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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 60241/2021

Nasrullah Khan

Vs.

Station House Officer, Police Station Saddar, Mianwali, etc.

JUDGMENT

Date of hearing	05.09.2022
For the Petitioner:	Mr. Muhammad Irfan Malik, Advocate, assisted by Mr. Bilal Riaz Sheikh, Advocate.
For Respondents No.1 & 3:	Mr. Mukhtar Ahmad Ranjha, Assistant Advocate General, with Ghulam Fareed/ASI.
For Respondent No.2:	Ch. Abdul Rehman, Advocate.

Tariq Saleem Sheikh, J.– Respondent No.2 is a resident of Sohrabwala, Tehsil and District Mianwali, and an ex-member of the District Council. On 30.8.2021, he filed a complaint with the Station House Officer of Police Station Saddar Mianwali alleging that the Petitioner held sacrilegious beliefs that he began propagating to the general public about six months ago. According to him, the Petitioner claimed that he could fly and see Allah Almighty and various companions of the Holy Prophet Muhammad (peace be upon him) in his dreams. He further stated that on 26.8.2021 he made similar statements before a crowd where PWs Qasim Sohail and Altaf Ahmad Khan were also present. Such propagation hurt the community’s religious feelings and was likely to incite violence. On this complaint, the SHO registered FIR No.337/2021 dated 30.8.2021 for an offence under section 295-A of the Pakistan Penal Code (hereinafter referred to as the “PPC” or the “Penal Code”). Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”), the Petitioner prays for the quashing of that FIR.

The submissions

2. The counsel for the Petitioner, Mr. Muhammad Irfan Malik, Advocate, contends that FIR No. 337/2021 is *mala fide* and politically motivated. He argues that it does not state what blasphemous notions the Petitioner holds and when he expressed them. The only specific allegation against him is that on 26.8.2021, he told a group of people about his dreams and claimed to have seen Almighty Allah and certain holy personages. Such narration is not an offence under section 295-A PPC.

3. Mr. Mukhtar Ahmad Ranjha, Assistant Advocate General, has refuted the above contentions. He submits that the Petitioner's thoughts and beliefs are blasphemous and sinful, and the law prohibits their expression. He contends that he deliberately and maliciously concocts false stories which offend other people's religious feelings. Although the Petitioner was engaged in his nefarious activity for quite some time, FIR No. 337/2021 pertains to the specific incident that occurred on 26.8.2021. PWs Qasim Sohail and Altaf Ahmad Khan support the prosecution case and have had their statements recorded under section 161 Cr.P.C. The FIR cannot be quashed because there is sufficient incriminating evidence against the Petitioner.

4. The counsel for Respondent No.2 (the Complainant), Ch. Abdul Rehman, Advocate, has adopted the arguments of the Assistant Advocate General.

Discussion

5. India's British rulers codified the offences relating to religion in Chapter XV of the Penal Code enacted in 1860. They expanded them in 1927. The primary reason for enacting these provisions was to maintain peace. In multi-cultural India, where people of diverse religions lived together, avoiding conflict between communities was crucial to control colonized populations.¹ Pakistan retained these laws after the Independence. The military regime of General Zia-ul-Haq added several clauses between 1980 and 1986 to separate the Ahmadi community which was declared non-Muslim in 1973.

¹ On Trial: The Implementation of Pakistan's Blasphemy Laws (2015). Available at <https://www.refworld.org/pdfid/565da4824.pdf>

6. Section 295-A Cr.P.C. was brought into the Penal Code by the Criminal Law Amendment Act, 1927 (XXV of 1927) in response to public outcry over the Lahore High Court's ruling in *Rajpaul v. Emperor* (AIR 1927 Lahore 590). In that case, the accused was charged under section 153A of the Penal Code (as it stood then) for publishing a pamphlet containing malicious satire on the private life of Prophet Muhammad (peace be upon him). The Court ruled that section 153A, the lone provision in the statute at that time, was not applicable regardless of how scathing the comments were. Incidentally, in *Kali Charan Sharma v. Emperor* (AIR 1927 Allahabad 649), the Allahabad High Court had taken a different view a few months before that decision. It held that scurrilous and derogatory remarks about a religion or its founder that foster animosity between sects of different faiths could be prosecuted under section 153A of the Penal Code. At that point, the legislature intervened and enacted section 295-A, which currently reads as under:²

295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.–

Whoever, with deliberate and malicious intention of outraging the religious feelings, or any class of the citizens of Pakistan, by words, either spoken or written, or by visible representations insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [ten]³ years, or with fine or with both.

7. The offence under section 295-A of the Penal Code has the following ingredients: a person (i) insults or attempts to insult the religion or religious beliefs of any class of citizens of Pakistan, (ii) with the deliberate and malicious intent of outraging the religious feelings of that class, (iii) insults or attempts to insult the religion or religious beliefs of

² The Statement of Objects and Reasons published in the Gazette of India dated August 20, 1927, Pt. V, p. 213 stated:

The prevalence of malicious writings intended to insult the religion or outrage the religious feelings of various classes of His Majesty's subjects has made it necessary to examine the existing provisions of the law with a view to seeing whether they require to be strengthened. Chapter XV of the I.P.C. which deals with offences relating to religion, provides no penalty in respect of writing of the kind described above. Such writings can usually be dealt with under section 153-A I.P.C. as it is seldom that they do not represent an attempt to promote feelings of enmity or hatred between different classes. It must be recognized, however, that this is only an indirect way of dealing with acts which may properly be made punishable themselves, apart from the question whether they have the further effect of promoting feelings of enmity or hatred between classes. Accordingly, it is proposed to insert a new section in Chapter XV of the I.P.C. with the object of making it a specific offence intentionally to insult or attempt to insult the religion or outrage or attempt to outrage the religious feelings of any class of his Majesty's subjects.

³ Subs. by Criminal Law (Third Amendment) Ordinance XXI of 1991 (PLD 1991 Cent. 437) w.e.f. 7.7.1991.

that class, (iv) the insult or the attempt to insult may be by written or spoken words or by signs or by visible representations or otherwise. This section establishes a high standard. The insult should not only be deliberate and malicious but also intended to offend a community's religious feelings. Ratanlal & Dhirajlal have commented on the cognate provision in the Indian Penal Code as follows:⁴

“The essence of the offence under [section 295-A of the Indian Penal Code] is that the insult to religion or the outrage to religious feelings must be the sole, or primary, or at least the deliberate and conscious intention. In order to bring the case within this section it is not so much the matter of disclosure as the manner of it. The words used should be such as are bound to be regarded by any reasonable man as grossly offensive and provocative and maliciously and deliberately intended to outrage the feeling of any class of citizens of India. It is no defence to a charge under this section for anyone to plead that he was writing a book in reply to the one written by one professing another religion who has attacked his own religion. The idea of making a separate offence under section 295-A is to punish those who attempt to insult the religion or religious belief of any class of citizens in India. It does not probably relate to any act done with the intention of outraging the religious feelings of any individual or individuals ... In order to establish malice as contemplated by section 295-A, it is not necessary to prove that the accused bore ill will or enmity against specific persons. If the injurious act was done voluntarily without a lawful excuse, malice may be presumed. Malice is often not capable of direct and tangible proof and in almost all cases has to be inferred from the surrounding circumstances having regard to the setting, background and connected facts in relation to the offending article. The truth of the allegation is not a good defence to a charge under this section. This section is well within the protection of cl. (2) of Article 19 of the [Indian] Constitution and its validity is beyond question nor is it inconsistent with the right guaranteed by Article 25(1) of the [Indian] Constitution.”⁵

8. ***In the matter of the Book “Jesus in Heaven on Earth” and in the matter of the petition of The Working Muslim Mission and Literary Trust, Lahore, and of the Civil and Military Gazette Limited, Lahore v. The Crown*** (PLD 1954 Lahore 724), a Full Bench of this Court held that even freedom of speech has limits. One must stop where the speech or writing does not further the speaker's goals. The Court said that the honest preaching of a creed that a man sincerely believes would lead to humanity's salvation is an effort worthy of emulation and the harm associated with it may be overlooked. However, there has to be a limit somewhere, and even the most admirable effort has its bounds. The dividing line marks the point at which discourse ends and malice begins. It is when a speech or piece of writing does not advance the ends of the

⁴ Ratanlal & Dhirajlal, *The Indian Penal Code*, 33rd Edition, p. 1475.

⁵ Internal citations omitted.

debate and says something that could be left unsaid without harming the controversy or expresses something with extreme bitterness that could be avoided or said sweetly. The Full Bench approvingly cited the following excerpt from Starkie’s Law of Libel and Slander (1897) to further explain what constitutes malicious intention:

“The law visits not the honest errors, but the malice of mankind. A willful intention to pervert, insult, and mislead others, by means of licentious and contumelious abuse applied to sacred subjects, or by willful misrepresentations or, artful sophistry, calculated to mislead the ignorant and unwary, is the criterion and test of guilt. A malicious and mischievous intention or what is equivalent to such an intention, in law, as well as morals, a state of apathy and indifference to the interest of society, is the broad boundary between right and wrong.”

9. In *The Punjab Religious Book Society, Lahore v. The State* [PLD 1960 (W.P.) Lahore 629], a Full Bench of this Court once again considered the ingredients of section 295-A PPC and ruled:

“The ingredients of section 295-A of the Pakistan Penal Code [would be satisfied] only if it is established that the intention to insult the religious beliefs was deliberate and malicious. When the thing objected to on the ground that it outrages the religious feelings of others is extremely offensive and has no reliable source to justify its acceptance as correct, the court will presume that it was done with the deliberate and malicious intention of insulting the religious beliefs of the followers of the religion to which or the founder of which the thing relates. The same presumption will be raised when the things objected to indicate that the argument in favour of one religion has sunk to the level of abuse to another. But while pronouncing on the question whether or not the thing which insults the religious belief of someone was said or done with the deliberate and malicious intention of insulting that religion or the religious beliefs of the followers of that religion, the court has to put itself in the place of a neutral person, that is to say, a person who is neither connected with the religion of the person who is alleged to have outraged the religious feelings of someone nor with that of the person or persons whose religious feelings are stated to have been outraged. The court has further to consider the thing from the point of view of a person who is not hypersensitive, but is a person of normal susceptibilities.”

10. In *Muhammad Khalil v. The State* (PLD 1962 Lahore 850), while dilating on the requirement to prove the intention in the context of section 295-A PPC, this Court held that –

“... the intention to outrage the religious feelings of a class of people and that intention should be not only deliberate but also malicious. An intention itself contains the element of deliberation, but since a person may normally be assumed to intend the consequence of his acts, the word ‘deliberate’ was used to make it a very purposeful intention, and it was further strengthened by the use of a negative adjective so that we should have to find before we can uphold the order of Government, that the primary purpose of the book was to outrage the feelings of Muslims, and to do so maliciously.”

11. If we examine FIR No. 337/2021 in light of the above discussion, we find that the offence under section 295-A PPC is not made out. There is no allegation that the Petitioner did anything to offend any group of people or insult their religion or religious beliefs. Furthermore, the Assistant Advocate General could not point out any circumstances that might indicate malice on his part.

12. I have also considered section 298 PPC (uttering words, etc. with deliberate intent to wound religious feelings) and found that it does not apply to the facts and circumstances of the present case. There is no evidence to suggest that the Petitioner intended to offend or harm the religious sensibilities of Respondent No.2 or any other person with his statements.

13. For long years, people have debated why we dream and what is the purpose of our dreams. The scientific community is divided concerning the function of dreams and whether they have any meaning. According to Sigmund Freud, dreams are a form of wish fulfilment. These are the wishes we are trying to fulfill in the real world. Sometimes these wishes are fairly innocent, and when they are, our dreams depict the wish exactly as it is. However, some of our desires (such as sexual or violent impulses which we can't acknowledge or act out) are so unacceptable to us that our dreams have to censor them. The conscious waking mind typically represses such wretched wishes, but they manifest bizarrely in dreams. However, Freud argued that a psychoanalyst and techniques like free association could help discover the wish hidden in the dreams.⁶ Carl Jung believed that dreams were purely mental expressions. He claimed that dreams were a language of symbols and metaphors that represented a person's unconscious state. According to him, dreams served two purposes: they compensated for imbalances in the dreamer's mind and provided a glimpse into the future, allowing him to foretell what would happen.⁷ The Activation-Synthesis Theory, propounded by Allan Hobson and Robert McCauley, posits that brainstem activation during the rapid

⁶Josie Malinowski, *Was Freud right about dreams after all? Here's the research that helps explain it.* Available at: <https://www.https://theconversation.com/was-freud-right-about-dreams-after-all-heres-the-research-that-helps-explain-it-60884>

⁷ *The Psychology of Dreams: Inside the Dream Mind* (2016). Available at: <https://www.brescia.edu/2016/09/psychology-of-dreams/>

eye movement (REM) sleep and limbic system stimulation (emotional motor system) create dreams.⁸ In other words, dreams occur when the brain is activated and thoughts come to mind. The Threat-Simulation Theory suggests that dreaming prepares us for potentially dangerous real-life situations.⁹ The research continues. While it is unclear to what extent Freud was right about dreams, there is little doubt that he was right in one area: dreams are key to understanding the unconscious, where exiled thoughts continue to exist.¹⁰

14. FIR No. 337/2021 accuses the Petitioner of entertaining and propagating blasphemous notions but does not provide any details. He is facing prosecution for claiming that he can fly and for having frequent dreams in which he sees Almighty Allah and some holy figures. As discussed above, scientists have many theories about why dreams happen and their purpose, but they all agree that one can only dream while sleeping. Sleep is a cyclical process. It happens in five stages, each of which contributes to the body's goal of strengthening and rejuvenation. The first four stages are referred to as such, but the fifth stage, REM, makes up 20 to 25% of adult sleep. Dreaming is possible during both REM and non-REM sleep.¹¹ Dreams during REM sleep are typically more vivid, fantastical, and/or bizarre though they may contain elements from waking life. On the other hand, non-REM dreams frequently have more coherent content, such as thoughts or memories associated with a particular place or time.¹² Albeit one can have several dreams every night, one cannot control them.¹³ A person cannot be prosecuted for what he sees in his dreams or for sharing his thoughts, visions, or emotions during those times with others.

⁸ *ibid*

⁹ *ibid*

¹⁰ See note 6, *ibid*.

¹¹ Francesca Siclari et.al. *Dreaming in N-REM Sleep: A High Density EEG Study of Slow Waves and Spindles*, Journal of Neuroscience, Vol. 38, Issue 43, (2018). Available at: <https://www.jneurosci.org/content/38/43/9175>

¹² When do we dream?

Available at: <https://www.sleepfoundation.org/dreams#:~:text=Dreams%20during%20REM%20sleep%20are,a%20specific%20time%20and%20place.>

¹³ According to some researchers, sleep experiments have demonstrated that techniques for influencing and controlling our dreams are effective. We can plan to dream about a particular topic, work out a problem, or end a recurrent nightmare. We can also raise our chances of having lucid dreams or "dreams within dreams". (Jordan Lite, *How Can You Control Your Dreams?* Available at: <https://www.scientificamerican.com/article/how-to-control-dreams/>

15. The general rule is that the High Court should not interfere with the investigation or trial process and should let it run its course. However, it may quash the proceedings by invoking its constitutional jurisdiction or inherent powers under section 561-A Cr.P.C. to prevent the abuse of the process of law. In *Miraj Khan v. Gul Ahmed and three others* (2000 SCMR 122), the Hon'ble Supreme Court of Pakistan held:

“There is no absolute bar on the power of the High Court to quash an F.I.R. and it is not always necessary to direct the aggrieved person to first exhaust the remedy available to him under section 249-A Cr.P.C. It is cardinal principle of law that every criminal case should be adjudged on its own facts. The facts of one case differ from the other and, therefore, no rule of universal application can be laid in a certain case so as to be made applicable to other cases. Even in the case reported in PLD 1997 SC 275, relied on by the learned counsel for the petitioner, this principle has been recognized that the High Court in exceptional cases can exercise jurisdiction under section 561-A Cr.P.C without waiting for the trial Court to pass orders under section 249-A or 265-K Cr.P.C., if the facts of the case so warrant. The main consideration to be kept in view would be whether the continuance of the proceedings before the trial forum would be futile exercise, wastage of time and abuse of the process of court or not. If on the basis of facts admitted and patent on the record no offence is made out, then it would amount to abuse of the process of law to allow the prosecution to continue with the trial.”

16. In *Muhammad Aslam (Amir Aslam) and others v. District Police Officer, Rawalpindi, and others* (2009 SCMR 141) the apex Court ruled that every citizen's fundamental rights must be respected and protected against intrusion by the authorities and individuals. When his life and liberty are threatened, and it is shown that the police conduct is malicious, the court should not hesitate to intervene and provide him relief.

17. As noted earlier, the Petitioner has been booked under section 295-A PPC. The facts mentioned in FIR No.337/2021 and the evidence gathered by the police during the investigation do not constitute an offence under that provision. Therefore, this petition is **accepted** and FIR No.337/2021 is quashed.

18. Before I conclude this judgment, I may highlight an important issue. It frequently happens that those accused of blasphemy have a mental condition. According to Muzaffar Husain, people suffering from diseases such as mania and schizophrenia may lack behavioral constraints and understanding or exhibit grandiose and strange delusional

notions that they have descended from God. Autistic people with varying degrees of intellectual disability are another diagnostic group that cannot follow social rules of appropriate reverence and care for what the community considers sacred. In some cases, neurotic disorders like obsessive-compulsive disorder can impose an oppressive demand on the person to blaspheme, which can have serious legal ramifications if the community reveres the objects of the blasphemy.¹⁴ Those suffering from mental illnesses should be provided treatment and protected against punishment. Muzaffar Husain says:

“ ... it remains the universal humane position that if it is in fact an illness that has caused the person to behave ‘blasphemously’ on an occasion, then no matter how terrible the offence might be perceived to be by others, it follows that the person ought to be given some basic legal and social protections and, where possible, appropriate treatment for their condition, instead of punishment.”¹⁵

19. Article 10-A of the Constitution recognizes the right to a fair trial as a fundamental right. In *Babar Hussain Shah and another v. Mujeeb Ahmed Khan and another* (2012 SCMR 1235), the Hon’ble Supreme Court held that the right to a fair trial and due process have always been the cornerstones of our judicial system. However, they have become even more important with the incorporation of Article 10A into the Constitution. Orders passed in violation of due process may be considered void. In *Suo Motu Case No. 4 of 2010* (PLD 2012 SC 553)¹⁶, the apex Court ruled that the right to a fair trial should be read into all the statutes, even when not expressly provided. It further noted that the legislature did not purposely define or describe the requirements of a “fair trial”. The intention was to give it the same meaning as is universally acknowledged and ingrained in the jurisprudence of our country.

20. Investigation regarding an offence usually begins when information about it is given to the officer in-charge of a police station. Its primary objective is to determine the facts and circumstances of the case. It includes, by definition, all the proceedings conducted by a police officer

¹⁴ Husain M. (2014). *Blasphemy laws and mental illness in Pakistan*, *The Psychiatric Bulletin*, 38(1), 40-44, <https://doi:10.1192/pb.bp.112.042572>

¹⁵ *ibid.*

¹⁶ Contempt proceedings against Syed Yousaf Raza Gillani, the Prime Minister of Pakistan, regarding non-compliance of the Supreme Court’s Order dated 16.12.2009.

under the Code of Criminal Procedure for collecting evidence.¹⁷ A fair investigation is essential to the right to a fair trial. In *Babubhai v. State of Gujrat and others* [(2010) 12 SCC 254], the Supreme Court of India held that it is also a part of the right to life and personal liberty and that “investigation must be fair, transparent and judicious as it is the minimum requirement of the rule of law.” In *Vinay Tyagi v. Irshad Ali alias Deepak and others* [(2013) 5 SCC 762], the Supreme Court explained that in criminal jurisprudence, the phrase “fair and proper investigation” means two things: first, the investigation should be honest, unbiased and according to the law, and second, the real emphasis should be to dig out the truth and bring it before the court of justice. Rule 25.2(3) of the Police Rules, 1934, embodies this principle. It is reproduced below for ready reference:

25.2 Power of investigating officers:

- (1) ...
- (2) ...
- (3) It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.

21. The law in Pakistan protects people with mental illnesses or impairments. Section 464 Cr.P.C. ordains that a person of “unsound mind” who is incapable of assisting in his own defence cannot be tried. Section 84 PPC recognizes the legal insanity defence. It states that a person cannot be held criminally responsible for an act, if due to unsoundness of mind at the time of committing it, he was incapable of knowing the nature of the act or that it was wrong or illegal. In *Dilshad Hussain v. The State* (2003 PCr.LJ 206) this Court ruled that the trial Judge should act on his own initiative to protect the accused even if he or his counsel does not come forward and invoke the provisions which provide safeguards for persons who cannot understand the wrongfulness and illegality of a criminal act. This decision is significant because, according to the World Health Organization, mental disorders account for

¹⁷ *H.N. Rishbud and another v. State of Delhi* (AIR 1955 SC 196).

more than 4% of Pakistan's total disease burden. It estimates that 24 million people require psychiatric care.¹⁸

22. Article 10A of the Constitution and the principle of fair investigation discussed above require that when a police officer investigates an offence, particularly one under Chapter XV of the Penal Code, he should determine whether the accused is of sound mind. He must apply to the competent forum for his psychiatric evaluation if he suspects mental illness.

23. The Registrar of this Court is directed to send a copy of this judgment to the Inspector General of Police, Punjab, who shall take appropriate steps to ensure that the Investigating Officers follow the above instructions.

(Tariq Saleem Sheikh)
Judge

Naeem

Approved for reporting

Judge

¹⁸ WHO Pakistan, <https://www.emro.who.int/pak/pakistan-news/who-pakistan-celebrates-world-mental-health-day.html>