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GILGIT BALTISTAN CHIEF COURT, GILGIT

2019 P.Cr.L.J Note 127

[Gilgit Baltistan Chief Court]

Before MALIK HAQ NAWAZ, J

Crl. Misc. No.113 of 2019

HAREER ASHRAF Petitioner

Versus

THE STATE Respondent

POLICE STATION : Women Police Station Gahkuch.
FIR No.02/2019 Dated .2019.

OFFENCE : Under Section 295-C of PPC

PETITION : Under Section 497 Cr.P.C. for release on
bail after arrest.

DECISION : Bail refused on 10.5.2019

Criminal Procedure Code (V of 1898)---

---Ss. 497---Penal Code (XLV of 1860), S. 295-C--- Use of derogatory
remarks etc. in respect of Holy Prophet (P.B.U.H).....

19 P Cr. L J Note 127

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Before Malik Haq Nawaz, J

HAREER ASHRAF---Petitioner

Versus

The STATE---Respondent

Criminal Miscellaneous No. 113 of 2019, decided on 10th May, 2019.

Criminal Procedure Code (V of 1898)---

---S. 497---Penal Code (XLV of 1860), S. 295-C---Use of derogatory remarks etc. in respect of Holy Prophet (P.B.U.H.)---Bail, refusal of---Using abusive language against the noblest personality of the world---Delay in lodging of FIR---Effect---Petitioner/accused was a female teacher and allegation against her was that she, in the staff room, uttered defiling words against the Holy Prophet (Peace Be Upon Him)---Petitioner contended that there was an unexplained delay of fourteen days which had been used in tailoring a false and fabricated story---Prosecution contended that a higher levelled Joint Investigation Team was constituted to ensure the transparency in the investigation, which opined that the petitioner was fully involved in the offence---Petitioner was directly charged in the FIR for using abusive language---Prosecution had explained the delay in a plausible manner as the same (delay) was caused to ensure that a fair and transparent investigation was to be carried out---Chief Court had seen, in the Court, the statement of two colleagues of the petitioner, available in prosecution file, but the said statement was not allowed to read in open court as the same, would be unbearable for a Muslim, especially against the Holy Prophet (Peace Be Upon Him)---Prima facie case existed against the petitioner---Bail was refused to the petitioner, in circumstance. [Para. 6 of the judgment]

Amjad Hussain for Petitioner.

Dy. Advocate-General for the State.

Jehanzeb Khan for the Complainant.

Date of hearing: 10th May, 2019.

ORDER

MALIK HAQ NAWAZ, J.---The petitioner has been booked for the offence under section 295-C vide FIR No. 02/2019 registered at women Police Station Gahkuch.

2. Para 2 of the impugned judgment passed by the learned Sessions Judge Ghizer is relevant, which is re-produced for the purpose of ready reference.

"In FIR No.02/2019 Women Police Station Ghakuch it has been alleged that the petitioner Mst. Hareer Ashraf, a teacher of Ghizer Public School, on 21-02-2019 at about 09:25 a.m. while sitting in female staff room of said school has uttered defiling words against Holy Prophet peace be upon him. The derogative words have been heard by two other lady teachers namely Nahida Ghalib and Hadiyi wife of Zia-ur-Rehman. It has been stated that the petitioner was reading a book on the life of Holy Prophet Peace be upon him. At first petitioner directed some vulgar words towards Hadiya Bibi. In reply she stated that we are teachers and we should not indulge in such vulgar words because we belong to the profession of our Holy Prophet Peace be upon him which is the profession of teaching. On this, the petitioner uttered some derogatory words against Holy Prophet Peace be upon him. The words have been exactly mentioned in the statements of said two lady eye-witnesses and I do not feel any need to produce them here. After completion of

investigation through a JIT, the petitioner has been found involved in the offence punishable under section 295-C, P.P.C. The petitioner has been sent to Judicial Lockup. Hence this petition."

3. The learned counsel for the petitioner submitted that there is an unexplained delay of 14 days which has been used in tailoring a false and fabricated story. The FIR was lodged by an un-authorized person thus nullity in eyes of law, as only Central Government or Provincial Government may authorize any person to lodge a complaint in the offence falling under Chapter-VI of P.P.C. The learned counsel further submitted that the petitioner has filed an affidavit to the effect that she is the believer of the Holy Prophet (peace be upon him) and has shown repentance and remorse over her act. The petitioner is a lady and her case falls within the first proviso of section 497, Cr.P.C. The learned counsel submitted that the intention of a person using derogatory remarks about the Holy Prophet (peace be upon him) has to be seen and without intention the simple words does not constitute the offence. The learned counsel referred some law cases to substantiate his arguments that when an affidavit is filed by



an accused charged under section 295-C, to the effect that he/she is the firm believer of the Holy Prophet (Peace be upon him) the Courts of the Country believed the affidavit and acquittal was ordered. The learned counsel relied on 1989 PCr.LJ 594, 2008 YLR 2798, 2012 PCr.LJ 614 and 1997 PCr.LJ 348.

4. On the other hand the learned Dy. Advocate General and learned counsel for complainant submitted that the offence under section 295-C, P.P.C. is the heinous offence, which carries the punishment of death only. The petitioner has failed to point out any ill will or malice against her two colleagues to falsely implicate her in the case of this heinous nature. The learned Dy. Advocate General submitted that there is no delay in lodging the FIR, as the proceedings under section 157, Cr.P.C., were undertaken by the local police to un-earth the real facts and further a higher levelled Joint Investigation team was constituted to ensure the transparency in the investigation, which opened that the petitioner was fully involved in the offence. Lastly the learned Dy. Advocate General submitted that no offence on earth is more heinous than the one in hand and the petitioner is not entitled for concession of bail. The learned counsel for the complainant relied on PLD 2019 SC 64.

5. Heard in detail.

6. The petitioner is directly charged in the FIR for using abusive language against the noblest personality of all the worlds and all the time to come. Whole the universe has been created for him and because of him. The delay as explained by the learned Dy. Advocate General in a plausible manner as the delay was caused to ensure that a fair and transparent investigation is carried out. The statements of two colleagues of the petitioner are available in prosecution file, which were seen by me in the Court but the learned Dy. Advocate General was not allowed to read these statement in open Court as in my humble view, the reading of these statements, was un-bearable for a Muslim, especially against our Holy and beloved Prophet (Peace be upon him).

7. There is a prima facie case against the petitioner. The petition is declined accordingly.