

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].
Regular First Appeal No.91-P/2006

Date of hearing:- 14.02.2017

Date of announcement: 05.05.2017

Petitioner(s):- Khalid Aziz by Barrister Syed Mudasser Ameer,
Advocate.

Respondent (s):-Pakistan Television through its Managing Director
and others by Mr. Aziz ur Rehman, Advocate.

JUDGMENT

ROOH-UL-AMIN KHAN, J:- This Regular First Appeal under section 15 of the Defamation Ordinance, 2002, (**Ordinance**), filed by plaintiff Khalid Aziz (appellant herein), is directed against the judgment and decree dated 30.01.2006, passed by learned Trial Court/Additional District Judge-XIII, Peshawar, whereby he dismissed his suit qua recovery of damages on account of defamation.

2. Facts in brief forming the background of the instant appeal are that appellant filed a suit for recovery of damages to the tune of rupees two hundred Millions against the defendants (respondents herein) for his defamation and mental torture by virtue of Urdu Drama Serial "***Saza Aur Jaza***" (herein after referred to as Play), telecasted by the respondents wherein the appellant has been adorned as "Shakeel" with disputed character by showing him as a corrupt and cruel bureaucrat who has no respect for religion, society and people.

3. It is averred in the plaint that appellant is a respectable citizen of Pakistan, who after getting Master degree in Political Science in 1967 with gold medal, earned B.A. (Hons) degree in Politics, Philosophy and Economics from Queen College, Oxford, got M.Phil in

Development Studies from Wolfson College Cambridge University in 1980. He got inducted in Civil Services of Pakistan and served in various faculties from Assistant Commissioner to the Chief Secretary NWFP (Khyber Pakhtunkhwa) as well as Director General Ehtesab Bureau. From the inception of his service, the appellant gained recognition for his excellent performance of the obligations handed over to him from the higher authorities and was specially applauded by the then Prime Minister Mr. Zulfikar Ali Bhutto in 1975 for his remarkable efforts in Federally Administrated Tribal Area (FATA). The appellant belongs to a very respectable and well established family of Peshawar, which had been the pioneers in Furniture Industry, known by the name and style of M. Hayat and Brothers, since 1921.

Appellant further averred that defendant No.1 (Pakistan Television) **PTV** is a Public Limited Company and the Government of Pakistan holds all its shares, which has been established/set up as a Private Limited Company by the name of **“Television Promoters Limited in 1965”** and later on, converted into a Public Limited Company in 1967. Defendant No.1 being the only National Television enjoys an unrivalled coverage and presence in every corner of the country as well as abroad. Defendant No.2 is the Managing Director of defendant No.1 while defendants No.3 and 4 are his General Managers from Lahore (wherefrom the play was telecasted). Defendant No.5 is the Producer and Director of the Play while defendant No.6 is its writer.

The appellant alleged that he was serving as Chief Secretary, KPK in the year 1997 but due to political change in the Government in 1997, he was suspended from his service and a departmental inquiry was initiated against

him on the allegations of supply of furniture to Governments Schools in KPK worth rupees 1.5 cror in 1995 by his family firm, however, he was ultimately exonerated from the charge, hence, was reinstated in service in October 1998 as an Additional Secretary Accountability. The appellant was also given the current charge of the Director General of Ehtesab Bureau in June 1999. Because of the change in the government in 1999 once again, the appellant was arrested by the NAB on 14.10.1999, in Islamabad without any allegations and after his 75 days humiliation and illegal detention, Reference No.3/2000, was filed against him and his wife, before the learned Judge Accountability Court, Peshawar. On conclusion of the trial, on 21.06.2000, the appellant was convicted and sentenced by the learned Trial Court to undergo 04 years R.I. and to pay a fine of rupees four crors and sixty lacs. The appellant challenged his conviction and sentence before this Court in an appeal wherein his conviction was maintained, however, his sentence was reduced from 04 years R.I. to 02 years R.I. The appellant challenged his conviction and sentence recorded by this Court by filing appeal before the august apex Court on 12.09.2001. In the meantime, Reference No.12 of 2001 was filed against the appellant by the NAB before Accountability Court Attock with the allegations that he by misusing his authority, obtained a contract for his family firm (M. Hayat & brothers) qua supply of furniture worth rupees fifteen millions to the Primary Education Department, KPK, and that the said furniture was not supplied completely and whatever was supplied was of inferior quality.

The appellant was being tried in the 2nd Reference by Accountability Court No.3, when in the meantime, the respondents, on 15.03.2002, telecasted the Play. The Play

is dramatized on the lifestyle of a senior bureaucrat of NWFP (KPK), having a well reputed family firm and pioneers in Furniture Industry and has got a NAB reference for rupees 15 millions arising out a contract between his family firm and Primary Education Department. Since, appellant was the only Additional Chief Secretary of NWFP (KPK), having a family background associated with furniture manufacturing concern, whose father's grave is also situated in the Factory as well as facing a NAB reference. His father was known by the name of "Khan" in the family members and the firm as Khan Brothers was the property shop of his father. Appellant alleged that all these facts shown in the play with the character of "Shakeel", refers to him and for any reasonable person who knows the appellant or those who are aware believe that the play is recorded and filmed on the appellant. The hypothetical, sensible viewer having knowledge of the above mentioned facts and circumstances would believe that the play refers to the appellant. The play is a complete misstatement and misrepresentation of the facts actuated by malice and it can only be described as an episode of malicious falsehood, aimed to disrupt and malign the appellant. The appellant refer to the following defamatory contents which allegedly defamed him in the society and he suffered mental agonies as well:-

(i) That second reference against him was still pending, but despite that in the Play the appellant has been shown convicted and sentenced by the Accountability Court to 05 years imprisonment and a fine of 6 Carors and by doing so the respondents have seriously infringed the independence of Judiciary and violated the appellant's fundamental right to free trial.

(ii) That the play shows the appellant to have married twice and that his second

marriage (with Saliha a character of the play) is kept secret from his family and relatives. This goes on to show the appellant's second wife eventually divorces him because of his corrupt practices. By doing so, the respondents have shown the appellant to be an insincere, untrustworthy, corrupt and shady character.

(iii) That the play shows that appellant order his servants to punish the tax Officer by making him a prey of his pet dogs, for enquiring the appellant about the tax returns. The play gives an impression that it was a matter of routine for the appellant to treat the people in such a cruel manner.

(iv) That play shows that appellant does not reply to "Salam of the income Tax Officer" and behaves very arrogantly with him, thereby shown the appellant to be a very arrogant and abusive man by nature as well as a bad Muslim.

(v) The play shows the appellant to concede to certain allegations even before the commencement of the trial, whereas those allegations are still being contested by the appellant in the Court of law. Infact the only reason why the appellant has suffered imprisonment since 14.10.1999 is because he does not concede to these blatant allegations against him. Hence, the defendants have maliciously attempted to make the masses believe that the appellant did commit the alleged offences and thereby defeated the whole purpose for which the appellant made huge scarifies i.e. to get justice from the Courts of law to clear his name of the allegations.

vi) The play shows major allegations, which are the subject matter of 2nd reference, as proven facts and goes into intimate details to show how the alleged corruption and corrupt practices took place/ were committed.

(vii) The play show that the appellant has no respect for law and law enforcing agencies and it is something very casual for him to abuse and disrespect them. At one stage it even shows that appellant being crossed with his guard for not shooting the Police Officers who came to arrest him.

(viii) The play show that the appellant in order to evade sales tax procured huge quantity of wood under the pretext that it was being used for building mosques all over the province, thereby not only showing him to be a bad citizen who evades government taxes but also a person who does not have any respect for the religious beliefs of the Muslim nation, the society as a whole and an Islamic State.

(ix) The play show the alleged second wife of the appellant being shocked that the appellant is convicted or arrested for embezzlement for only 15 Million rupees. She alleges that he had been involved in a lot of sales tax scams as well as with the timber mafia. Hence, showing that coming from someone who is intimately related to the appellant, these are intimate true facts about appellant's corruption and instance of looting the State and people of Pakistan, which have not or could not be proved against him.

(x) The play shows that the plaintiff obtained a huge sum from a bank as loan on the pretext of a contract which never existed and that the said loan was later on waived because of the appellant's influence.

(xi) The play show that the amount obtained from Primary Education Department for the supply of furniture was put directly into the account of the appellant's brother.

That all the above distorted facts shown in the play are false and has no nexus with the reality, thus, he prayed for recovery of rupees two hundred millions as damages for his defamation with interest at the prevailing market rate against the respondents. He further prayed that respondents be directed to publish an unqualified apology in all the leading newspapers of the country as well as televisions and to stop them from further telecasting the play.

4. Defendants were summoned by the learned Trial Court. They appeared and contested the suit by filing written statement raising therein variety of objections, legal as well as factual. They denied the claim of the appellant

and asserted that character of a bureaucrat depicted in the play is fictitious one and it does not by any stretch of imagination refers to the appellant or could be so understood by right thinking members of society. The facts alleged in the cases against the appellant either before the Accountability Court or before any other Court of law were not in the knowledge of the respondents as the appellant was not known to them. The play merely represents unveiled social evil faced before the society and it does not in any way or manner refers to the appellant in particular or aims at disrupting the appellant. The play has been written, directed, produced and telecasted in good faith as a fair criticism on the persons exploiting and misusing the office, authority and the power vesting in them by virtue of the trust and confidence reposed in them by the government and citizens of the country. The theme of the play and the characters are all fictitious and the same by no stretch of imagination is referred or understood as having any reference to the appellant. The representation in the play were not made against the appellant in particular, but were an expression of opinion in respect of social evils prevalent in the society, which has been telecasted in good faith to unveil the ways, means and tactics used by the corrupt and criminal elements of society in connection with their heinous crime and to foster awareness amongst the general public.

5. From the controversial pleadings of the parties, the following issues were formulated by the learned Trial Court:-

1. Whether law bars the plaintiff's suit?
2. Whether the plaintiff has no cause of action against the defendants?
3. Whether the suit is false and vexatious to the knowledge of the plaintiff and whether the defendants are entitled to the compensatory cost under section 35-A CPC?

4. Whether the Urdu Play “Jaza Aur Saza” was telecasted by the defendants and whether it referred to the plaintiff?
5. Whether the play telecasted by defendants was defamatory, libelous, malicious and injured the reputation of plaintiff?
6. Whether the plaintiff is entitled to the recovery of a sum of rupees 200 millions from the defendants as damages for alleged defamation?
7. Relief.

6. Parties produced their respective evidence in support of their respective stance and on conclusion of trial, the learned Trial Court vide impugned judgment dated 30.01.2006, dismissed the suit of the appellant, hence, this appeal.

7. Learned counsel for the appellant argued that appellant was shocked mentally and suffered immense loss of reputation in every circle of the society and had to go through a lot of trouble because of the respondents telecasting the Play; that the imputations and blatant allegations leveled by the respondents in the Play are utterly false, farthest from truth, clearly mischievous, made purposely and deliberately to defame the appellant and injure his reputation as well as to expose him to hatred and public ridicule with an image to malign and disrupt his reputation; that by telecasting the play, the appellant has been lowered in the estimation of a large number of people nationally and internationally including his close circles and he has suffered incalculable harm, mental torture and distress as well as his moral and intellectual character in the eyes of public at large generally and his close circles in particular, has been adversely affected; that the respondents’ deceptive, ill motivated and slanderous misuse of public media against an individual, the respondents have attempted to incite public hatred against the appellant and civil services of Pakistan; that not only the respondents have brought disgrace to the appellant and

exposed him to opprobrium and state of extreme dishonor, but have also gained financial and monetary benefits by telecasting the Play, in the form of sponsors and publicity and therefore, unjustly enriched themselves at the cost of the appellant's reputation; that by intervening into a subjudice matter and stooping to show the Judge given a sentence, the respondents have slandered the Independence of Judiciary and seriously affected the appellant's right to have a free trial. He contended that appellant has proved his claim through oral and documentary evidence, but the learned Trial Court, without appreciating the evidence in its true perspective reached to erroneous conclusion by non-suiting the appellant, hence, the impugned judgment is liable to be reversed.

8. Conversely, learned counsel for the respondents contended that appellant has miserably failed to prove the character of "Shakeel" a Bureaucrat shown in the Play that it refers to the appellant through some concrete evidence coupled with malice and ill will of the respondents to disrupt and damage the reputation of the appellant by telecasting the said play; that character of a Bureaucrat depicted in the play is fictitious and it does not in any manner refer to the appellant and the play merely represents a social evil faced by the society, which has been written, directed, produced and telecasted in good faith as a fair criticism; that the play is not against the appellant in particular but is mere an expression of opinion in respect of social evils prevalent in the society. They while supporting the impugned judgment sought dismissal of the appeal.

9. We have heard the exhaustive arguments of learned counsel for the parties and perused the record with their able assistance.

10. Before adverting to the controversy on merits in light of the available evidence, we, deem it appropriate to refer first to the law on the subject so as to know the aim and object behind the same. The appellant has brought this suit under the Defamation Ordinance, 2002 (**the Ordinance**), which was promulgated on 1st October, 2002. The Ordinance is a special law on defamation creating special remedies and provides specific Court for trial of cases and appeal. Jurisdiction for trial of cases under the Ordinance has been conferred on District Court. Defamation has been defined under section 3 of the Ordinance, as under:-

“3. Defamation. (1) 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 shall be actionable as defamation.

*(2) Defamation is of two forms, namely,
(i) Slander; and
(ii) Libel*

(3) Any false oral statement or representation that amount to defamation shall be actionable as slander,

(4) Any false, written, documentary or visual statement or representation made either by ordinary form or expression or by electronic or other modern means of devices that amount to defamation shall be actionable as libel”.

11. On the touch stone of abovementioned provision of law and evidence produced by the parties, we have to see:

- i) Whether the life sketch and style of appellant has been focused in the Play and it refers to the private life of the appellant? If so,
- ii) Whether the act of the respondents i.e. playing/telecasting the Play has injured the reputation of appellant?

- iii) What should be the quantum of damages, if proved, to meet the ends of justice.

12. To substantiate his claim, the appellant while appearing as PW.2, introduced himself with his family background; described his achievements and exhibited certain medals awarded to him during tenure of his civil service. He disclosed the factum of his family business in furniture manufacturing and his involvement by the then Government in accountability cases in the year 1997-99. He deposed that he has been shown in the Play as a cruel, dishonest and greedy bureaucrat involved in corruption and accumulation of wealth by illegal means. The entire episode of the Play directly referred to him only with a change of name of "Shakeel". In the play under the name of "Saza and Jaza" the Chief Secretary of the Province, whose family carrying a furniture business has been shown involved in case of corruption and corrupt practices and facing trial in Accountability Court on the charges of benefiting his furniture Company. He further deposed that in the script of the Play the imitator by name of "Shakeel" enters the Office of a NAB officer, namely, Sultan (pursuant to a call up notice) and introduce himself as "Ex-chief Secretary" of the Province. In reply to a query of the NAB Officer regarding corruption and accumulation of illegal wealth, Mr. Shakeel replies that he agnatically and familial hereditary businessman; antique designs furniture manufactured for Royal Families and head of the State. He is not a middle class "ratta Mar" CSP Officer. In another scene of the play the appellant has been shown to have started his career from the post of Assistant Political Agent and has reached to the rank of Additional Chief Secretary. A summary of academic and service history of the appellant would depict that he was inducted in service as CSP Officer and posted as Assistant Political Agent and at

the time of the NAB reference, he was performing his duties as Additional Chief Secretary of the North West Frontier Province (now Khyber Pakhtunkhwa).

13. The above quoted scenes of the drama would abundantly make it clear that the character of Shakeel referred to a bureaucrat of the Province, whose family was dealing in furniture business and he was nabbed by the NAB authorities and tried by the Accountability Court. Most particularly the play was picturized and telecasted at an occasion, when the NAB reference against the appellant was pending adjudication before the Accountability Court. Record divulges that the appellant was the sole bureaucrat posted as Additional Chief Secretary of the Province, whose family was dealing in furniture business since long and he was prosecuted by the NAB, hence, the character of Shakeel fully referred to the appellant.

14. Section 4 of the Ordinance, speaks about actionable defamation in following words:-

“The publication of defamatory matter is an actionable wrong without proof of special damage to the person defamed and where defamation is proved, damage shall be presumed.”

Similarly, section 5 of the Ordinance, provides the following grounds of defence to be taken by the defendant in defamation proceedings:-

- (a) *He was not the author, editor, publisher or printer of the statement complained of;*
- (b) *The matter commented on is fair and in the public interest and is an expression of opinion and not an assertion of fact and was published in good faith;*
- (c) *It is based on truth and was made for the public good;*
- (d) *Assent was given for the publication by the plaintiff;*
- (e) *Offer to tender a proper apology and publish the same was made by the defendant but was refused by the plaintiff;*
- (f) *An offer to print or publish a contradiction or denial in the same manner and with the same prominence was made but was refused by the plaintiff;*

- (g) *The matter complained of was privileged communication such as between lawyer and client or between persons having fiduciary relations; and*
- (h) *The matter is converted by absolute or qualified privilege.*

15. The plain reading of the above provision of defamation Ordinance would divulge that the essential ingredients to constitute defamation and to be proved by the plaintiff are that (i) the allegations leveled against the plaintiff should be false, baseless and unfounded (ii) the wording used and the allegations leveled, on the face of it, should have been defamatory and derogatory in nature; (iii) such allegations should have been published in widely circulated newspapers or spoken in large gathering; (iv) the said publication made or wordings used should have been with malic without any reasonable excuse and justification; and (v) the allegations should have been directly attributed to the plaintiff specifically mentioning his name.

16. Taking in to account the above stated principles, we would like to give a brief resume of evidence.

17. Ghulam Sarwar, the friend of the appellant, while appearing as PW.3 deposed that after watching the Play, he felt the same to be extremely defamatory based on utter lies, full of innuendos and every person who watched it knew that it was about the appellant; that the play subjected the appellant to public hatred, ridicule as a result he suffered mental torture. In cross examination, PW.3 admitted that appellant had not been the only Chief Secretary of NWFP. He, however, admitted that appellant was sentenced in NAB reference against which he had filed an appeal which was pending in the Supreme Court. He categorically admitted that all the NAB cases were reported in the Newspapers and that the cases against the appellant were also given considerable courage by the news papers. He deposed that the reference which is the

subject matter of the relevant episode of the Play was also given wide coverage by the Press even before telecasting of the play.

18. Naeem Khan appeared as PW.4. He is also the friend of the appellant. He deposed that he had watched the play which is highly disgusting and it left very bad taste about the reputation of the appellant. In cross-examination he deposed that he watched the play by chance when he as usual was watching TV with his family at evening; that he has not seen the said episode from the beginning as when he switched on the TV, the play was being telecasted. He does not remember the name of the character which refers to the appellant in the play. He also does not remember the names of other characters or other minute details of the play, however, the circumstances that were being depicted in the play were about Chief Secretary of NWFP (KPK) having a furniture family concern and a primary education department's contract, and all these refer to the appellant.

19. Inspector Mehmood while appearing as PW.5 deposed that he watched the relevant episode of the play on 15.03.2002 which refers to the appellant. The play was defamatory in nature as the appellant has been shown in the Play as a cruel and dishonest person who made the tax Officer a prey of his pet dogs and imported wood illegally on the pretext of building mosque so that he evade taxes; that on next day he met the appellant and inquired from him about his second marriage and other doubtful and disgracing materials as telecasted in the play, in reply, the appellant felt hurt and shocked and went in silence; that the play has adversely affected the good reputation of the appellant in public at large as well as in his close circles. In cross-examination he deposed that he did not remember the episodes he had seen prior to the episode which he

referred above. He admitted that prior episodes were not about the appellant although brief introductions are made occasionally during prior episodes when a detailed episode is being telecasted; that the prior episodes were about Secretaries of whole of Pakistan, against whom NAB cases were pending; that he also does not remember the number of all the characters of the said play; that he does not know the details about all the Chief Secretaries of NWFP (KPK).

20. Mehmood Aziz is the brother of the appellant. He appeared as PW.6. First part of his statement refers to the education qualification and service achievements of the appellant. He deposed that he has watched the play in which the character by the name of **“Shakeel”** a bureaucrat refers to his brother appellant; that the play is not only defamatory against his family, but also malicious, cheap and propaganda against the appellant; that their entire family felt bad after watching said play as well as their friends and colleagues and public at large towards the appellant.

21. In rebuttal Sajjad Ahmad Khan defendant appeared as DW.1. He deposed that he had been working in Pakistan Television Corporation since 1974 and entered in the field of production in 1982. Since then, he had been produced various plays like “Madar, Palay Shah, Barrish Key Baad, Pukar, Dhuwan, Sanata, Namaloom, Bangul Khan Jugizai etc including “Saaza Aur Jaza”. It is the motive of PTV to present the realistic feature of the society which is the exact end of any good drama. In these plays social evils have been highlighted and discouraged. Likewise, in the Play “Sazza Aur Jaza” the evil of corruption in various departments, like Pakistan Steel Mills, Land Revenue, Patwari System, Education Department, Banking and Politicians etc has been shown. No individual person has

been targeted or discussed in the Play "Saza Aur Jaza". All the characters and events in this Play are fictitious and resemblance to any person living or dead is purely co-incidental. He deposed that he had neither seen Mr. Khalid Aziz nor had met him in his life, therefore, does not know about his personal life. The plays like Yousaf Ben Tashphain or Palay Shah are dead people but a lot of material is collected to produce these serials. He further deposed that the Play was purely a national cause as the corruption had changed the entire fabric of the society and this was the prime duty of PTV to inform and educate the masses about this evil; that in no way this Play is damaging to any person as so many departments and Institutions have been discussed in the Play and the same is neither against any individual nor refers to the appellant.

In cross-examination he deposed that it is the joint efforts of Producer, Director and the Writer when the dram is about matters like corruption there are a lot of changes that can be brought able in context with the general impact of the society. In the Play no particular changes had been brought by him in the script which was given by the writer. In reply to a question as to who was the writer of the play, he named Mr. Asghar Nadeem Syed. He denied all the suggestions that the Play refers to the appellant.

22. From the entire evidence led by the appellant coupled with the record of the play, one thing is squarely proved that the respondents have mounted a campaign which is an amalgamation of facts ornamented and decorated with a lot of exaggeration which are in fact, abusive and defamatory on the face of it. The appellant and his witnesses have admitted involvement and arrest of the appellant in NAB references and publication of the same in the local and National newspapers as well as the

defendants No.2 to 5, were not known to him personally, but merely having no acquaintance or malice of the respondents with the appellant would not be sufficient to exonerate them from the charge of defamation, because the word malice or mala fide, are alien to sections 3, 4 and 9 of the Ordinance. In defamation cases, falsehood is presumed on the part of defendant, unless proved that the published or broadcasted materials were true. The plaintiff can only be burdened to prove the malice in case the defendant succeeds in proving that the defamatory words were true and privileged otherwise the Court shall presumed that the defamatory materials published or broadcasted are false and mala fide exists on the part of defendant. In the case in hand, the defendant No.6 has authored the insinuating documentary and appeared it in the Play with abnormal degree of exaggeration, and so was telecasted by defendants No.1 to 5, without certifying the facts about the life and living of appellant. Particularly, the author of the Play chose not to appear before the Trial Court and this Court, hence, has been placed ex-parte throughout the proceedings. The claim of the defendants that the subject Play merely represents the social evil face of the society and telecasted in good faith for public, ridicules, incongruous and discrepant in nature. Such a flimsy defence, without a particular plea of fair comments or absolute privilege, would not purport to be a plea of justification of the imputations. Even in case of fair comments, the defendant must show that the comments are based upon facts, true and certified, failing which it shall be deemed that the defendant cannot prove a defence of "fair comment". So far the constitutional protection with regard to liberty of speech is concerned, suffice it to say that no doubt, Article 19 of the Constitution guaranteed the freedom of speech, but it also imposes certain

limitations. The article *ibid* does not provide license to any person to make personal attempt on an individual to disgrace his dignity and reputation. The Print and Electronic Media are in no way vested with unfettered liberty and impunity to publish and telecast any material which is prejudicial to the interest of any person or harm or cause damage to reputation, honour and prestige of a person. Any drama's author or broadcasting Agency is not free to telecast anything for promotion of the company or corporation or on the instruction of same quarter or according to its desire, but its freedom is subject to a moral code of conduct and such reasonable restrictions as may be legitimately imposed under the law in public interest and glory of Islam. In case titled, **“Sheikh Muhammad Rashid Vs Majid Nizami Editor in Chief, the Nation and Nawa-e-Waqat, Lahore and another” (PLD 2002 Supreme Court 514)**, while dilating upon the scope and limits of Article 19 of the Constitution has observed as under:-

“In the original Article word ‘defamation’ was available which was substituted by the word ‘commission of’ vide section 4 of the Constitution (Fourth Amendment) Act, 1975 (LXXI of 1975). Although the scope of freedom of press has been enlarged after the omission of the word ‘defamation’ from Article 19 yet it does not licentiate the press to publish such material which may harm or cause damage to the reputation, honour and prestige of a person. The Article provides the freedom of press subject to any reasonable restrictions which may be imposed by law in the public interest and glory of Islam, therefore, the press is not free to publish anything they desired. The press is bound to take full care and caution before publishing any material in

press and keep themselves within the bounds and ambit of the provisions of the Article.”

Similarly, the worthy Karachi High Court in case titled, **“Mst. Kaneez Fatima Vs Farooq Tariq and others” (PLD 2002 Karachi 20)**, has elaborately dilate upon ‘right to live’ and dignity of a person in the following golden words:-

“The right to live is not confined to mere living but as observed by his lordship Mr. Justice Saleem Akhtar, right to live means meaningful life, which can be enjoyed with dignity, PLD 1994 SC 693. The principle is required to be extended further to the cases where any defamation is caused, because the human dignity, honour and respect is more important than physical comforts and necessities. I am, therefore, of the considered opinion that no attempt on the part of any person individually, jointly or collectively to detract, defame or disgrace another person, thereby diminishing, decreasing and degrading the dignity, respect, reputation and value of life and more particularly on the part of journalist, should be allowed to go with impunity. The situation is aggravated if it affects the honour and respect of any person in public life or in any concerned with collective good of the public, in any walk of life.”

Theater and drama have their origin in the cultural setting of the past and the vicissitudes of the present. It is part of the social life of the people embracing the totality of their way of life, habits, attitudes and propensities. It is not only an entertainment but is regarded as informal ways by which the quality of lives of people can be inculcated and enriched. The television and electronic media play the role of most sturdy backbone in communicating and exposing the positive and negative elements of the society. Drama as

one of the core genres of literature is the mirror of any society, because it documents what is happening and throws it back at the same society. In our humble opinion the dramas and TV Plays shall be used as tools to sensitize the general public on matters that affect them on daily basis. It should not be used for humiliation of a person or a particular segment of the society. When an untrue statement or a scene is added even to an evil act of a person, the law of defamation would plunge into the gulf for his/her rescue and protection. What has been picturized and telecasted by the respondents in the Play under the name of “Saza Aur Jaza” with regard to the allegation of corruption or misuse of authority or accumulation of illegal wealth cannot be termed as humiliation, hence, the respondents cannot be booked for a wrong of defamation. It is also not the case of the appellant, rather he has urged that the respondents have de-shaped his character by not showing him only a corrupt person but he has been showed to have contracted a second marriage with a lady namely Saleha, daughter of a retired, pious, senior bureaucrat. The appellant has been shown to have kept the above said marriage secret from his other family member and after his involvement in the NAB case, the lady abandoned her conjugal domicile with the appellant and obtained “Talaq” from him as he was a robot tool of the government and involved in corruption. In a scene the appellant has been portrayed immensely cruel, pitiless, nasty and brutal person as he had order his servant to punish the tax Officer by making him a prey of his pet dogs, because he had come to the house of the appellant to enquire about the tax return. He was also shown as an arrogant and abusive person as he did not reply salam of the Tax Officer and he was dealt with and behaved arrogantly.

23. From the evidence discussed above, we are firm in our view that the character of “Shakeel” as shown in the Play refers to the appellant. Sajjad Ahmed Khan defendant who appeared as a solitary witness tried to justify the Play as being aimed at general evils in the society but remained unsuccessful to prove that the character of Shakeel does not refer to the appellant. Islam provides to every citizen the right to the protection of his/her honour. In the famous sermon of the Holy Prophet Muhammad (Peace be upon Him), on the occasion of the Farewell Hajj, He not only prohibited the Muslims from taking the lives and properties of other Muslims but also condemned and prohibited any encroachment on their honour, respect and chastity. The Islamic law is superior to the Western law of defamation. Under the Islamic Law if it is proved that someone has attacked the honour of another person, then, irrespective of whether the victim is able to prove himself an honourable person, the culprit is to be punished. Islam has declared defamation, a crime irrespective of whether the accused is a man of honour or of whether the words used have actually disgraced the victim and harmed his reputation. Under the Islamic law it is sufficient to prove that the accused said things which according to common sense, could have damaged the reputation and honour of the plaintiff. Making false allegation against an innocent person is one of the meanest misdeeds that have been severely censured by Islam. Deriving guidance from the teaching of Islam, it should be remembered that defamation or false allegation is one of the worst kind of lies because it contains the great evil of falsity as well as the harms of back-biting. Moreover it is the worst kind of oppression.

24. The appellant has proved defamation at the hands of respondents up to the hilt through sufficient oral

evidence as well as exhibiting the Play in evidence. Now the moot question for determination before us is what should be the quantum of damages to be awarded to the appellant so as to meet the ends of justice. Admittedly, the appellant has not prayed for special or exemplary damage in his suit and from the evidence as well it appears that he is claiming only general damages for the harm to his reputation. Though, the appellant has claimed Rs.200000000/- (twenty crore) as damages for defamation but has not led any evidence on the quantum of damages. The learned counsel for the appellant urged at the time of arguments that keeping in view the circumstances of the case and social status of the appellant in life and his family honour, the damages claimed may be decreed. On the other hand, the learned counsel for respondents, submitted that the appellant having failed to prove special damages, he was not entitled to the damages claimed. In case of **Altaf Gohar Vs Wajid Shamsuddin (PLD 1981 Karachi 515)**, it has been observed by the worthy Karachi High Court that:-

“The grant of general damages in proceedings of this nature where plaintiff succeeds in proving defamation is inherent in the action as the law presumes that some damage must have resulted to plaintiff by publication of defamatory and libelous statement which is actionable. There is, however, no rule of law regulating assessment of general damages in such cases. It is left to the Jury in England and to Judge in this country to assess the damages. The assessment of damages in such cases is therefore not capable of any exact appraisal. However, while assessing the amount of general damages, it must be kept in view that the damages for defamation are compensatory in nature and therefore, the amount assessed should not appear to be punitive or exemplary. No doubt on proof of certain facts the Court may grant even punitive or exemplary damages but these need not be discussed here as

neither such damages are claimed by the plaintiff nor a case of their grant is made out here.”

In case titled, **“Pakistan Coast Guards Vs Umar Saleya” (1997 CLC)**, the worthy Karachi High Court while taking into consideration various judgments of the same High Court in respect of award of general damages, awarded general to the tune of rupees five lacs by considering various circumstances of the case. The relevant part of the judgment is reproduced below:-

“The plaintiff has not prayed for special or exemplary damages and from the evidence as well it appears that it is claiming only general damages for harm to reputation. I have gone through a number of cases in which general damages have been awarded. See Dr. Q.M. Qarni V Khalilur Rehman PLD 1975 Kar. 379 (Rs.15,000/- awarded as general damages), Muhammad Ansarul Islam Qarni, Advocate Vs Karachi Stock Exchange Limited (PLD 1975 Kar.556) (Rs.28000 awarded as special and general damages), Abdul Aziz Vs Rafique Akhtar (1988 MLD 566) (Rs.40,000 awarded as general damages) and Altaf Gauhar v Wajid Shamsul Hassan (PLD 1981 Kar 515) (Rs.25,000 awarded as general damages). In the case of Abdul Aziz this Court decreed the plaintiff’s suit for Rs.40,000 against defendant No.1 with the interest at the rate of 6% for publication of a news item dated 19.07.1973 published in daily Morning News, Karachi, as a result of press conference organized by the defendant No.1. The rule laid down by this Court in the case of Abdul Aziz (supra) is fully attracted to the facts of the present case.

The imputations in the case of Abdul Aziz v Rafiq Akhtar were made in July, 1973. In the instant case the imputations were made in a press conference in June, 1993. There is a difference of almost 20 years between the publication of the imputations in the case of Abdul Aziz and the existing case. To grant a decrease in real terms of the value of money, a sum of Rs.40,000 in the circumstances of this case here no defence has been pleaded would be a meager amount. The circulation of the newspapers like Jang and Dawn are commonly known to be the widest in Pakistan. The libel has been reproduced in at least other four newspapers. There is no defence wither by way of justification, fair comment or privilege. I am therefore, inclined to award a sum of Rs.5,00,000/- (rupees five lacs) by way of general damage with proportionate costs.”

Considering and assessing the case in hand at the touch stone of the above principle, the Play had been telecasted

in the year 2002 on PTV having wide coverage in the country, hence, following the ratio of the aforesaid judgment qua determination of damages, awarding/decreeing the suit of the appellant to the tune of rupees seven lacs as general damages would be sufficient and appropriate to meet the ends of justice.

Resultantly, this appeal is allowed, the impugned judgment of the learned Trial Court is set aside and the suit of the appellant-plaintiff is decreed in his favour against the respondents-defendants to the tune of rupees seven lacs as general damages, to be paid by the respondents-defendants in equal share to the appellant-plaintiff.

Announced:
05.05.2017

M.Siraj Afridi P.S.

JUDGE

JUDGE