

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Amin-ud-Din Khan

**Crl.P.916-L/2021**

(Against the order dated 24.05.2021 of Lahore High Court,  
Lahore, passed in Crl. Misc. No.31929 of 2021)

Tahir Naqash, etc.

..... **Petitioner(s)**

**Versus**

The State, etc.

..... **Respondent(s)**

For the petitioner(s): Mirza Mahmood Ahmad, ASC.  
Sh. Usman Karim-ud-Din, ASC.

For the State: Mirza Abid Majeed, DPG, PB.  
Syed Zahid Hussain, DSP  
Arshad Ali, Inspector/I.O.  
Abdur Rasheed, SHO.

For the complainant: Mr. Shaukat Rafique Bajwa, ASC.  
Assisted by:  
Hafiz Mussab Rasool, Advocate.

Date of hearing: 12.01.2022

**JUDGMENT**

**Syed Mansoor Ali Shah, J.**- The petitioners seek leave to appeal against the order dated 24.05.2021 of the Lahore High Court, whereby their petition under Section 561-A of the Code of Criminal Procedure 1898 ("CrPC"), challenging the alteration/addition of certain offences to the charge framed against them, has been dismissed and the orders dated 04.01.2021 and 03.05.2021 passed by the trial court and the revisional court respectively have been upheld.

2. Briefly stated, the petitioners and one other accused person were booked in case FIR No.352 of 2020 dated 03.05.2020 for the offences punishable under Sections 298-B and 298-C of the Pakistan Penal Code 1860 ("PPC") on the allegation that they being *Ahmadi/Qadiani* had styled their place of worship as a mosque and displayed *sha'air-e-Islam* on the walls inside their place of worship including (i) کلمہ طیبہ (ii) بسم اللہ الرحمن الرحیم (iii) یا حی یا قیوم (Arabic) and maintained copies of the Holy Qur'an inside their place of worship.

It was also alleged that the design of the place of worship resembled a mosque and its electricity bill described the place of worship as a mosque. On these allegations, the petitioner were put to trial and the learned trial court, i.e., the Court of Magistrate, on 23.11.2020, framed the charge against the petitioners for offences punishable under Sections 298-B and 298-C PPC.

3. Later, the complainant filed an application under Section 227 CrPC for alteration of the charge praying that offences punishable under Sections 295-B and 295-C PPC were also attracted and the same be added to the charge. The trial court, vide its order dated 04.01.2021, held that allegations levelled against the petitioners attracted Sections 295-B and 295-C PPC, and therefore allowed the application. The petitioners filed a revision petition against the order of the trial court but the same was dismissed by the Court of Additional Sessions Judge vide order dated 03.05.2021. The petitioners assailed the said orders, through a petition under Section 561A CrPC, before the High Court, which met the same fate and was dismissed vide the impugned order dated 24.05.2021. Hence, this petition.

4. Learned counsel for the petitioners argued that the allegations levelled in the FIR do not attract the offences punishable under Sections 295-B and 295-C PPC. Only the public propagation of the *Ahmadi* religion by the *Ahmadis* posing themselves as Muslim or referring to their faith as Islam and the use in public of the epithets, descriptions and titles, etc., reserved for certain holy personages or places of Islam, has been restricted under the law, i.e., Sections 298-B and 298-C PPC, as construed in *Zaheeruddin v. State*<sup>1</sup>, but there is no bar on the *Ahmadis* to privately profess and practice their religion as per their faith. He submitted that in this case, the petitioners were admittedly present inside their private place of worship, and the display of the *sha'air-e-Islam* was made, and the copies of the Holy Qur'an were placed, inside their private place of worship. He submitted that *Ahmadis* believe the Holy Quran to be the words of the God Almighty, and

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<sup>1</sup> 1993 SCMR 1718.

the Holy Prophet Muhammad (peace be upon him) to be the messenger of the God Almighty; they therefore cannot even think of defiling or desecrating the Holy Quran or the sacred name of the Holy Prophet. There is no material on record that the petitioners did any of such acts; therefore, Sections 295-B and 295-C PPC are not attracted in the present case.

5. The State prosecutor, as well as, the learned counsel for the complainant also relied on *Zaheeruddin case* in addition to *Majibur Rehman v. Federal Government*,<sup>2</sup> *Jahangir Joya v. State*,<sup>3</sup> *Khurshid Ahmad v. Government of Punjab*,<sup>4</sup> to submit that the place of worship of the petitioners is a public place and the display of *sha'air-e-Islam* as well as maintaining copies of the Holy Qur'an and other material recovered from the said place of worship attract Sections 295-B and 295-C PPC. They submitted that mere reading of the *Kalma* and the Holy Qur'an by non-Muslim/*Ahmadis* constitutes defilement and desecration of the sanctity of the *Kalma*, the Holy Qur'an and the Holy Prophet.

6. We have given due consideration to the arguments of the learned counsel for the parties and have gone through the record of the case. The question before us is, whether the allegations levelled in the crime report and the material collected in the course of the investigation attract the commission of offences punishable under Sections 295-B and 295-C, PPC?

7. Much emphasis was laid on the cases cited above by the learned counsel for the respondents to establish that Sections 295-B and 295-C PPC are attracted in the present case. The three main cases, *Majibur Rehman*, *Khurshid Ahmed* and *Zaheeruddin*, either deal with the constitutional vires of Sections 298-B and 298-C PPC brought about through the Anti-Islamic Activities of the Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984 ("Ordinance") or the administrative orders passed for restraining the public display or propagation of their religion by the *Ahmadis*. These cases hold that Sections 298-

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<sup>2</sup> PLD 1985 FSC 8.

<sup>3</sup> PLD 1987 Lah 458.

<sup>4</sup> PLD 1992 Lah 1.

B and 298-C PPC are *intra vires* the Constitution of the Islamic Republic of Pakistan 1973 ("Constitution"), besides maintaining such administrative orders passed by the local administration to prevent a law and order situation from arising.

8. In *Zaheeruddin*, this Court held that offences punishable under Sections 298-B and 298-C PPC are *intra vires* the Constitution and do not offend Article 20 of the Constitution. The main consideration in *Zaheeruddin* was that the *Ahmadis* by performing the intended centenary celebrations and ceremonies in public may outrage the feelings of Muslims, generating resentment and hostility amongst them, and thus giving rise to law and order issues leading to serious threat to the life and property of the citizens. The Court further held that only such religious practices are protected by the "freedom of religion" guaranteed under Article 20 of the Constitution which are integral and essential part of the religion, while the appellant (therein) had failed to show that the practices they intended to perform at the centenary celebrations were the essential and integral part of their religion, and the same had to be performed only in public or in the public view, on the roads and streets or at the public places. However, this Court while maintaining the administrative orders that had restrained the *Ahmadis* to perform the intended centenary celebrations and ceremonies in public, clearly observed that the *Ahmadis* can perform such activities in private. Abdul Qadeer Chaudhry, J., speaking for the majority, in *Zaheeruddin* wrote<sup>5</sup>:

The purpose of the order has also been spelt out in the last direction to say, that no other activity which may directly or indirectly incite or injure the feelings of the Muslims, shall be undertaken. The above restrictions clearly mean such activities which might have been performed in the public or in public view and not those to be performed in the private.

Likewise, in *Majibur Rehman*, Fakhre Alam CJ spoke for the Full Bench of the Federal Shariat Court of Pakistan in the following words<sup>6</sup>:

This cannot be tolerated and non-Muslims cannot be allowed to encroach upon the rights and privileges of the Muslim community to utter disintegration of the Ummah. Moreover, this does not affect the rights of the Qadianis to profess their faith in Mirza sahib...nor does it interfere with their right to practice their religion or to worship or in their place of worship according to its dictates.

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<sup>5</sup> p.1757

<sup>6</sup> p. 93.

The Muslim Sharia affords full protection to the practice of religion by the non-Muslims as to its profession. ...It is for this reason that the Holy Prophet (P.B.U.H) and his worthy successors agreed to the best terms inter alia in connection with the freedom of religion to the Polytheists and non-Muslims whether at war with Muslims or not.

Thus, neither *Zaheeruddin* nor *Majibur Rehman* imposes any prohibition or restriction on *Ahmadis* to profess and practice their religion in their place of worship according to their faith.

*Constitutional values and fundamental rights*

9. The above observations of this Court and of the Federal Shariat Court are in line with the constitutional values enshrined in the preamble to our Constitution which require us to be tolerant as a people, believe in freedom, equality and social justice, and respect our minorities and make adequate provisions for them to freely profess and practice their religions and develop their cultures and to safeguard their legitimate interests. All citizens of Pakistan, whether Muslim or non-Muslim, are guaranteed fundamental rights under the Constitution including equality of status, freedom of thought, expression, belief, faith, worship subject to law and public morality. The Constitution emphasizes that only when we honour these values can we, the people of Pakistan, prosper and attain the rightful and honoured place amongst the nations of the World and make full contribution towards peace, progress and happiness of the humanity.

10. Article 14 of the Constitution guarantees right to dignity to every person. Human dignity encapsulates the notion that every person has inherent equal worth. This simple but profound concept has three elements: first, every member of the human family has value - no one can be dismissed, ignored, mistreated or abused as if their humanity means nothing; second, each person's worth is equal to every other person and no one's life is more important than any other person; third, human dignity inheres in the human person and cannot be taken away.<sup>7</sup> To deprive a non-Muslim (minority) of our country from holding his religious beliefs, to obstruct him from professing and practicing his

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<sup>7</sup> Erin Daly & James R. May, Dignity Law, Global Recognition, Cases, and Perspectives. 2020 HEIN.

religion within the four walls of his place of worship is against the grain of our democratic Constitution and repugnant to the spirit and character of our Islamic Republic. It also deeply bruises and disfigures human dignity and the right to privacy of a non-Muslim minority, who like all other citizens of this country enjoy the same rights and protections under the Constitution. Bigoted behaviour towards our minorities paints the entire nation in poor colour, labelling us as intolerant, dogmatic and rigid. It is time to embrace our constitutional values and live up to our rich Islamic teachings and traditions of equality and tolerance.

11. Article 20(a) of the Constitution provides that every citizen shall have the right to profess, practice and propagate his religion subject to law, public order and morality. Article 20(b) provides that every religious denomination or sect shall have the right to establish, maintain and manage its religious institutions. Under Article 22, the Constitution provides that no person attending any educational institution shall be required to receive religious instruction or take part in any religious ceremony or attend religious worship if such instruction, ceremony or worship relates to a religion other than his own. Article 22(3)(a) provides that no religious community or denomination shall be prevented from providing religious instruction for pupils of that community in any educational institution maintained wholly by that community or denomination. Article 25 underlines that all citizens are equal before the law and are entitled to equal protection of law.

12. Article 260(3) of the Constitution though declares the *Ahmadis/Qadianis* as non-Muslim, it neither disowns them as citizens of Pakistan nor deprives them of their entitlement to the fundamental rights guaranteed under the Constitution. The Constitution treats, safeguards and protects all its citizens equally, whether they are Muslims or non-Muslims. Article 4 of the Constitution is an inalienable right of every citizen, including minority citizens of Pakistan, which guarantees the right to enjoy the protection of law and to be treated in accordance with law.

Sections 295-B & 295-C PPC

13. With this constitutional perspective, we proceed to answer the question as to the applicability of Sections 295-B and 295-C PPC in the present case. For this purpose, we need to examine the definition of the offences as provided in these Sections, which are reproduced hereunder for convenience of reference:

**295-B Defiling, etc., of Holy Qur'an:** Whoever wilfully defiles, damages or desecrates a copy of the Holy Qur'an or of an extract therefrom or uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.

**295-C Use of derogatory remarks, etc., in respect of the Holy Prophet.** Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

To constitute an offence under Section 295-B, the reading thereof shows, the accused must have *defiled, damaged or desecrated* a copy of the Holy Quran or an extract therefrom or use it in any derogatory manner or for any unlawful purpose. There is no allegation in the crime report that attracts the said offence. The courts below have held that mere reading of the *Kalima* or the Holy Quran by a non-Muslim /*Ahmadi* attracts Section 295-C. This, in our view, is not only far-fetched, but also fails to meet the fundamental constituents of the crime, i.e., *mens rea* and *actus reus*. Only that which resides in the mind of a non-Muslim while reading the Holy Quran is not sufficient to constitute the offence. In order to attract Section 295-B PPC, there must be an overt act (*actus reus*) that shows that the copy of the Holy Quran or its extract has been defiled, damaged or desecrated or it has been put to use in a derogatory manner or for an unlawful purpose. There is nothing on the record to establish this, in the present case.

14. Similarly, to constitute an offence under Section 295-C PPC, there must be words spoken or written or by visible representation or any imputation, innuendo or insinuation, direct or indirect, which defiles the sacred name of the Holy Prophet

Muhammed (peace be upon him). In the instant case, the display of the *Kalima*, having name of the Holy Prophet Muhammed (peace be upon him) therein, inside the place of worship do not attract the constituents of the said offence. What runs inside the mind of an *Ahmadi*, while reading the *Kalima* does not constitute an offence punishable under Section 295-C PPC unless there is some overt act on his part that defiles the sacred name of the Holy Prophet Muhammed (peace be upon him). There is nothing on the record to establish this, in the present case.

15. We feel it necessary to observe that laws in a constitutional democracy objectify public interest and are solicitous of individual liberties and interfere with them as little as possible. Thus, the rule of interpretation has been evolved according to which a penal statute should be strictly construed in favour of the accused. The degree of strictness depends upon the severity of the statute. It would nevertheless be appropriate to clarify that when it is said that all penal statutes are to be construed strictly, it only means that the court must see that the act charged is an offence within the plain meaning of the words used and must not strain or stretch the words. In other words, the rule of strict construction requires that the language of the statute should not be so construed so as to include acts within it which do not fall within the reasonable interpretation of the statute. The rule of strict construction, however, must yield to the paramount rule that every statute is to be expounded according to the express or manifest intention of the Legislature.<sup>8</sup> The acts charged in the present case do not attract Sections 295-B and 295-C PPC either by the plain reading of the words of these two provisions or by their construction through the lens of the express or manifest intention of the Legislature behind them.

16. For the above reasons, we are of the view that in the facts and circumstances of the present case, the trial court and the revisional court had not correctly examined the ingredients necessary to constitute the offences punishable under Sections

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<sup>8</sup> N.S Bindra's Interpretation of Statutes, 12<sup>th</sup> edition (2017) LexisNexis, pp 824-5, 836.



295-B and 295-C PPC and had failed to correctly appreciate the import of the *Zaheeruddin case*, and the High Court has legally erred in maintaining those orders. This petition is therefore converted into appeal and allowed: The impugned order is reversed, the petition of the petitioners under Section 561-A CrPC is accepted and the orders of the trial and revisional courts are set aside. The trial of the petitioners shall proceed on the basis of the charge framed on 23.11.2020 only for offences punishable under Section 298-B and 298-C PPC.

Judge

Islamabad,  
12<sup>th</sup> January, 2022.

**Approved for reporting**

*Iqbal*

Judge