

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Musarrat Hilali

Criminal Petitions No.1054-L and 1344-L of 2023

(Against the orders dated 16.10.2023 and 27.11.2023 respectively of the Lahore High Court, Lahore passed in Crl. Revision No. 68011/2023 and Crl. Misc. No. 41772-B/2023)

Mubarik Ahmad Sani. ... *Petitioner*
(in both cases)

Versus

The State and another. ... *Respondents*
(in both cases)

For the Petitioner: Sh. Usman Karim-ud-Din, ASC.
(In both cases)

For the State: Mr. Ahmed Raza Gillani,
(In both cases) Additional Prosecutor-General, Punjab.
a/w Shabraiz, DSP.

For the Complainant: Mr. M. Shahid Tasawar Rao, ASC.
(In both cases)

Date of Hearing: 06.02.2024.

ORDER

Qazi Faez Isa, CJ.

Criminal Petition No. 1054-L/2023: Through this petition the petitioner seeks the deletion of certain charges from the *Charge* framed against him. The learned counsel for the petitioner states that the petitioner was charged for three offences pursuant to the case arising out of FIR No. 661/22 registered against him on 6 December 2022, at Police Station Chenab Nagar, District Chiniot. The three offences for which the petitioner is charged were under: (a) section 7 read with section 9 of the Punjab Holy Quran (Printing and Recording) Act, 2011, (b) under section 298-C of the Pakistan Penal Code, 1860 (**'PPC'**), and (c) under section 295-B of the PPC.

2. It was alleged in the FIR that the petitioner was distributing/disseminating a proscribed book – *Tafseer-e-Sagheer*. Learned counsel submits that distributing/disseminating a proscribed book was made an offence by the Punjab Holy Quran (Printing and Recording) (Amendment) Act in the year 2021 whereas the FIR alleged that the

petitioner had done this in 2019. We have examined the original law and the changes made to it, and the contention of the learned counsel that the said offence was incorporated into the law in 2021 is correct.

3. The Constitution of the Islamic Republic of Pakistan (**the Constitution**) stipulates that a person cannot be charged for something which was not an offence when it was done. Article 12(1) of the Constitution stipulates that:

- ‘12. (1) No law shall authorize the punishment of a person-
- (a) for an act or omission that was not punishable by law at the time of the act or omission; or
 - (b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.’

Therefore, since in the year 2019 the distribution/dissemination of a proscribed book was not an offence, the petitioner could not have been charged for it.

4. As regards the offences under sections 298-C and 295-B of the PPC for which the petitioner is also charged his learned counsel submits that neither the FIR nor the police report (*challan*), submitted after investigation by the police, allege that the petitioner had done any of the acts mentioned therein to constitute these offences.

5. The learned counsel representing the complainant read out the FIR, but nothing is stated therein to constitute the offences under sections 298-C and 295-B of the PPC. The *challan* is also silent in this regard. The *Charge* framed on 24 June 2023 by the Additional Sessions Judge, Lalian to the extent of charging the petitioner for the offences under sections 298-C and 295-B of the PPC did not accord with the provisions of Chapter XIX of the Code of Criminal Procedure, 1898 (**the Code**), which pertain to *Charge*. The instant case is also not one wherein the *charge* could be altered or where the petitioner could have been convicted of a lesser offence to those under sections 298-C and 295-B of the PPC. Therefore, the offences under sections 298-C and 295-B of the PPC are removed from the *Charge* framed against the petitioner.

6. Courts must exercise extreme caution when dealing with matters of faith. The Islamic faith is based on the Holy Qur’an which, in its *surah Al-*

Baqarah (chapter 2), verse 256 reproduced hereunder, expounds that there must not be any compulsion in religion.

لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ فَمَنْ يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمِنْ
بِاللَّهِ فَقَدِ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَىٰ لَا انفِصَامَ لَهَا وَاللَّهُ سَمِيعٌ عَلِيمٌ

7. Religious compulsion also violates the Divine scheme of accountability in the Hereafter. Even Prophet Muhammad (peace and blessings of Almighty Allah be upon him) was told by the Creator that he is required to only convey the Message and should not compel people to believe, as stipulated in *surah Ar-Ra'd* (chapter 13), verse 40 and in *surah Yunus* (chapter 10), verse 99 of the *Holy Qur'an*. Freedom of faith is one of the fundamental tenets of Islam. But sadly, in matters of religion tempers flare up and the Qur'anic mandate is forsaken.

8. The *Holy Qur'an* requires that all matters of significance should be pondered over and reflected upon (*surah An-Nahl* (chapter 16), verse 44 and *surah Yunus* (chapter 10), verse 24). All those concerned with this case should have done so, instead they were eager to demonstrate that the Holy Qur'an was desecrated and that God's Last Messenger (peace and blessings of Almighty Allah be upon him) was denigrated. They should also have considered verse 9 of *surah al-Hijr* (chapter 15) where Almighty Allah says:

إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ

The translation of the above verse is, 'We have, without doubt, sent down the Message; and we will assuredly guard it.'

9. The principle of there being *no compulsion in religion* mentioned in the Holy Qur'an is enshrined in the Constitution as a Fundamental Right. Clause (a) of Article 20 of the Constitution stipulates that, 'every citizen shall have the right to profess, practice and propagate his religion' and clause (b) of Article 20 states that, 'every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions'. Article 22 of the Constitution requires and prescribes that, 'no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination'. These Fundamental Rights cannot be derogated from, circumvented or diluted.

10. If only the functionaries of the State had heeded the *Holy Qur'an*, considered the Constitution and examined the law then the FIR would not have been registered in respect of the abovementioned offences. Therefore, Criminal Petition for Leave to Appeal No. 1054-L of 2023 is converted into an appeal and allowed by setting aside the impugned order and by deleting section 7 read with section 9 of the Punjab Holy Quran (Printing and Recording) Act, 2011 and section 298-C and 295-B of the PPC from the *Charge* framed against the petitioner.

11. Criminal Petition No. 1344-L/2023: Through this petition the petitioner seeks bail. On the last date of hearing the following order was passed:

‘Learned counsel states that the petitioner was arrested on 7 January 2023 and if at all the offence is made out it would be under section 5 of the Criminal Law Amendment Act, 1932, as the allegation against him is that he distributed a proscribed book, that is, *Tafseer-e-Sagheer*, which section attracts a maximum imprisonment of six months. Learned counsel further states that the FIR was registered on 6 December 2022 whereas the alleged offence was stated to have been committed on 7 March 2019 without explaining the delay and the petitioner has remained incarcerated since 7 January 2023. Issue notice for 6 February 2023.’

12. We enquired from the learned Additional Prosecutor General, Punjab (**APG**) whether the above contention of the learned counsel for the petitioner was incorrect and the learned APG stated that it was not.

13. Though the petitioner has not been charged under section 5 of the Criminal Law Amendment Act, 1932, however, it could be contended that its ingredients were mentioned in the FIR and in the *Charge*, therefore, the charge could be altered under section 227 of the Code and the trial could continue as the alteration would not prejudice the petitioner. Therefore, we proceed to consider whether the petitioner should be granted bail in respect of the said section 5.

14. The petitioner was arrested on 7 January 2023 and has remained incarcerated for thirteen months, which is more than double the permissible punishment under section 5 of the Criminal Law Amendment Act, 1932. Trials in respect of offences where the maximum sentence of imprisonment is relatively short must be conducted promptly or the accused should be granted bail. However, bail was declined to the

petitioner by the Additional Sessions Judge on 10 June 2023, without considering that the petitioner had already served out the maximum prescribed imprisonment for the said offence. The learned Judge of the High Court also dismissed the petitioner's bail application, through the impugned order dated 27 November 2023, by overlooking this crucially important aspect of the case.

15. Therefore, since the petitioner has already served out the maximum imprisonment of six months prescribed for the offence if he is found to be guilty of having committed it, keeping him incarcerated would violate a number of his Fundamental Rights. Article 9 of the Constitution stipulates that a person shall not be deprived of his *liberty save in accordance with law*; the *law* no longer permits his detention. And, Article 10A of the Constitution guarantees right to *a fair trial and due process*, which too the petitioner is now being denied. In addition to the violation of these two Fundamental Rights is the overarching right stipulated in Article 4 of the Constitution, '*To enjoy the protection of law, and, to be treated in accordance with law is the inalienable right of every citizen.*' The petitioner is no longer being treated in *accordance with law* because while waiting for the conclusion of his trial he has remained imprisoned for a period much longer than what he could have been punished for if he is found guilty.

16. We regretfully note that in dealing with cases pertaining to *offences against religion* facts give way to emotions, as seems to have happened in this case too, and individual complainants supplant the State, even though the very nature of these offences is not against an individual or with regard to personal property.

17. Therefore, Criminal Petition for Leave to Appeal No. 1344-L of 2023 is converted into an appeal and allowed by setting aside the impugned orders and it is ordered that the petitioner be immediately released upon provision of a personal bond in the sum of five thousand rupees in respect of the case arising out of the abovementioned FIR No. 661/22.

Chief Justice

Judge

Islamabad:
06.02.2024
(M. Tauseef)

Approved for Reporting