

IN THE LAHORE HIGH COURT, LAHORE.

1993 P.Cr.L.J 1326 Lahore)

Before **ABDUL MAJID TIWANA, J**

Crl. M. No.4589/B of 1991

MUHAMMAD MUZAFFAR CHUGHTAI..... Petitioner

Versus

HABIBULLAH AND ANOTHER Respondents

POLICE STATION : Shahdara, District Lahore. FIR No.42/1991

OFFENCE : Under Section 295-C of PPC

PETITION : Under Section 497(5) Cr.P.C. for
cancellation of post arrest bail.

DECISION : On 22.3.1992 bail granting order dated
07.11.1991 passed by learned Sessions
Judge, Lahore was recalled.

Criminal Procedure Code (V of 1898)---

---Ss. 497(5)---Penal Code (XLV of 1860), Ss.295-C—Bail, cancellation of

---Accused admittedly a Qadiani,.....

[Lahore]

Before Abdul Majid Tiwana, J

MUHAMMAD MUZAFFAR CHUGHTAI---Petitioner

Versus

HABIBULLAI-1 and another---Respondents

Cr. M. No.4589/B of 1991, decided on 22nd March, 1992.

Criminal Procedure Code (V of 1898)---

---S. 497(5)---Penal Code (XLV of 1860), S.295-C---Bail, cancellation of--Accused, admittedly a Qadiani, during his conversation with his staff members had unnecessarily broached the story of the marriage of Holy Prophet Muhammad (p.b.u.h.) with Hazrat Zenab after obtaining her divorce from Hazrat Zaid, despite no occasion having arisen for such reference---Object of accused, prima facie, appeared to be to malign and defile the sublime personality of Holy Prophet (p.b.u.h.) may be as a part of his faith of religious belief as a non-Muslim---Reasonable grounds, thus, existed to believe that the accused had committed an offence punishable under S.295-C, P.P.C. with death or imprisonment for life and he was not entitled to the grant of bail---Bail allowed to accused by Sessions Court was recalled accordingly.

Rashid Murtaza Qureshi for Petitioner.

Nazir Ahmad Ghazi, A.A.-G.with Maqsood Ahmad Khan for the State.

Mubashar Latif for Respondent No.1.

ORDER

Muhammad Muzaffar Chughtai petitioner, who is complainant in case F.I.R. No. 42 of 1991 registered at Police Station Shahdara, under section 295-C, P.P.C., by this application seeks the cancellation of bail granted to Habibullah respondent, vide order dated 7-11-1991, passed by the learned Sessions Judge, Lahore.

2. The brief facts of the case, as disclosed in the F.I.R., are that on 24-10-1991 when the petitioner was present at his shop known as Chughtai Time Centre in Shahdara Town, Nemat Ullah. Niazi P.W., Assistant Contribution Section, Local Office of Social Security, Shahdara, came to him and told him that on 19-10-1991, When he and his two companions Nisar Zaman Pirzada and Faiz Farid, both officials of the abovesaid office, were present in their office, the respondent during the course of conversation resorted to blasphemy and stated that the Holy Prophet had entered into mangy, Nikahs, out of which one was with Hazrat ~Zaneb, with whom he had fallen in love and after obtaining her Talaq from Hazrat Zaid, married her and in these words he defiled the sacred personality of the Holy Prophet. He alleged that after listening to these words, his religious feelings stood outraged. He, requested that the respondent, who was a Qadiani, should be proceeded against in accordance with the provisions of Penal Law. .

3. On the basis of the aforesaid statement, the police registered the case against the respondent in the manner aforementioned and arrested him on 31-10-1991. He applied for bail to the Court of Session at Lahore on 3-11-1991 and he was enlarged on bail by the learned Sessions Judge on 7-11-1991. Aggrieved by that order, the complainant has approached this Court for the cancellation of the bail of the respondent.

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It is argued on behalf of the petitioner that the impugned order passed by the learned Sessions Judge, Lahore, is factually incorrect to the extent that the statement of Nazir Zaman P.W. had not been recorded by the police under section 161, Cr.P.C., while his statement had been recorded by the Investigation Officer on 29-10-1991 and it was available on the police record. It is further contended that the statement at Bar of the learned counsel representing the respondent before the Session Court was false because the respondent did not conduct any enquiry against Nemat Ullah Niazi, as it appears from the record of Social Security Department produced before this Court today, and he had only been erroneously appointed as an Inquiry Officer by the Director, Social Security, for some duration and when the mistake was pointed out to him by the office, he cancelled the order. According to the learned counsel, there was no substance in the statement at Bar of the learned counsel, nor in the findings of the learned Sessions Judge that Nemat Ullah Niazi P.W. had made a false statement against the respondent in order to coerce and detract him from holding an impartial enquiry. It is urged that during the course of investigation the statement of respondent was recorded on 31-10-1991, in which he indirectly admitted having talked about the incident relating to the marriage of Holy Prophet with Hazrat Zenab after obtaining her divorce from Hazrat Zaid and it tantamounted to a clear defiling of the Holy Prophet, which is a part of the belief of the Qadiani Community to which the respondent admittedly belongs. It is contended that all the three P.Ws. namely, Nemat Ullah Niazi, Faiz Farid Rana and Nisar Zaman are employees of the office being headed by the respondent and their presence and even his conversation with them is admitted by him in his statement, dated 31-10-1991. Finally, it is urged that the offence, which the respondent is accused of is punishable with death or transportation for life and he could not be hurriedly enlarged on bail as the learned Sessions Judge proceeded to do.

5. The learned Law Officer supports the application for cancellation of bail.

6. The application has been opposed on behalf of the respondent on the ground that the occurrence allegedly took place on 19-10-1991 in the office of the respondent and no grievance thereof was made out by any person until 24-10-1991 when Nemat Ullah Niazi went to the shop of Muhammad Muzaffar Chughtai complainant situated outside his office, and they went on concocting the story for five days before reporting the matter to the police on 29-10-1991 and that too by an outsider. All these facts, according to the learned counsel, could lead to a conclusion that there had been consultation and deliberation with a view to entrap the respondent in a false case. He contends that two days after the registration of the case when the respondent was called upon by the police to explain his position, he, in a straightforward manner made the statement and did not conceal or suppress any thing, nor did he distort any fact and whatever he had told during the investigation was the whole truth. It is urged that it is an article of faith of the respondent that he believes in Holy Prophet Muhammad and considers him as the holiest person in the universe for all time to come and he could not even imagine of attributing anything which could have even the slightest repurcussion on his high personality.

7. After perusing the record including respondent's, police statement dated 30-10-1991, and considering the argument addressed at the Bar, I am of the view that the respondent, who is admittedly a Qadiani, during his conversation with the members of his staff, namely, Nemat Ullah Niazi, Faiz Farid Rana and Nasir Zaman, unnecessarily broached the story of the marriage of Holy Prophet Muhammad (p.b.u.h.) with Hazrat Zenab after obtaining her divorce from Hazrat Zaid, despite the fact that there was no occasion for him to refer to it. Prima facie his object appeared to be to malign and defile his sublime personality, may be as a part of his faith of religious belief as a non-Muslim. Being an Officer Incharge or Head of the Office, it was not expected of him to go to the staff room and enter into a religious discussion with his subordinates unless he had a purpose behind it. Dictates of official duty, rather demanded that he should have stopped them from gossiping during duty hours and wasting public time instead of encouraging them. So to a greater extent, he invited the trouble himself. There seems to be an element of consultation and deliberation as well before reporting the matter to the police and this is apparent from Mr. Niazi's associating an

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outsider (Complainant). with an office incident and he seems to have done so mischievously but since the part played by the respondent, to a greater extent, stands admitted by him, all other factors become secondary.

8. It may be mentioned here that in view of the contention raised by the learned counsel for the respondent before the learned Sessions Judge, Lahore, and reiterated before this Court that in a complaint of bribery against Nemat Ullah Niazi P.W., the respondent was conducting an enquiry and for that reason the former falsely implicated him in this case. I have summoned the record of enquiry proceedings from the Directorate of Social Security, the Department of the respondent, and of Nemat Ullah Niazi and others, the prosecution witnesses. I find that in a complaint against Mr. Nemat Ullah Niazi originally Mr. Shahid Masood was appointed as an Enquiry Officer and when he expressed his inability to hold the enquiry on account of his pre-occupation, the respondent was appointed as an Enquiry Officer by the Director, Social Security; on 31-5-1990. The Office Superintendent in a note of the same date pointed out to him that he, being Authority under the Disciplinary Rules, could not change the Enquiry Officer because it was within , the competence of Authorised Officer. In view of this note, the Director on 5-7-1990 asked the Authorised Officer to appoint a new Enquiry Officer and he acted accordingly on.23-4-1991. This being so, the appointment of the respondent as an Enquiry Officer against Nemat Ullah Niazi P.W. for a short duration was only on papers as formal Notification or Office Order had not been issued till its ultimate cancellation and apparently it had no nexus with the incident of alleged blasphemy of the respondent taking place on 24-10-1991. Thus, there seems to be no substance in the above contention of the learned counsel for the respondent which the learned Sessions Judge accepted as the whole truth and making it a basis; enlarged the respondent on bail.

9. In view of the above, there were reasonable grounds to believe that the respondent had committed an offence punishable under section 295-C, P.P.C., which is punishable with death or transportation for life, and he was not entitled to the grant of bail. Therefore, the bail order, dated 7-11-1991, passed by the learned Session Judge, Lahore is recalled. The respondent should be taken into custody and sent to the lock-up.

N.H.Q./M-936/L.

Bail cancelled.