

# **Judgment Sheet**

IN THE PESHAWAR HIGH COURT, PESHAWAR.  
JUDICIAL DEPARTMENT

**R.F.A. No. 196/2005**

## **JUDGMENT**

Date of hearings 19.11.2018.

### **Wazir Ahmad Khan and other versus Reayat Khan Khattak and others.**

Appellants by Mr. Muhammad Amin Khattak Lachi, advocate.  
Respondent No. 1 by Mr. Nasir Mehmood, advocate.  
Respondents Nos. 2 to 5 by Mr. Adnan Khattak, advocate.  
Respondent No. 6 by Mr. Arshad Jamal Qureshi, advocate.

**WAQAR AHMAD SETH CJ;** - Through this single consolidated judgment, this Court intends to dispose of all the connected Regular First Appeals. Their details are well mentioned in below lines;-

1.	R.F.A. No. 196/2005	Wazir Ahmad Khan and other versus Reayat Khan Khattak and others.
2.	R.F.A. No. 181/2005	Chief Editor Daily Statesman versus Reayat Khan Khattak and others.
3.	R.F.A. No. 249/2005	Attiq-ur-Rehman & others versus Reayat Khan Khattak and others.
4.	R.F.A. No. 84/2011	Muhammad Zareen and another versus Wazir Ahmad Khan and others.

Appellants through their respective appeals prayed as mentioned below;-

i.	R.F.A. No. 196/2005	On acceptance of this appeal judgment and decree dated 20.06.2005 of the learned
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		<b>Additional District Judge-X, Peshawar may be set aside and suit of the plaintiff may be dismissed with cost.</b>
<b>ii</b>	<b>R.F.A. No. 181/2005</b>	<b>On acceptance of this appeal the impugned judgment and decree dated 20.06.2005, of the learned Lower Court below be set aside and the suit of the respondent No. 1 be dismissed with costs against the appellant or any other remedy deemed proper may also be allowed.</b>
<b>iii</b>	<b>R.F.A. No. 249/2005</b>	<b>On acceptance of this appeal the impugned judgment &amp; decree dated 20.06.2005 passed by the Court of Additional District &amp; Sessions Judge, Peshawar may kindly be set aside and the suit of the plaintiff / respondent No. 1 against the appellants be dismissed with cost.</b>
<b>iv.</b>	<b>R.F.A. No. 84/2011</b>	<b>By accepting appeal in hand, order and judgment dated 31.01.2011 passed by the learned Additional District Judge-XI, Peshawar may very graciously be set aside and consequently application may be accepted OR any other order deemed proper in the matter.</b>

2. The laconic but essential facts leading to the appeals are that respondent No.1 /plaintiff filed suit for the recovery of Rs. 20 Million by way of damages for the loss of reputation and disgrace amongst his family members as well as official circle. He also claimed secondary relief as compensation at the rate of **14% per annum** over the amount cited above on the grounds that he belongs to respectable family of Khattak's of village Kotay Kalay Tehsil and District Karak, being highly educated and remained posted on various Executive Slots, such as **Deputy Commissioner, Director Land Record, Political Agent, Member Board of Revenue, Commissioner, Secretary Agriculture and Secretary Science and Information Technology as well as Senior Member Board of Revenue the then N-W.F.P now Khyber Pakhtunkhwa**. That appellants Nos. 1 to 7 approached the head of the State by submitting applications dated **07.01.2004, 08.03.2004 and 18.03.2004** to the ***President of Pakistan, Prime Minister of Pakistan, Chief Minister N-W.F.P, Chief Secretary, District Nazim Karak, DCO Karak and DOR Karak***, respectively. In their applications they alleged some derogatory and defamatory statements and the same have been published against him and that too without any verifications or authenticity, which badly affects his reputation in the eyes of others.

3. Learned trial Court summoned the defendants/appellants, they contested the suit by filing their respective written statements, raising therein legal and factual objections, interalia, cause of action, jurisdiction and estoppels, some of the appellants were proceeded ex-parte due to their absentia.

4. Learned trial Court afforded the opportunities to the parties to adduce their evidence in support of their respective versions. From the divergent pleadings of the parties, learned trial Court framed 11 issues including the relief. After hearing the exhaustive arguments, **learned Additional District & Sessions Judge-X, Peshawar** vide its very elaborate / detailed **impugned judgment dated 20.06.2005**, decreed the suit in favour of respondent No.1 / plaintiff as prayed for. Relevant abstract from order dated 20.06.2005 is reproduced for ready reference:-

**"The result of my above discussion is that the plaintiff has successfully proved his case against the defendants accordingly, he is granted a decree for recovery of rupees 20 million by way of damages for the loss of reputation and disgrace with a compensation of 14% per annum as prayed for. The suit is decreed with costs which shall follow the events."**

5. Written arguments on behalf of learned counsel for the appellants as well as arguments of learned counsel for the respondent No.1 / plaintiff heard and available bulky record with their able assistance gone through anxiously.

6. The precise backgrounds of the connected Regular First Appeals are that, respondent No.1 / plaintiff, Reayat Khan Khattak, instituted a suit against the appellants / defendants, ten in number, for the recovery of rupees 20 million by way of damages for the loss of reputation and disgrace, in the official circles, his friends and family members alongwith compensation at the rate of 14% per annum on the amount mentioned above. The facts narrated in the plaint and evidence so recorded in this behalf would show that respondent No.1 / plaintiff brought on

record that he belongs to a respectable family of the village Kota Killi, Tehsil & District Karrak and that he is not only an educated person, having five sons, one is Civil Judge, two are Doctors and an Engineer, having a say in the village, as well as, in the society in which he is living, besides being holding the post of Senior Member Board of Revenue Khyber Pakhtunkhwa, Peshawar, he has been disgraced due to the act of appellants / defendants. Record suggests that appellants / defendants No.1 to 7 submitted applications dated 7.1.2004, 8.3.2004 & 10.3.2004 to the President of Pakistan, Prime Minister of Pakistan, Chief Minister Khyber Pakhtunkhwa, Chief Secretary Khyber Pakhtunkhwa, District Nazim Karrak etc, wherein they have leveled the defamatory charges against the respondent No.1 / plaintiff and these applications were published in the dailies Islamabad, Peshawar, Ausaf Peshawar and Statements Peshawar, respectively. The appellants / defendants have published defamatory statements against the respondent No.1 / plaintiff without verifying the facts therein and as such suit for recovery of rupees twenty millions by way of damages was filed before the Additional Sessions Judge-X, Peshawar.

7. Suit for damages under Defamation Ordinance, 2002 to be filed before District / Sessions Judge, or under section 9 of the Civil Procedure Code before the Civil Judge, are one and the proceedings. There is no dispute or doubt that respondent No.1 / plaintiff was not a Government Servant / Civil Servant, when the instant suit was filed. Admittedly, he was by that time posted as Senior Member Board of Revenue, Peshawar. There is no dispute that before filing the said suit respondent No.1 / plaintiff has obtained any

permission from his high up / department, for filing of the suit for damages / defamation. Vide order dated 07.04.2015, this Court directed the parties by pinpointing that before institution of damages / defamation suit, departmental permission was obtained, but in the entire written arguments, specially respondent No.1 decree holder has not touched this aspect of the case. I have before me Khyber Pakhtunkhwa, Government Servants (Conduct) Rules, 1987, Rule-31 of which reads as under:-

**“Vindication by Government servants of their public acts or character.—(1) A Government servant shall, not without the previous sanction of Government have recourse to any Court or to the press for the vindication of his public acts or character from defamatory attacks, when Government grants sanction to a Government servant to have recourse to a Court, Government will ordinarily bear the cost of the proceedings, but may leave the Government servant to institute them at his own expense. In the latter case, if he obtains a decision in his favour, Government may reimburse him to the extent of the whole or any part of the cost.**

**(2). Nothing in this rule limits or otherwise, affects the right of Government servant to vindicate his private acts or character.**

8. The underlining is by me to have the emphasis as the word ‘shall’ has been used in addition to ‘previous sanction’ which strengthens the arguments that it’s mandatory in all circumstances. It is not only on civil side, but also in criminal litigation. In this respect reliance is placed on **1982 PCr. LJ, 1313, Karachi, Khalid Taqi Khan Versus the State & 2 others.** (c) wherein it was held as under:-

**“---R. 14.7 read with West Pakistan Government Servants (Conduct) Rules, r.**

27-Public act and character, vindication of petitioner dealt with case in his capacity as a Police Officer but case later on investigated by some other police officer and ultimately dropped and shown as disposed of under S. 163/173, Cr.PC, but being dissatisfied with manner of disposal of case petitioner taking matter with higher authorities and eventually filing a direct complaint in Court Government Servant not being permitted to have recourse to any Court for indication of his public acts and character except without prior permission of Government, direct complaint filed; by petitioner, held unauthorized and without legal backing, in circumstances.

Government servant cannot have recourse to any Court for the vindication of his public acts and character except with prior permission of the government. He is however free to defend his private acts and character. It is true that a report / complaint about commission of a criminal offence, not reportable by any specified person under the law, can be lodged even by a person who is not directly or personally concerned. But in the instant case the position was entirely different in that the petitioner who was associated with the case as a police officer could not turn round and assume the role of private individual for the purpose of filing a direct complaint. In such an eventuality on one hand he would be bound by the orders passed by his superiors, notwithstanding his personal dislike, while on the other hand he would be opposing the same orders. If a police officer is allowed free hand in this manner, it will seriously impair the service discipline, entailing disastrous consequence. Indeed the service discipline is enforced, more vigorously in the Police Department than any other government department

Likewise, in the case reported in 2003 P Cr. LJ 1892, titled Aslam Akbar Kazi and 3 others versus

**Gulzar Ahmad Channa and another**, wherein it was held that:-

**“---Ss. 561-A & 198-A---Penal Code (XIV of 1860), S. 501---Application for quashing of proceedings and order---Complainant who was superintendent, central prison, had alleged that accused had published a news regarding commission of sodomy by warder of Jail, on an under trial prisoner which news was baseless and amounted to defamation against complainant as public servant and if it was a case of defamation against the complainant as public servant complaint should have been filed by Public Prosecutor under S. 198-A Cr.PC with previous sanction of Government, but it had not been done so. Neither complaint was filed by a person authorized by law or one allegedly defamed, nor the Magistrate had mentioned that he found that offence was committed, impugned proceedings and order passed by the Magistrate were not in accordance with law. Order as well as proceedings before Magistrate, were quashed in circumstances.**

9. Even otherwise, Rule 31 of the Khyber Pakhtunkhwa, Conduct Rules, 1987, applicable to the parties before the Court, as respondent No.1 / decree holder was a Civil Servant / Government Servant and being civil servant allegations were leveled against him directly connecting to his post / position, which according to him disgrace him in the society etc. A Government Servant / Civil Servant cannot under any circumstances, have recourse to any Court for the vindication of his public acts and character etc, except with prior permission of the Government, while in the instant suit, admittedly no permission has been sought by respondent No.1 / plaintiff.

10. In view of the above, this and the connected appeals are allowed, impugned judgment and decree



of the trial Court / ADJ-X Peshawar dated 20.6.2005 is set aside and the suit of the respondent No. 1 / plaintiff stand dismissed with no order as to cost.

11. Since, the suit of respondent No.1 / plaintiff has been dismissed; therefore, the connected RFA No. 84 of 2011, for setting aside the ex-parte proceedings has become in-fructuous, dismissed as such.

  
**CHIEF JUSTICE**

**Announced**  
**19.11.2018**