

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT**

**CR No. 242-P/2018 With CM No.383-P/2018 with CM No.641-P/2018**

**JUDGMENT**

**Date of hearing:** 11.06.2018

**Petitioner:** (Azd Khan Khattak, etc) by Mr. Safdar Iqbal Khattak, Advocate

**Respondent(s):** (Muhammad Faisal Khan Durrani) by Mr. Pir Baksh Mehtab, Advocate

\*\*\*\*\*

**MUHAMMAD NASIR MAHFOOZ, J.-**

Petitioners have filed instant revision petition under Section 115 CPC against the order dated 8.1.2018 rendered by learned Additional District Judge-IV, Kohat, whereby, their application under Order VII Rule 11 CPC was dismissed.

2. Brief facts of the case are that petitioners are serving in Kohat University of Science and Technology "KUST" on various positions i.e. Acting Registrar, Director Institute of Education and Research, Chairman Pharmacy Department, Lecturer Institute of Information Technology, Head of Biotechnology Department and Pro-Vice Chancellor, while the respondent is also



performing his duty as Office Assistant in the KUST. On 23.03.2016, petitioner No.1 submitted an application to the Vice Chancellor against the respondent regarding his illegal act and attitude, upon which, an inquiry was conducted. After completion of inquiry, the inquiry committee came to the conclusion that *"that there was exchange of harsh words between the parties and no abusive or unparliamentarily language used by any party"*. Thereafter, respondent submitted an application to the local police of PS Jarma Kohat on 24.03.2016 for lodging of FIR against petitioner No.1 on the allegations that petitioner No.1 is giving threat to kill him. On the said report of respondent, the local Police of PS Jarma conducted a proper inquiry and came to the conclusion that no such like cognizable offence has been made by petitioner No.1 and bound both the parties under Sections 107/151 Cr.P.C. Aggrieved from the same, respondent filed an application under Section 22-A Cr.P.C. before the learned Sessions Judge, Kohat / Justice of the Peace for lodging of FIR against petitioner No.1, which was dismissed vide order dated 4.8.2016. After dismissal of his application under Section 22-A Cr.P.C., respondent approached to the learned Illaqa Judicial Magistrate, Kohat by filing complaint under



Section 200 Cr.P.C. for lodging of FIR against petitioner No.1, which was also dismissed vide order dated 30.5.2017 and the criminal revision against the said order also met the same fate vide order dated 14.10.2017. Lately, during a meeting held in the KUST on 23.3.2016, where the senior officers were assembled to participate along with the representatives of different television channels, respondent wanted to express his grievance through the press and electronic media present there but he was restrained by petitioner No.1 from hearing his views which led to some verbal brawl between them. Therefore, the respondent has instituted a suit for defamation under Section 3 of the Defamation Ordinance, 2002 against the petitioners in the Court of District Judge, Kohat. Petitioners contested the suit by filing written statement as well as application under Order VII Rule 11 CPC for rejection of the plaint. Learned Trial Court, after receiving reply and hearing learned counsel for the parties, dismissed the application under Order VII Rule 11 CPC vide impugned order dated 8.1.2017. Dis-satisfied with the same, petitioners have filed instant revision petition.



3. I have heard learned Counsel for the parties and have also gone through the record with their valuable assistance.

4. Perusal of record depicts that the senior officers of the KUST had initiated some action against the respondent for one reason or the other. There is a letter calling for explanation of the respondent issued by the Registrar, KUST on 7.4.2010, wherein, it was alleged that the respondent's attitude was not professional one and reluctant to perform his official responsibilities. This letter was perhaps issued on the complaint of Mr. Amanat Khan, Head of the Department of Journalism and Mass Communication, KUST dated 26.3.2010, addressed to the Registrar, KUST, Kohat. Similarly, an inquiry report on record reveals that the respondent was warned to be careful in future and to maintain the office decorum along with one Mr. Amir on 15.4.2013. Lately on 2.3.2016, on the report of the Director, Institute of Education & Research, KUST regarding being habitual late comer to the office and using rough language, explanation was called from the respondent, prior to that on 11.2.2016 a letter of explanation was issued to



respondent regarding some matter relating to efficiency and discipline on the part of respondent.

5. As mentioned above that the University officers have consistently reported some efficiency and disciplinary matters against the respondent, which lately surfaced in the shape of verbal brawl between petitioner No.1 and the respondent during a meeting where the members of electronic media were present, for which, the respondent filed a suit for defamation under Section 3 of the Defamation Ordinance, 2002 praying for recovery of Rs.1,20,00,000/- from the petitioners jointly and Rs.20,00,000/- from each of the petitioners independently. Petitioners contested the suit by filing their written statement along with an application under Order VII Rule 11 CPC for the rejection of plaint. The said application was dismissed by the learned Trial Court through the impugned order and held that the contentions of both the parties would be put to pro and contra evidence. It requires to be mentioned that the officers of the KUST have reported against the respondent for some allegations relating to his conduct but the said allegations have never been inquired into nor even the reply to the explanation letters issued to respondent has been



submitted by him. A single official of the KUST has tried to implicate the senior officers in an unnecessary litigation in Courts, so as to forestall their actions under Section 5 of the KUST (Efficiency and Disciplinary) Statutes, 2006. At this stage, no comments or remarks are being passed regarding the subject matter in dispute, which may restrict the petitioners from proceedings in the departmental inquiry against the respondent, while the suit for defamation filed by the respondent against the petitioners appears to be is misconceived on many grounds.

6. The cause of action having accrued to the respondent as mentioned in the plaint is 29.3.2016, while the suit is filed on 27.5.2017, after about one and a half year, whereas, section 12 of the Defamation Ordinance, 2002 provides limitation of actions, which is quoted below for ready reference:-

**“Limitation of actions.-An action against-**

- (a) an author, editor, proprietor or publisher of a newspaper;
- (b) the owner of a broadcasting station;
- (c) an officer, servant or employee of the newspaper or broadcasting station; or
- (d) any other person;



for defamation contained in the newspaper or broadcast from the station or its publication otherwise shall be taken within six months after the publication of the defamatory matter came to the notice or knowledge of the person defamed.”

7. From the bare reading of the aforesaid provision of law crystal clear that section 12 of the Defamation Ordinance, 2002 will be applicable where an action for defamation has to be filed within a period of six months. Even if it is presumed that by any action of the petitioners, the respondent has been defamed in the public, so apparently his suit was barred by limitation as the respondent has filed the suit after he failed to get remedy from the learned Justice of the Peace under Section 22-A Cr.P.C. as well as from the learned Illaqa Judicial Magistrate under Section 200 Cr.P.C. There is no defamatory matter in the instant case so as to invoke the jurisdiction of the learned District Courts as the words “any wrongful act” used in Section 3 of the ibid Ordinance must be clarified that the intention to lower him in the estimation of others or tends to reduce him to ridicule, etc which is lacking in the instant case.



8. The inter-se relationship between the parties is that of officers and sub-ordinate and the

proper remedy in the shape of proceeding under the relevant provisions of the KUST (Efficiency and Disciplinary) Statutes, 2006 is available, which could not be bypassed to initiate legal proceeding in different courts. Though the petitioners are senior officers and the respondent is sub-ordinate thereto but that would not bring them in a better position to mis-use their authority to the detriment of respondent and even otherwise the facts and circumstances of the instant case requires deep probe through a proper inquiry Committee.

9. Whenever a senior officer initiated any action against the sub-ordinate official, it is considered to be in the interest of public service and the senior officer is provided an indemnity clause in the relevant statute, which provides that actions of the officers are based on good faith in the interest of public service. Moreover, in the dispensation of justice under the Civil Servant Act, an officer is legally bound to get prior permission before filing any legal proceeding against any other officers / officials that may not be stricto sensu applied herein but may be treated as a general principle.



10. On all force, the application filed by the petitioners under Order VII Rule 11 CPC was



maintainable and wrongly dismissed by the learned Trial Court. It is incumbent upon the Trial Court to go through the contents of the plaint before proceeding with case and it is the essential aspect of Order VII Rule 11 CPC to stop the frivolous litigation at the initial stage as it would not only avoid wasting of precious time of the Courts but it also avoid to drag the opposite party in an unnecessary litigation. Clause (d) of Order VII Rule 11 CPC provides that the Court is not to proceed with a suit, which is barred by a law. As in the instant case, the suit is barred by section 3 read with sections 8 & 12 of the Defamation Ordinance, 2002. It is also a pre-requisite to initiate an action under the ibid Ordinance that the plaintiff shall within two months after the publication of defamatory matter has come to his notice or knowledge, shall give fourteen days notice in writing of his action to bring an action of his intention and in the absence thereof, no action lies. In view of above clear cut provisions of the ibid Ordinance, if the respondent's suit is allowed to proceed further it would be a glaring violation of the relevant provisions of the Ordinance.



11. In view of above discussion, instant revision petition is accepted along with C.Ms. and

the plaint of the respondent is rejected under Order VII Rule 11 CPC.

12. It may be mentioned that no inquiry on the letters of explanation issued to the respondent have been initiated by the University through proper inquiry proceeding, so that the matter is settled once for all, therefore, the University Authorities are directed to proceed with the different letters of explanation issued against the respondent by conducting a proper detailed inquiry and shall not be prejudiced by any remarks in the instant judgment. The inquiry committee shall be constituted within 15-days of receipt of this order and the same shall be concluded within a period of two months. It is also worth while to mention here that the inquiry shall be conducted in an impartial and transparent manner according to law, so that the respondent is not condemned unheard in any manner whatsoever, and respondent shall also observe discipline.

**Announced.**  
**Dated: 11.06.2018.**

  
**JUDGE**