

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P No.419-2023

Shandana Gulzar Khan
vs.
The State and others.

Petitioner by: Mr. Sher Afzal Khan Marwat and Ch. Usama Tariq, Advocates.

Respondents by: Ms. Saadia Shehzadi, State Counsel.
Ashiq Shah, Inspector, P.S Aabpara,
Islamabad.

Date of Hearing: 14.03.2023.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioner has prayed for quashing of F.I.R No.01/2023, dated 01.02.2023 under Sections 124-A/153A/505 PPC, registered at Women Police Station, Islamabad.

2. Brief facts necessary for the decision of this case are that instant F.I.R has been lodged on the complaint of Abdul Hadi, a Magistrate, Islamabad stating therein that on 31.01.2023 at about 07:11 p.m, he was in his office and in the meanwhile on Dawn News Channel in the program of Iftikhar Sherazi anchorperson, the PTI leader namely Shandana Gulzar had made the following statement:-

"میں پشاور کی ہوں یہ میرا شہر ہے میں اس کو چور چور ہوتے ہوئے دیکھا ہے جنرل مشرف کے ٹائم پر یہ پاکستان کی بد قسمتی ہے کہ جب حر نیل اپنے آپ کھڑا سمجھنے لگتا ہے مز عوں سے بھی بڑا ہو جاتا ہے تو KPK کی سلامی آجاتی ہے بھائی آپ کے پاس اتنے بڑے شہر ہیں وہاں پر طالبانوں کو بھیجیں آپ لاہور بھیجیں پنجاب میں اتنی چھاؤنیاں ہیں ملاٹیا آپ کا دشمن ہے بارڈر پر کچھ بھی ہو سکتا ہے تو سارا

KPK میں ہے مطلب نہ تو سمجھ نہیں آتی اچھا چلیں محب طالبان افغانا۔ ان پر کرتی تو سمجھ آتی کہ ان کے بقول تو افغانا۔ ان ہمارا دشمن ہے تو انہوں نے یہ تو نہیں کیا ہے محب طالبان پاکستان کو پالتا کون ہے ان کو پیسے کون دیتا ہے اور وہ بم بلبس کریں یا نہ کریں وہ تو کیدیٹ لیس گے مجھے بتائیں ساڑھے آٹھ سال خان صلب کی حکومت تھی KPK میں ملک ڈرون نہیں ہوتی بلکہ بم بلاس نہیں ہوتا اور خان صلب ساڑھے آٹھ مہینے میں کہاں چلے گئے کیا کہتے ہیں پہلے مالاکنڈ ڈوریشن سوات میں ہوا پھر ابھی پشاور میں ہوا مزید دوران انٹرویو ملک اور سوال کے جواب میں کہا کہ میں محمود خان صلب کو چیف آف آرمی سٹاف KP لگا دیتے ہیں اور تیمور جھگڑا کو ISI کا چیف لگا دیتے ہیں KPK ماضی میں نہ کیوں کے اب ماضی کی بار کر کے نہ ماری حکومت تو نہیں ہے وہاں پردس بیس دن سے اوسب۔ تجھب۔

خان صلب کی فیڈرل حکومت چلی گئی تو طالبان بھی واپس آگئے اور دھماکے بھی واپس آگئے ہم کہتے تو KPK میں امن تھا تو یہ مجھے بتائیں کہ ساڑھے آٹھ مہینے میں سینٹر میں کون آیا ہے جو میرے صوبے میں دھماکے کروا رہے ہیں کہ وائے نہ پنجاب میں کریں سندھ میں کریں آپ کو ہمیشہ بلوچستان اور KPK نظر آتا ہے جس پر اینکر پرسن نے کہا کہ شندانہ صاحبہ آپ جیسی سینئر پولیٹیشنر سے ہم اس قسم کی اسٹیٹمنٹ تو خیر توقع نہیں کرتے کہ باقی ملک کے اندر دھماکے ہوتے ہیں تو ٹھیک ہے لیکن KPK کے اندر نہیں ہونے چاہئیں جس پر شندانہ گلزار نے کہا کہ میں نے یہ نہیں کہا کہ میں اس کا اس کہہ رہی ہوں کہ صرف KPK میں کیوں ہوتے ہیں ذرا اس پر تو سوچیں شہباز شریف کی اسٹیٹمنٹ ہے نیویارک ٹائمز میں کے طالبانوں سے بھیک مانگتا ہوں کے پلیز میرے صوبے دھماکے نہ کریں اور جہاں کرنے ہیں کریں انہوں نے تو سندھ بلوچستان اور KPK میں کو تو پانی میں ڈال دیا ہے تو آپ مجھے بتائیں کہ ایسے بزدل لوگ ملتے ہیں پاکستان کو؟"

3. As per stance of the complainant, in the program of Iftikhar Sherazi, Anchorperson at Dawn News Channel, where petitioner was guest and gave the interview, who is a senior leader of Pakistan Tehreeq e Insaf, and her interview amounts to instigate and incite the public at large and to create terror for the purposes of disharmony among the different sections of society and also created feelings of

enmity, hatred or ill-will between different religious or racial or linguistic or regional groups or castes, even the words used by the petitioner destroyed the tranquility of the State and to increase the feelings to subvert the Government.

4. Learned counsel for the petitioner contends that instant F.I.R has been lodged to exert the pressure among the member of Pakistan Tehreef-e-Insaf including the petitioner to eliminate their freedom of speech and as such the words and phrases used by the petitioner do not fulfill the requirement of Sections 124-A/153-A/505 PPC, even the sanction to prosecution was not obtained before registration of this case, therefore, instant F.I.R is liable to be quashed.

5. Conversely, learned State Counsel has opposed the instant writ petition with the contention that the entire interview leads to a conclusion, which will create a hatred, enmity among the political and religious groups within the State of Pakistan and such aspect amount to incitation and further creates harmony and effect the public peace and tranquility. It has further been contended that the sanction was duly been obtained prior to registration of F.I.R and as such all the requirements have been fulfilled.

6. Arguments heard and record perused.

7. Perusal of record reveals that the above mentioned criminal case was registered on the statement of the petitioner in the program on aired at Dawn News channel as mentioned in para-1 of this judgment. However, while going through the said words and phrases used by the petitioner, a senior leader of Pakistan Tehreek-e-Insaf in the TV interview, the same should have been placed in juxtaposition with the

ingredients of Section 505 PPC as to whether the statement made by the petitioner is within the intent to cause or incite or is likely to cause or incite, any public servant, officer, soldier to create fear or alarm to the public or to any section of the public against state or against the public tranquility or any class or community of persons or those statements and words visibly represents to create hatred or to excite disaffection towards the Federal Government established by law in terms of Section 124-A PPC to include the charges of sedition, even the requirement of Section 153-A PPC comes to an application if enmity, hatred and ill-will between different religious, racial, language or regional groups have been created, therefore, in nutshell where the words used and spoken by the petitioner in the TV Program in an interview with Iftikhar Sherazi, anchorperson Dawn TV *viz-a-viz* in complete context, it would be considered as sarcastic comment, rather express the opposite of what it literally means, thus mocking the person on the receiving end, while possibly entertaining others.

8. No doubt, the statement made by the petitioner in some manner is against some individual personalities and positions, but it lacks the ingredients of incitement, fear or alarm to the public nor it effects the public tranquility, whereas the right to freedom of speech in terms of Article 19 of the Constitution of Islamic Republic of Pakistan, 1973, though extends the complete freedom of speech subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court or incitement to an offence

whereas, the term “*reasonable restriction*” imposed by law is the key factor in determination of the conduct of any person or accused in such type of cases.

9. I have gone through the term “*reasonable restriction*”, which in ordinary sense means, a fair, proper or moderate under the circumstance; sensible confinements within the bounds and limits of law, so that the rights of other may also be protected and any words or gesture creates the disharmony and effects the public peace and tranquility and creates incitement of sedition, where people should be compelled to take the law in their own hands against the Government and expressed their rebellious conduct. The plain and ordinary meaning of the constitutional framework is to protect the freedom of speech in all sense, except where law has prohibited the same against a particular classes defined in Article 19 of the Constitution in examining the reasonableness of any restriction on the right to freedom of expression it should essentially be kept in mind as to whether in purporting to exercise freedom of expression one was infringing upon the right of freedom of expression of others, and also violating their right to live a nuisance free life. This Court has also been guided with the expression of public order defined in *PLD 2016 SC 692 (Pakistan Broadcasters Association Vs. Pakistan Electronic Media Regulatory Authority)*, where it was held that no one could be forced to listen or watch that he may not like to, and one could not be invaded with unsolicited interruptions while eagerly watching or listening to something of his interest. State was not supposed to remain oblivious of such violation/invasions and could not detract from its obligation to regulate the right to speech when it came in conflict with the right of the

viewers or listeners. In a civilized and democratic society, restrictions and duties co-existed in order to protect and preserve the right to speech. It was inevitable to maintain equilibrium by placing reasonable restriction on freedom of expression in the maintenance of "public order".

10. This Court has also observed and gone through the charges leveled against the petitioner while considering the interview recorded in the Dawn News Channel and as such on plain reading of the contents of the FIR as well as recorded interview text, it appears that the sarcastic remarks against certain personalities were referred and as such there is no element of incitement or sedition nor any public officer was coerced or forced to cause any disharmony among the public peace nor any element of mutiny or effect of inducement could be observed. In cases of sedition, allegation of incitement, public to insurrection and rebellion are required to be demonstrated either through words used or from any other evidence or action of the accused. Sedition has been described, as disloyalty in action and the law considers as sedition all those practices, which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war, which is not the case in hand. All those factors were rightly been quoted and considered in number of judgments to set law into motion.

11. This Court has relied upon *PLD 2017 SC [Islamabad] 64 (Ali Raza and another Vs. Federation of Pakistan and another)*, where following factors were considered and highlighted:-

- (a) *Offence must contain promotion of feeling of enmity, hatred or ill-will between different religious or racial or linguistic or regional groups or castes.*

- (b) *Words, deeds or writing used to disturb the tranquility of the State or to subvert the government.*
- (c) *Incite the people to incursion and rebellion.*
- (d) *Complaint must be initiated by the Federal or Provincial Government and by authorized person under the law after considering the relevant factors of the alleged incident with reasons..*
- (e) *Private persons cannot agitate the matter regarding seditions of charge rather it should be initiated, inquired and investigated by the Government or at least on their direction.*
- (f) *Criminal conspiracy can only be considered if the other principle offence comes on record on the basis of allegations referred in the complaint in each case.*
- (g) *Authorized officer shall state reason before issuing any sanction in terms of Sections 196 and 196-A, Cr.P.C. with speaking order.*

12. The above litmus test if applied in the present case, the same will not recommend/suggest the very registration of this F.I.R. The second element, which was highlighted is the sanction of prosecution, though the same was available on record, but it is without any justiciable reason, which persuaded the State for registration of a criminal case.

13. Keeping in view the above position, such type of cases where very registration of FIR does not disclose commission of cognizable offence within the meaning of law, is liable to be quashed and no useful purpose would be achieved by placing such criminal cases before the Court as it will consume much time and resources of the State with unnecessary burden, therefore, quashing of such FIR is more advisable.

14. For what has been discussed above, instant writ petition is **Allowed** and the F.I.R No.01/2023, dated 01.02.2023 under Sections

124-A/153A/505 PPC, at Women Police Station, Islamabad is hereby

QUASHED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in the open court on : 24.03.2023

JUDGE

RAMZAN