت سابقہ ریکارڈ تھانہ غالیگے حاصل کر کے شامل کاروائی ہے۔"

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7. It appears that the respondents actually wanted to press into service the factual aspect of the controversy between them and the appellants in their application addressed to the Deputy Commissioner, Swat. In other words, as the inquiry report notes their intention of harming the appellants could not be gathered from the contents of the application of the respondents. It appears that the respondents made imputation for protection of their own interest and the

application being on behalf of the residents of the village, the imputation appears to have been made for the public good. Moreover, the appellants failed to show as to what action, particularly in respect of the imputation has been initiated against them by the Deputy Commissioner, Swat. In short, the imputations whatsoever were leveled in connection with the dispute over irrigation and drinking water and use of *Shamilat* land. According to eight exception to section 499, PPC, an accusation made in good faith against any person to lawful authorities does not constitute defamation. Similarly, as noted above, an accusation in good faith for protection of the interest of the person making it or of any other person or for the public good also do not constitute the offence of defamation. The issues of irrigation and drinking water and the use of *Shamilat* land including the protected forest, pertain to the duties of the Deputy Commissioner to whom the application was made. The contents of the application categorically reflect that the imputations were not independent, rather, the main issue between the parties was over the enjoyment of drinking and irrigation water and the use of *Shamilat* land. Moreover, there is nothing on the record that the application was put in the public domain through publication.



8. For the foregoing reasons, I conclude that the learned trial Court has rightly dismissed the complaint and acquitted the respondents u/s. 265-K, Cr. P.C. A bare perusal of the provision contained in section 265-K, Cr. P.C. would show that the trial Court has the power to acquit an accused at any stage even without recording of evidence. For the sake of guidance, reference may be made to the recent case law. In the case of Abbas Haider Naqvi and another vs. Federation Of Pakistan and others reported as **PLD 2022 Supreme Court 562**, the Hon'ble apex Court held:

“11. First of all, we would like to state that there can be no cavil to the rule of practice and propriety, referred to by the High Court, that when the trial is near completion, the fate of the case should not ordinarily be decided under Section 265-K of the Cr.P.C. There may however be such exceptional circumstances which may justify departure from the said rule, as there is hardly any rule of practice which does not admit exception(s). Even otherwise, Section 265-K of the Cr.P.C. provides that the trial court can make an order of acquittal at any stage of the case, and such stage may be an initial stage of the case on taking cognizance before recording of the prosecution evidence, or it may be a later stage of the case after recording of some evidence of the prosecution. No absolute bar, in derogation of the law, can therefore be put on the statutory power of the trial court to entertain an application under Section 265-K, Cr.P.C. and decide upon its merits at a later stage of the trial if the exceptional circumstances of the case call for so doing to prevent the abuse of the process of court or to secure the ends of

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justice. The High Court has, however, failed to appreciate that the said rule has no application to a ground pleaded by an accused for his acquittal under Section 265-K of the Cr.P.C., which does not require appraisal of the prosecution evidence recorded during trial, such as, the ground pleaded by the Petitioners in the present case.

12. Ordinarily, an accused, who invokes Section 265-K5 Cr.P.C. for his acquittal, pleads that there is no probability of his being convicted of any offence in the case on any of the following four grounds: (i) that even if the facts alleged by the prosecution are taken to be true on their face value, they do not make out/constitute the commission of any offence by the accused;<sup>6</sup> (ii) that there is no evidence or incriminating material on record of the case in support of the commission of the alleged offence by the accused;<sup>7</sup> (iii) that the evidence or incriminating material collected during investigation in support of the commission of the alleged offence and proposed to be produced during trial is insufficient and, even if recorded, will not sustain conviction of the accused, of any offence in the case;<sup>8</sup> and (iv) that the prosecution evidence so far recorded does not make out a case for conviction of the accused, of any offence in the case and the remaining prosecution evidence, even if recorded, will not improve the prosecution case against the accused in any manner.”

This Court in State through Advocate General, Khyber Pakhtunkhwa, Peshawar v. Gulfam Hussain and another (2018 YLR 1223),

observed as under:

“Recording of entire evidence is not necessary for acquittal of an accused rather at any stage the Court while exercising powers under section 265-K, Cr. P.C., can acquit the accused if there is no probability of his conviction in any offence. Mere naming of respondents on the basis of suspicion and rumors, is not



sufficient to establish their guilt, particularly, when the same has no corroboration from ocular or circumstantial evidence.”

9. In light of the above discussion, the instant appeal is found to be meritless. It is, thus, dismissed.

Announced

Dt: 10.11.2022

  
JUDGE

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