

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

Civil Miscellaneous Appeal No. 16 of 2023

Asma Shirazi

versus

Council of Complaints through Secretary, and others.

Appellant by: Ms. Irum Shujah, Advocate.
Respondents by: Mr. Shahryar Nawaz Malik,
Advocate for respondents No.1
& 2.
Mr. Sajjad Hussain, Law
Officer, PEMRA.
Respondent No.3, Ex-Parte.

Date of Decision: 27.11.2023

MOHSIN AKHTAR KAYANI, J: Through this civil

miscellaneous appeal the appellant Ms. Asma Shirazi has assailed order dated 21.12.2022, whereby, complaint filed by the appellant has been dismissed by PEMRA.

2. Brief facts referred in the instant appeal are that appellant / complainant is aggrieved with the news published / circulated on ARY news headlines at 09:00 p.m. on 19.01.2022 and at 03:00 a.m., 04:00 a.m., 05:00 a.m., 06:00 a.m., 07:00 a.m., 08:00 a.m. and 11:00 a.m. on 20.01.2022 (collectively the "News Bulletin") aired on ARY News (the "TV Channel"), which is owned by ARY Digital Communications Limited (the "Licensee") / respondent No.3. As per the appellant on 19.01.2022, the S.M.C. No.5/2021 titled "*Suo Motu action regarding highhandedness of journalists by FIA action pursuant to FIR No.127/2021 and FIR No.128/2021 lodged at Cyber Crime Wing Lahore*" was fixed before a three member bench of the Supreme

Court, which pertains to allegations against FIA for “*lodging false and unfounded cases against reputable senior journalists*”. During the proceedings, the Attorney General of Pakistan mentioned in verbal submission that certain social media platforms were being used to malign private citizens. He also pointed out to a compliance report submitted by FIA which mentioned a particular Vlog that attributed *Jinnat* to the successful nomination of Prime Minister of Azad Kashmir and to the first lady. The Attorney General of Pakistan also mentioned that there is a difference between criticizing public figures and private individuals and the remarks contained in the Vlog were quite unfortunate. In response, one of the judges expressed that the remark in that Vlog was indeed nonsensical and defamation laws need to be strengthened because if such incident had taken place in England, then hefty fine would have been imposed. As per stance of the appellant when the news item was circulated / broadcasted for the first time on TV channel relating to Supreme Court proceedings on the same date, there was no mention of appellant, however, when the same news was broadcasted later then the facts were deliberately concocted to make the viewers’ believe that the appellant’s journalism was criticized during the proceedings. In this regard appellant has drawn attention of this Court towards the screenshots appended in this case, which are also part of the pleadings before Council of Complaint / PEMRA in which ARY news channel is giving ticker that “*عرب نے جنات والی بات گھنٹی اور غیر اخلاقی*”

کے ساتھ، alongwith the picture / photograph of the appellant. The complaint has been filed to the Council of Complaint PEMRA against the news for broadcasting false and defamatory contents during the headline dated 19.01.2022, under Rule 8 of PEMRA (Council of Complaints) Rule, 2010 read with section 26 of PEMRA Ordinance, 2002, PEMRA Code of Conduct, 2015, whereby, a proper reply was filed by the respondent side and Council of Complaint after hearing both the parties passed the following order:

“After providing several opportunities to the complainant and respondent before the Council in its various meetings, relying upon the arguments made by the legal counsels of the parties at length, the Council deliberated upon the matter in detail. The Council was of the view that the complainant could not refer to an thus prove violation of any clause of the PEMRA’s Electronic Media (Programmes and Advertisements) Code of Conduct, 2015 in the instant matter. While concluding the above discussion all the members of the Council were of the view that no legal point had been made by the complainant in the instant matter as proper forum for defamation was available to the complainant so matter in hand was dismissed being non maintainable.”

3. Learned counsel for the appellant contends that impugned order is non-speaking which is within the contemplations of Section 24-A of the General Clauses Act, 1897; that no justification or reasoning was mentioned in the impugned order which is liable to be set-aside; that the respondent No.2 approved the recommendations of respondent No.1 and has thus failed to independently apply its mind as per Rule of the Pakistan Electronic

Media Regulatory Authority (Council of Complaints) Rules, 2020 which stipulates the respondent No.2 to record its reasons in writing for approving the recommendations proposed by respondent No.1; that Council of Complaint could not suggest to the appellant to approach the proper forum for defamation instead of dealing with the matter at hand itself, which is liable to be dismissed; that the grave violations of code of conduct have been overlooked by respondents No.1 and 2, especially, with reference to Clause 3(1)(i) of the code; that it is obligation of the respondent licensee channel to take active steps to ensure that content being aired is correct and true; that respondent No.3 disseminated news with gross negligence and malicious intent, whereas, onus is on the broadcasted news channels that the news is correct and true.

4. Conversely, learned counsel for PEMRA contends that PEMRA Authority has rightly adjudicated upon the matter which requires recording of evidence and calculation of damages on the basis of defamation if appellant succeeded to prove this aspect; that respondent Nos.3 has taken a specific stance and as such nothing illegal has been aired; that that the PEMRA authority could not decide the quantification of any news which has not been established to be false and in this regard the complaint is not maintainable.

5. Notices were directed to be issued to respondent No.3, however, despite service of notice, no one appeared on behalf of

respondent No.3, therefore, vide order dated 12.06.2023, respondent No.3 has already been proceeded against ex-parte.

6. Arguments heard, record perused.

7. Perusal of record reveals that entire controversy revolves around placing of photograph of appellant alongwith news bulletin by ARY news which was aired by ARY Digital Communication (Pvt.) Ltd / respondent No.3 on 19.01.2022 and 20.01.2022 at different time frames, in which Supreme Court of Pakistan in Suo Moto case gave certain observations which were not having any nexus with appellant as per her point of view but her picture was placed alongwith the news bulletin which gives an impression that the Supreme Court had observed the remarks against the appellant. As per stance of the appellant she has no nexus or having any relationship with that news content which was aired by placing picture of the appellant with following remarks:

صحافیوں کھر اسماں کرنے پراز خود نوٹس کیس	
سپریم کورٹ نے جنات والی بات گھٹیا تریدی	
Photograph of the appellant	جنات والی بات گھٹیا اور غیر اخلاقی ہے، حج کے ریمارکس
---- میں کوئی ایسا کہتا تو گھر بچ کر بھی مر مانہ ادا کرنا پڑتا، ریمارکس	

The other news contents are as under:

صحافیوں کھر اسماں کرنے پراز خود نوٹس کیس	
سپریم کورٹ نے جنات والی بات گھٹیا تریدی	
Photograph of the appellant	جس خاتون کی پبلک نہیں، ان کی تضحیک کی گئی، دلائل

8. The appellant filed complaint against ARY News for broadcasting false and defamatory content of the headlines dated 19.01.2022 and 20.01.2022, with the claim that the Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, have clearly been violated, whereby, in terms of Sub Rule (1) of Rule 8, "*any person aggrieved by any aspect of a program or advertisement may lodge a complaint before the Council or the authorized officer, in whose jurisdiction that programme of advertisement is viewed, provided that where a complaint is received by an authorized officer, the authorized officer shall place the same before the Council for consideration and further proceedings*". In terms of Sub Rule (3) of Rule 8, after serving of summons on the operator or a person, the licensee or the person has to submit his explanation, thereafter, Council of Complaint may recommend appropriate action to authority.

9. Now question arises that which complaints are entertainable? The same has to be considered in terms of section 26 of the PEMRA Ordinance, 2002, wherein Sub Section (2) of Section 26, the legislature has used the word "*against any aspects of programmers broadcast*", therefore, this aspect has to be read in conjunction with the notification issued by Government of Pakistan, Ministry of Information, Broadcasting and National Heritage, dated 19.08.2015, whereby, the Electronic Media Code of Conduct, 2015, was notified, where certain fundamental principles were highlighted, where following content is restricted to be aired:

- a. *is against the Islamic values, ideology of Pakistan or founding fathers of the nation including Quaid-e-Azam and Dr. Allama Muhammad Iqbal;*
- b. *incites or condones dislodgement of democratic setup against the command of the constitution of Pakistan, provided that discussions on improvement of democracy shall constitute a fair comment.*
- c. *includes a call to arms against the Federation of Pakistan or anything against the integrity, security and defense of Pakistan;*
- d. *passes derogatory remarks about any religion, sect, community or uses visuals or words contemptuous of religious sects and ethnic groups or which promote communal and sectarian attitude or disharmony;*
- e. *contains anything indecent, obscene or pornographic.*
- f. *contains abusive comment that incites hatred and contempt against any individual or group of persons, on the basis of race, caste, nationality, ethnic or linguistic origin, color, religion, sect, gender, age, mental or physical disability;*
- g. *is in violation of copyrights or other related property rights as protected under any law for the time being in force;*
- h. *is likely to incite, aid, abet, glamorize or justify violence, commission of any crime, terror or leads to serious public disorder;*
- i. *is known to be false; or there exist sufficient reasons to believe that the same may be false beyond a reasonable doubt;*
- j. *contains aspersions against the judiciary or armed forces of Pakistan:*

- k. amounts to intimidation, blackmail or false incrimination of any person;*
- l. is defamatory as defined in the law for the time being in force; or*
- m. depicts behavior such as smoking, alcohol consumption, narcotics and drug abuse as glamorous or desirable:
Provided that where showing of smoking, alcohol consumption, narcotics and drug use is necessary for dramatic or educational purposes, a clear warning as to injurious effects of the same shall also be shown simultaneously.*

10. I have attended the above fundamental principles which also reflect that false news which is based upon intimidation, blackmailing or false incrimination of any person and defamatory contents were not allowed to be on aired. Similarly, in terms of section 4, of the Electronic Media Code of Conduct, 2015, it is obligation of the licensee to ensure that information on aired must be in an accurate and fair manner, even the programme on sub-judice matters may be aired in informative manner and shall be handled objectively. No news shall be based upon opinion, analysis or commentary, and it is obligation of the licensee that contents based on extract of court proceedings shall be fair and correct, however, in absence of these fundamental principles and restrictions if any news item has been published or on aired or distributed which cause aspersion or create impression that person / complainant has been exposed to unjust criticism, false allegations, incrimination which resulted into ridiculing personality or effecting

in lowering his / her esteem in the estimation of others, complaint is entertainable and Council of Complaint should recommend proposed action including but not limited to imposition of fine and tender of apology by the licensee, or revocation of license or suspension of licence of the licensee.

11. In the present case all facts are admitted in which the court proceedings have been aired by respondent No.3 / ARY Digital Communications (Pvt) Ltd. on 19.01.2022 and 20.01.2022 on multiple times alongwith the photograph of the appellant. From viewers point of view it appears that remarks flashed in the news contents are relating to the appellant which affects her reputation, especially, when the same has nothing to do with the appellant. On the other hand Council of Complaint while receiving the reply of respondent No.3 / ARY Digital Communication Pvt. Ltd. considered the reply which was as under:

“ 6. That the contents of Para 3.1 are a matter of record hence need no reply. Para's 3.2 to 3.4 are incorrect and thus vehemently denied. The allegation of the Complainant that the News was aired to mislead the viewers into believing that the judges of the Supreme Court passed adverse remarks about the Complainant is unwarranted as the Channel only aired the news pertaining to the court proceedings and the remarks passed by the honorable Court in respect of the social media trolling which was conducted against the Complainant. The Complainant has failed to draw the line of difference between the news that was actually aired. Moreover, the purpose to display the photo of the complainant alongside the remarks of the Honorable

Supreme Court, was to give the viewers an impression of the fact that the Complainant is apparently the prime victim of the “journalist harassment”, and furthermore, the fundamental cause leading to the court proceedings was her Article, upon the publication of which the social media users started trolling her. Furthermore, the Complainant has deliberately referred to the contents of social media to prove her claim against the Channel. It is submitted, that at the outset, the Channel could not be held responsible for the opinions of others. Moreover, the Complainant has deliberately filed the Complaint on wrong forum to malign the reputation of the Channel. It is an admitted principle of law, that PEMRA and/or COC does not the jurisdiction to entertain a Complaint pertaining to an allegation of Defamation, which is governed by a special law nor adjudicate on the Complaint the bases of which relates to social media.”

While placing above mentioned reply in juxtaposition with allegations this Court is of the view that the defence rendered by the respondent side particularly in paragraph No.6, above that “complainant is apparently the prime victim of the ‘journalist harassment’” is not reflected from news content aired on 19.01.2022.

12. The respondent No.3 / ARY Digital Communications Pvt. Ltd. has not brought anything on record before Council of Complaint as to why and under what circumstances the appellant be called as victim of the “journalist harassment”, neither any such proof has been placed to that effect to substantiate the specific plea narrated by respondent No.3 in terms of having special knowledge under Article-122 of Qanun-e-Shahadat Order, 1984, therefore, in

absence of any material evidence this Court is of the view that respondent No.3 was unable to demonstrate their defence in unequivocal terms. In common prudence if we go through the news content and the photograph aired by respondent No.3 it make no sense or justiciable impression as to why photograph of appellant has been placed alongwith remarks/ticker in the news repeatedly flashed on the particular day.

13. The Council of Complaint in their order and reasons declared the complaint as non-maintainable with observation that appellant may resort to other legal remedies provided under defamation law and this aspect was confirmed by the PEMRA Authority, but *prima facie* it reflects that the Council of Complaint as well as PEMRA have not adhered to Section 37 of the PEMRA Ordinance, 2002, where the provisions of the Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being enforced which has overriding effect. The Defamation Ordinance, 2002, if considered in juxtaposition with PEMRA Ordinance, 2002, there is no cavil that PEMRA Ordinance, 2002, is earlier in time and also contains overriding clause, hence, when two special laws which required to be interpreted, it is duty of the court to also consider other factors including object, purpose and policy of both statutes as well as intention of legislature in order to determine which of the two special laws prevail and is applicable as held in **PLD 2018 [Islamabad] 372 (Shifa Internatinoal Hospitals Ltd. Vs.**

Mst. Hajira Bibi). From plain reading of PERMA Ordinance, 2002, it appears that same has been notified to regulate the electronic media in Pakistan to improve the standards of information, education and entertainment and to ensure accountability, transparency and good governance by optimizing the free flow of information. In Defamation Ordinance, 2002, it deals with defamation and for matters connected there with or incidental thereto, though, defamation has separately been explained in Section 3, which means *“any wrongful act or publication or circulation of a false statement or representation made orally or in written or visual form which injures the reputation of a person, tends to lower him in the estimation of others or tends to reduce him to ridicule, unjust criticism, dislike, contempt or hatred”*. In Section 5 of the Defamation Ordinance, 2002, the defences have been provided where matter commented on is fair and in the public interest and is an expression of opinion and not an assertion of fact and was published in good faith, even, it has not been demonstrated from the record that respondent No.3 have followed the minimum standards of due diligence, however, at this stage this Court is of the view that Defamation Ordinance, 2002, has not been repelled or barred for the purposes of remedies available to the petitioner nor the impugned order has any bearing or effect on a separate legal proceedings in the Defamation Ordinance, 2002, if initiated by the appellant against the respondent No.3 as the same also provided the concept of damages as well as tendering of

apology if acceptable to the appellant. This Court is also mindful of the fact that every citizen shall have right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by the law as defined in Article-19 of the Constitution of Islamic Republic of Pakistan, 1973, but that does not mean any news item has been aired in such a manner that appellant would be exposed to unjust criticism for no fault rather put to trial by media. On the other hand right of individual to be dealt with in accordance with the law who shall enjoy protection of law and to be treated in accordance with the law is inalienable right of every citizen, and therefore, the Code of Conduct is the most relevant document in terms of news and current affairs program where licensee shall ensure that programme of sub-judice matter may be aired in informative manner and shall be handed subjectively and any content based on extract from court proceedings shall be fair and correct, therefore, this Court is of the view that editorial side and the airing committee of the licensee / respondent No.3 is not vigilant enough that picture of the appellant was wrongly placed alongwith the news content, when she has nothing to do with that particular news item on aired by respondent No.3 / ARY Digital Communication Pvt. Ltd. All these factors were not appreciated by the Council of Complaint as well as by the PEMRA on the guidelines highlighted in PLD 2019 [SC] 1 in suo

moto case regarding discussion in TV Talk Show with regard to a sub-judice matter.

14. At this stage I have confronted learned counsel for the appellant, as to whether this Court can award damages or allow the complaint accordingly as per the prayer, whereby, she contends that the inaction on part of PEMRA is visibly seen on record and no justification has been rendered on the conduct of respondent No.3. In such scenario, the appellant is entitled for damages, however, quantification is not the job of this Court to assess damages when nothing has been suggested on record, therefore, this appeal is allowed and this Court deems appropriate that nominal damages of Rs.50,000/- be awarded in favour of appellant alongwith the direction to the respondent No.3 to broadcast an apology for their action of news dated 19.01.2022 and 20.01.2022, for clarity of general public, however, appellant still has the right to approach the competent court to seek damages under defamation law if so advised.

(MOHSIN AKHTAR KAYANI)
JUDGE

A.Waheed.