

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Muhammad Ali Mazhar

**Civil Petition No. 1431/2022**

*(Against the judgment dated 09.03.2022  
of the Lahore High Court, Lahore passed  
in Writ Petition No. 24397/21)*

*Meera Shafi and others.*

... *Petitioner*

**Versus**

*Federation of Pakistan through Secretary M/o  
Law and Justice, Islamabad and others.*

... *Respondents*

For the Petitioners: Mr. Muhammad Saqib Jillani, ASC.

For Respondent No. 5: Mr. Ali Sibtain Fazli, Sr. ASC.

Date of Hearing: 08.06.2022.

**ORDER**

**Qazi Faez Isa, J.** The learned Mr. Muhammad Saqib Jillani, representing the petitioners, says a tweet was posted on the social networking website, Twitter on 19 April 2018 by petitioner 1 alleging sexual harassment and naming respondent 5 as the perpetrator. Subsequently, she filed a complaint under the Punjab Protection against Harassment of Women at the Workplace Act, 2012 (**'the Act'**). However, the complaint was dismissed by the Ombudsperson on the ground of jurisdiction, appeal against such order was preferred before the designated appellate authority (the Governor of the Province) who upheld the order of the Ombudsperson. Thereafter, the petitioner 1 invoked the constitutional jurisdiction of the High Court but her writ petition was also dismissed, and she filed Civil Petition for Leave to Appeal before this Court, and leave to appeal was granted on 11 January 2021 (Civil Appeal No. 76 of 2021, which is pending adjudication).

2. The respondent 5 sought damages on account of his alleged defamation by filing a suit on 23 June 2018, which we are informed is pending adjudication. The learned Mr. Jillani submits that to pressurize and harass the witnesses of the petitioner 1 in the pending suit filed

against her the respondent 5 lodged FIR No. 72/20 on 25 September 2020 at the FIA Cyber Crime Wing, Lahore under section 20 of the Prevention of Electronic Crimes Act, 2016 ('PECA') against eight persons, including the petitioners and her witnesses; all of whom, we are told, have obtained bail and are facing the ordeal of a criminal trial. And, by such tactics the petitioner 1's complaint under the Act and her defence in the suit, that what she had tweeted was true, have been jeopardized. He submits that section 20 of PECA violates Article 19 of the Constitution of the Islamic Republic of Pakistan ('**the Constitution**') which enshrines *freedom of speech and expression* as a Fundamental Right, with *defamation* not stated as one of the exceptions therein, and though the learned Judge of the High Court specifically noted this (in paragraph 23 of the impugned judgment) he still held that section 20 of PECA did not violate Article 19 of the Constitution.

3. The learned senior counsel Mr. Ali Sibtain Fazli has filed *caveat* on behalf of the respondent 5. Learned counsel objects to the filing of this petition on the ground that the petitioners had the remedy of filing an intra court appeal ('ICA') against the impugned judgment, which they did not avail.

4. In response to our query, both the learned counsel say that to the best of their knowledge this is the first and only case before the Supreme Court with regard to a challenge made to PECA on the ground that criminalising defamation is unconstitutional. Leave to appeal is granted to consider, amongst others, the following:

- i. Whether section 20 of PECA, and any other provision thereof, violate Article 19 of the Constitution?
- ii. Whether the defence of truth is undermined by section 20 of PECA by criminalising defamation?
- iii. Whether the criminalisation of defamation negates, dilutes, and/or suppresses the Fundamental Right of *freedom of speech and expression*?
- iv. Whether an anomalous situation is created if both a civil case, claiming damages on account of defamation, and a criminal prosecution for defamation proceed, and/or do so

simultaneously, and whether this would undermine the Fundamental Right of a *fair trial and due process* enshrined in Article 10A of the Constitution?

- v. Whether by invoking PECA against victims of sexual harassment, and victims of other crimes, amounts to silencing them, and perpetuates injustice?
- vi. Whether section 20 of PECA deters the wronged from accusing the wrongdoer and infringes the permission specifically granted to the wronged, that, '*Allah does not like that evil should be uttered in public except by one who is wronged*' (Al-Qur'an, *surah An-Nisa* (4) verse 148)?
- vii. Whether the petitioners could have recourse to this Court without having filed an ICA against the impugned judgment?
- viii. Whether there is an exception to the above (not filing an ICA) when Fundamental Rights require enforcement, and when Fundamental Rights of the general public may also be affected, and, if so, whether the constitutionality of a law, which allegedly violates Fundamental Rights, should not be determined at the earliest?

5. Notice be issued to the respondents. Learned senior ASC Mr. Ali Sibtain Fazli waives notice on behalf of respondent 5. Appeal stage paper-books be prepared on the basis of the available record; however, parties may augment them with the record of the said cases. Notice be also issued to the Attorney-General for Pakistan in terms of Order XXVII-A of the Code of Civil Procedure, 1908 since the constitutionality of a Federal Law, that is, the Prevention of Electronic Crimes Act, 2016, has been challenged on the ground that criminalising defamation violates Articles 19 and 10A of the Constitution, and in respect of the aforesaid questions. Notice be also issued to the Advocate-General, Punjab since the said cases are pending in the province of Punjab.

CMA No. 3523 of 2022: The learned counsel for the applicants/petitioners submits that if the criminal case registered against them proceeds, and concludes, it may further jeopardize/influence the outcome of the complaint filed under the Act and the pending defamation suit. Under the circumstances, the proceedings in the case arising out of FIR No. 72/20

dated 25 September 2020, registered at the FIA Cyber Crime Wing, Lahore  
are stayed till the next date of hearing.

Judge

Judge

Islamabad:  
08.06.2022

Approved for Reporting  
(M. Tauseef)