JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Regular First Appeal No. 78 / 2017
Syed Asad Ali Shah
versus
The Chief Editor, daily Jang and others.

Appellant by:	Mr. Awais Khan, Advocate, proxy counsel.
Respondents by:	Ex-parte.
Assisted by:	Salman Abbas (Law Clerk).
Date of Decision:	20.11.2023.

MOHSIN AKHTAR KAYANI, J: Through this regular first appeal, the appellant Syed Asad Ali Shah has assailed judgment and decree dated 05.04.2017, passed by the learned Additional District Judge-West, Islamabad, whereby, his suit for Defamation/ Damages of Rs.9.9 million under Defamation Ordinance, 2002, was dismissed.

2. Brief facts referred in the instant appeal are that the appellant is presently working as a Deputy Director Pakistan Housing Authority (PHA) Foundation, and is a holder of degree of "Masters of Network & Telecommunication Management" from Devry University, United States of America. The respondents, on 01.04.2014 published a news item in Jang newspaper Rawalpindi, alleging therein that NAB after inquiring into the genuineness of the appellant's degree found the same to be forged and proposed action against the appellant. The said news item was widely

circulated, including within the establishment of the PHA Foundation, and among friends and family members of the appellant. In response to the same, the appellant served a legal notice upon the respondent on 27.05.2014, under section 8 of the Defamation Ordinance, 2002 demanding the respondents to tender an apology acceptable to the appellant and to publish/circulate/communicate/state the same by issuing the rejoinder in apology in the same manner or opt the legal consequences. Thereafter, with the lapse of the requisite time i.e. 14 days, the appellant filed a suit for defamation seeking damages in the tune of Rs.9.9 million. The respondents contested the suit by way of filing written statement, whereby, it was acknowledged that Mr. Atif Shirazi/ respondent No.3, in the performance of his professional duties as a reporter in Daily Jang, published the said news item on the basis of communication between National Accountability Bureau (NAB), HEC and PHA Foundation. The respondent contended that the news item was published in good faith in public interest without any malice or personal grudge against the appellant, and therefore the matter reported is covered under qualified privilege as provided in Defamation Ordinance, 2002. The trial court while considering pleadings of the parties framed ten issues and recorded evidence of PW.1/Abdul Qadir, Assistant Director (H.R) PHA, PW.2 / Muhammad S/o Jehangir Khan. The appellant appeared as PW.3, and produced documentary evidence as Exh.P.1 to Exh.P.15. On the other hand

Syed Atif Abbas Sherazi appeared as DW.1 and produced certain photocopies of the documents. The trial court after giving findings on the material issue No.10 dismissed the appellant's suit through the impugned judgment and decree dated 05-04-2017, hence, this appeal.

3. Learned counsel for the appellant contends that respondent No.1 / Chief Editor, Daily Jang, neither appeared to defend himself nor produced any defence in the court; that the trial court in para no.14 of the impugned judgment while reproducing the defamatory content, left the more serious and significant portion of the defamatory content unaddressed and without adjudication; that the appellant has proved his case through cogent evidence and he is entitled for decree of damages against the respondents for such defamation.

4. The respondents have not put appearance before this Court, despite earlier notice in Daily Jang, Rawalpindi & Karachi, by way of publication through substituted mode, but the same was not published, thereafter, notices were published in Daily Pakistan Urdu, which have been placed on record, hence, respondents are hereby proceeded ex-parte.

5. Arguments heard, record perused.

6. Perusal of record reveals that the entire suit revolves around publication of the news item in Daily Jang, published by the respondents, that was placed on record as Exh.P.9, wherein forged degrees of three PHA Foundation officials were highlighted and

proposed action was referred by NAB Authorities. In the news item, it was also highlighted that the appellant was directed to produce his verified degree, but he remained unable to do so. PW.1/Abdul Qadir, Assistant Director (H.R) PHA, Ministry of Housing & Works appeared on behalf of appellant by producing record of their department in which it was acknowledged that a letter was issued to the HEC for verification of the degree of appellant, whereby in reply to the same, another letter (Exh.P.1) dated 24.02.2014 was issued mentioning therein that the equivalence certificate of the appellant was attested, and the appellant's degree of "Master of Networks and Communication Management" had been verified. As per evidence of PW.1, no letter was ever received in PHA Foundation qua forged degree of the appellant nor was any enquiry ordered. During his cross-examination, however, PW.1 acknowledged that the department had initiated the process of verification of degrees pursuant to the orders of NAB. PW.1 was unable to produce various correspondence made between NAB, HEC and PHA Foundation.

7. The appellant, in support of his claim, further produced PW.2 / Muhammad Ali, as a witness of reading the news item published in Daily Jang, who confirmed that the name of the appellant had been mentioned therein. As per his stance, he verified this news from the appellant at his office, which was found to be false and had made the appellant extremely upset. Subsequently, PW.2 upon his business visit to Tehsil

Tandlianwala, heard conversations among students of madrassa discussing the said news item. PW.2 also claimed that the appellant belongs to (پیر گھرانہ), and his father was an honest and reputable person, having served as a DPO in various districts. The appellant's degree was also produced as Exh.P.6 and Exh.P.7, and his name was referred in شجرہ نسب as Exh.P.4. During the course of cross-examination, PW.2 acknowledged that he is a devotee of the appellant and he has not verified the degrees / qualifications of the appellants.

8. The appellant appeared himself as PW.3, and recorded his evidence. He claimed that he is posted as a Deputy Director in PHA Foundation, and is also serving as the President of PHA Officers' Association. In order to substantiate this claim, he produced his office card as Exh.P.5. Moreover, the appellant contends that he belongs from a respectable and religious family, with his father retiring as an honest and reputable police officer, and his great grandfather revered as a religious preacher with numerous devotees, both within and outside of Pakistan. As per his stance, he studied in Devry University and obtained degree of "Master of Network and Communication Management" Exh.P.6 which was verified by HEC on 24.02.2014, through letters dated Exh.P.07 and Exh.P.08. He also produced the news item as Exh.P.9, and claimed that it was false and fabricated, published against him in order to ridicule him in the eyes of general public. Due to this,

the appellant contends that he has suffered a loss of reputation, and consequentially, he has to clarify his position and provide explanations to family members and friends. Resultantly, he served a legal notice upon the respondents to tender an apology, but they have not published any rejoinder. Acknowledgment of the legal notice was placed on record as Exh.P.10 to Exh.P.12, and delivery receipts as Exh.P.13 to Exh.P.15. As a result, the appellant has prayed for damages in the tune of 9.9 million rupees.

9. During his cross-examination, the appellant admitted that he never issued any notice to Duniya news. It was also admitted that appellant was hired by PHA Foundation in the year 2012 as Deputy Director. The appellant completed his B.A education from University of Punjab, in Pakistan and his name was mentioned in the degree without his parentage, address, caste, registration number, serial number or roll number. The appellant admitted traveling to the United States of America in the year 1998 and was admitted in Devry University in the year 2001 and 2002, but he had not attached any proof of deposit of fee slip along with the suit. The appellant acknowledged that he had not produced any correspondence of HEC with the Devry University. It was also admitted that in the letter Mark-D/1 issued by HEC to the PHA Foundation mentioned the name of the appellant along with a list of the employees of PHA Foundation.

10. We have also gone through the evidence of DW.1 / Syed Atif Abbas Shirazi, who in his affirmative evidence emphasized the following:

"متنازعہ خبر مورخہ 01.04.2014 کو میں نے ہی فائل کیا تھا جو کہ نیب کے ذرائع سے حاصل کی گئی تھی اور اس متنازعہ خبر میں مدعی کے متعلق صرف ایک جملہ (اسی طرح ڈپٹی ڈائریکٹر انفارمیشن ٹیکنالوجی اسد علی شاہ نے امریکہ کی کسی یونیورسٹی کی ڈگری کی فوٹو کاپی پیش کی بار بار طلب کرنے کے باوجود اپنی اصلی ڈگری پیش نہیں کر سکے) ایک جملہ تھا جب میں نے یہ خبر فائل کی تو مدعی کی ڈگری (انڈر آبجیکشن) زیر اعتراض تھی اور یہ مارک D.1 اینڈ D.1/1 اینڈ مارک D.2 اینڈ D.2/1 کی بنیاد پر فائل کی تھی۔"

This aspect was further qualified with the following stance:

"ہائیر ایجوکیشن کمیشن اپنی پالیسی کے مطابق غیر ملکی جامعات کی ڈگری کی تصدیق نہ کر سکتا ہے۔"

During the course of cross-examination, he acknowledged that one of the office of Daily Jang is situated in Jang Building No.40, Jinnah Avenue, Blue Area, Islamabad, but claimed that his office was situated in Jang Building Murree Road, Rawalpindi. He also admitted that:

"یہ درست ہے کہ علم آنے کے بعد بھی دوران دعویٰ نوٹس کا جواب نہ دیا ہے اور نہ ہی مدعی سے معذرت کی ہے اور نہ ہی اخبار میں REJOINDER شائع کیا ہے اور از خود کہا کہ خبر درست تھی اس لیئے ایسا نہ کیا۔
سوال۔ کیا آپ کے قبضے میں کوئی ایسا دستاویز ہے جس سے مدعی کی ڈگری جعلی قرار دی جا سکے۔
جواب۔ میں نے خبر میں یہ لکھا تھا کی مدعی نے اپنی اصل ڈگری پیش نہیں کی اور محکمہ نیب کی جانب سے بار بار طلب کرنے کے باوجود فوٹو کاپی پیش کی اور یہ خبر اور میرے پاس کوئی ایسا ڈاکومنٹس نہ ہے۔ نیب کی خط و کتابت میرے پاس موجود ہے جس کی بنا پر یہ خبر فائل کی گئی تھی وہ Mark.D/09 ہے اور Mark.D/2 ہے۔ یہ درست ہے کہ Mark.D/2، PHA فائونڈیشن کا جاری کردہ ڈاکومنٹس ہے نیب کا نہ ہے۔"

Similarly, he also acknowledged that

"یہ درست ہے کہ Mark.D/1 اور Mark.D/2 نیب کی طرف سے جاری کردہ نہ ہے۔"

At last he admitted that:

"یہ درست ہے کہ یکم اپریل 2014 سے لیکر آج تک میں نے نیب کی طرف سے کاروائی کرنے کی سفارش اور ڈگریوں کو جعلی قرار دینے کا کوئی لیٹر عدالت میں پیش نہ کیا ہے۔ یہ درست ہے کہ مذکورہ خبر مورخہ یکم اپریل

2014 سے مدعی کی شہرت اور ساکھ کو نقصان پہنچا ہے۔ یہ درست ہے کہ خبر کی تصدیق کے لیئے مدعی سے نہ پوچھا تھا۔ یہ درست ہے کی ڈگری میں نے یونیورسٹی سے کنفرم نہیں کی تھی اور بشمول HEC اور PHA فائونڈیشن سے تصدیق نہ کی تھی۔"

11. While considering this overwhelming evidence, acknowledgments and admissions made by DW.1 in his cross-examination, it leaves behind nothing in favor of the respondents, especially when it was admitted that the allegations mentioned in the news item were not verified by DW.01 himself, rather he never intended to get it verified from the concerned university or from HEC and PHA Foundation or from the appellant in any manner. The respondent has been unable to prove his special knowledge in terms of Article 122 of Qanun-e-Shahadat Order, 1984, especially in view of the fact that he has unable to produce any official from NAB to confirm the allegation which formed the basis of the news item. Moreover, the respondent has taken the stance that he is not originator of the news item in terms of section 2 (dd) of the Defamation Ordinance, 2002, however he was unable to produce any witness to verify this fact or to prove that the originator of the news item was someone else.

12. No doubt, "publisher" means a commercial publisher in terms of section 2 (f) of the Defamation Ordinance, 2002 and "publication" includes the communication of words in a newspaper article (Exh.P.9) under section 2 (f) of the Ordinance. "Defamation" has been defined in section 3 as "*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" which shall be actionable. Moreover, section 3 provides that "*any false written, documentary or visual statement or representation made either by ordinary form or expression or by electronic or other modern means or devices that amounts to defamation shall be actionable as libel*". Therefore, applying the provisions of the Ordinance in the instant case, it is safe to conclude that the false written documentary representation made in the newspaper item (Exh.P.9), which was largely circulated and injured the reputation of the appellant, is actionable as libel, and it satisfies the test laid down in **2013 CLC 2284 Lahore *(Faqir Muhammad Vs Muhammad Shakil)***.

13. The respondent side has contended that their case falls within the defence provided under section 5 of the Defamation Ordinance, 2002, especially, with reference to making a fair comment in public interest, and is an expression of opinion and not an assertion of fact, and was published in good faith or the alleged statement was true. We have gone through the said defence, but surprisingly the correctness of the news item Exh.P.9 and its contents have not been substantiated by any of the evidence of the respondents, especially, in view of the evidence of PW.1/Abdul Qadir, who after verification of the record of HR department of PHA Foundation, confirmed that the degree of the appellant was found to be genuine, duly issued by Devry

University, and verified by the HEC through their letter Exh.P.1. Hence, the entire claim of the respondent crumbles down.

14. The respondent side has taken another plea contending that HEC does not have jurisdiction to verify foreign degrees, but in this regard nothing was placed on record. The material placed on record, especially the verification and confirmation of attestation by HEC vide its letter dated 24-02-2014 (Exh.P.1.) proves otherwise. We have also examined Mark.D.1 and Mark.D.2, which are mere photocopies of correspondence between PHA Foundation with HEC and NAB. Mark.D.1. is a simple letter of communication dated 05.08.2013, from HEC to the Director Admin PHA Foundation, requiring original documents of certain employees for the purposes of further verification of their degrees. The said letter does not mention anything relating to the allegation of forged degree of the appellant. Similarly, Mark.D.2, is also a letter of correspondence dated 05.12.2013, from PHA Foundation to the Additional Director (Staff) for the Director General NAB, wherein the Director Administration of PHA Foundation claimed that degrees of some of the officials were not attested/verified and previous verification was considered to be doubtful. Both these letters are to be considered in light of the status of these marked documents, under the Qanun-e-Shahadat Order, 1984, which provides certain prescribed circumstances for the admissibility of secondary evidence. In this scenario, the onus was upon the respondent to establish if the original documents were destroyed,

lost or misplaced, in which case the Court was to resort to secondary mode of evidence in order to reach to a just conclusion of the case as held in **2017 CLC [Azad Kashmir] 1221** ***(Muhammad Zaman Tabbasum Vs. Mehmood)*** and **2010 CLC [Balochistan] 1434** ***(Jalil Khan Dostani Vs. Dawood Ahmed)***. Failure on part of the respondent to prove the same would render the secondary evidence inadmissible as provided in **PLD 2021 Supreme Court 715 (*Mst. Akhtar Sultana Vs. Major Retd. Muzaffar Khan Malik)***. In the present case, the onus was upon respondent to prove his plea by calling record of NAB authorities or PHA Foundation or HEC, and failure to do the same would result in adverse inference to be drawn in terms of Article 129(g) of Qanun-e-Shahadat Order, 1984, for withholding best evidence. Moreover, the practice of mere publication of news without confronting the originator of said news or the concerned person to prove the fact that he had so reported therein, has been deprecated by the Hon'ble Supreme Court of Pakistan in the case reported as **2021 SCMR 873** ***(State Vs. Ahmed Omer sheikh)***. It was the duty of the respondent newspaper as well as respondent DW.1 or the concerned editor in chief to verify contents of the news item and confront the same to the appellant prior to its publication, so that point of view of appellant is placed on record, which is a minimum requirement in terms of Artice-140, of Qanun-e-Shahadat Order, 1984.

15. Keeping in view the above position, this Court is of the view that the appellant's reputation has been damaged by the news item

which was not verified through any source. Moreover, it is not the case of the respondent that NAB has conducted any enquiry and recorded any adverse findings against the appellant regarding his degree. Therefore, the conduct of the respondent is proved to be defamatory, who has not fulfilled the minimum requirement as well as obligation to discharge his burden for verification of the factual aspect of the allegation or to extend an opportunity to the appellant for taking his view, and in view of this, the defence raised by the respondent has also not been demonstrated. The trial court has not considered all these factors and recorded its findings without dilating upon the details and admissions made by DW.1 in his testimony. In this scenario, the findings of the trial Court to the extent that the news item is not defamatory rather reflected true state of affairs is not correct. The news item caused aspersion, even though no direct word was used as forged degree or جعلی ڈگری in the news item, however the allegations in the news item and the context in which it was placed have in fact maligned the reputation of the appellant in eyes of other people, including among his colleagues, family members, friends, and general public, which is actionable. The address of the respondent office is not denied which is also situated in Islamabad. Hence, we are of the view that the appellant is entitled for decree of damages, especially, when his entire reputation has been put at stake in general public due to

the conduct of the respondents, and has been exposed to unjust humiliation.

16. At last the concept of quantification of damages has to be seen. The appellant has prayed for damages in the tune of Rs. 9.9 million, as compensation for the loss of his reputation, causing humiliation and mental agony to him. As already discussed above, this Court finds that on account of the defamatory publication by the respondents, the appellant has suffered mental agony and humiliation and is entitled for damages, however this Court cannot pass a decree for the amount which the appellant desires, especially when the appellant has not proved each item of loss through evidence placed on record. Therefore, in such scenario, this Court has to carefully weigh the quantum of damages for such loss. For this purpose, a distinction has to be drawn between general damages and special damages. General damages normally pertain to agony suffered through defamatory statements, and in such cases, generally no yardstick can be applied for ascertaining the exact amount of monetary loss sustained. Thus, in awarding general damages, the courts are to apply rule of thumb, according to which discretion rests within the court to calculate such compensation keeping in view the attending circumstances of each case as held in **PLD 2021 [SC] 564** ***(Munawar Ahmed, Chief Editor Daily Sama Vs. Muhammad Ashraf)***, **PLD 2012 [SC] 80** ***(Abdul Majeed Khan Vs. Tawseen Abdul Haleem)*** and **1997 CLC 546** ***(Qazi Dost Muhammad Vs. Malik Dost Muhammad).*** On the other hand,

in case of special damages, the person claiming the same has to prove each item of loss and substantiate the same with reference to the evidence brought on record. The purpose behind is to place the injured person in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened or the event of loss to his reputation had not occurred. For the purposes of quantification of damages, this Court has to consider the mandate provided under section 9, of the Defamation Ordinance, 2002, which provides as hereunder:

"***9. Remedies.*** *Where defamation shall be proved to have been occurred, the court may pass order directing the defendant to tender an apology, if acceptable to the plaintiff, and publish the same in similar manner and with the same prominence as the defamatory statement made and pay reasonable compensatory damages as general damages with a minimum of Rs.50,000/- and in addition thereto, any special damage incurred that is proved by the plaintiff to the satisfaction of the court.*

Provided that in the case of originator the minimum compensatory damages as general damages shall be three hundred thousand rupees."

17. In the present case, as per the yardsticks laid down in above mentioned cases by the Supreme Court of Pakistan, whereby, loss of special damages have not been demonstrated in any reference, therefore, by applying rule of thumb, this Court is left with no other option but to award general damages, especially, when apparent defamation has been demonstrated from the record, hence, instant appeal is **ALLOWED,** impugned judgment and

decree is hereby **SET-ASIDE** and suit of the appellant is decreed to the extent of Rs.500,000/- (five hundred thousand rupees) as general damages with direction to the respondents to publish apology in the newspaper in similar manner in which the news item Exh.P.9 was published within a period of 30 days.

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open court on : 04.12.2023

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Approved for reporting

A.Waheed.