

\$~24

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 23rd December, 2021

+ CS(OS) 702/2021 & I.A. 17206/2021.

QAMAR HASNAIN

..... Plaintiff

Through: Dr. Farrukh Khan, Mr. Ateendra
Singh and Mr. Baasir Aziz, Advs.

versus

SYED WASEEM RIZVI & ORS.

..... Defendant

Through: Mr. Sajan Poovayya, Senior Advocate
with Mr. Saransh Jain, Mr. Shloka N.,
Mr. Shaurya R. Rai, Mr. Raksha
Aggarwal, Mr. P.S. Kharola, Mr.
Sourabh Tandon and Mr. Sharan
Balakrishna, Advocates for Defendant
No. 5.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA HYBRID MODE]

SANJEEV NARULA, J. (Oral):

1. Aggrieved with an online self-publication titled "Muhammad", purportedly authored by Defendant No.1, Plaintiff has approached this Court seeking orders restraining Defendant No. 1 from making derogatory, demeaning and incendiary statements against the religion of Islam, the Holy Qur'an and Prophet Mohammed and other revered personages. The suit contains following prayers:

"a) Pass a decree for permanent and mandatory injunction against the Defendant

- No. 1, thereby restraining the Defendant No. 1 from making statements and / or publishing remarks that are lascivious, prurient derogatory and hurtful, against the Prophet Muhammad (PBUH), the religion of Islam, its followers, its tenets and/or against the Holy Qur'an;*
- b) Pass a decree for permanent and mandatory injunction against the Defendant No. 1, thereby restraining the Defendant No. 1 from selling, letting to hire, distributing, publicly exhibiting, or in any manner putting into circulation for the purpose of sale, hire, distribution, public exhibition, circulation and/or promotion, copies of the book titled Muhammad in any way and through any medium, including but not limited to the form of a paperback, hardcover, or any other print media as well as in the form of digital media in any way;*
 - c) Pass a decree against the Defendant No. 1 directing the Defendant No. 1 to recall all copies of the abovementioned book and to destroy all copies of the said book, sold or unsold;*
 - d) Pass a decree against the Defendant No. 1 and in favour of the Plaintiff, awarding damages to the Plaintiff amounting to a sum of Rs.2,05,00,000/- to the Plaintiff payable by the Defendant No. 1, or any amount deemed just and proper in the facts and circumstances of the present case, with a view to discourage the Defendant No. 1 from committing similar offences in the future;*
 - e) Pass a decree of permanent and mandatory injunction and declaration against the Defendant nos. 2, 3, 4 & 5, directing them to remove all objectionable posts and comments from their respective social media platforms and to remove all such objectionable content from results on their respective search engines, issued by or attributed to the Defendant No. 1 and to take steps to ensure the curbing of the spread of hateful and inflammatory content on and through their respective platforms;*
 - f) Pass a decree awarding costs of the suit to the Plaintiff;*
 - g) Pass any other/further order(s) that this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.”*

2. Plaintiff states that he is a responsible and concerned citizen of India, a religious scholar, and a concerned follower of Islam. He avers that he represents the interests and concerns of the Shia community at large and is on a personal mission to create inter-religious dialogue and promote communal harmony.

3. Defendant No. 1 is purportedly the author of the impugned book. Defendant No. 2 is Facebook India Online Services Private Limited, Defendant No. 3 is WhatsApp Application Services Private Limited, Defendant No. 4 is Google India Private Limited and Defendant No. 5 is

Twitter Communications India Private Limited. The relief *qua* Defendants No. 2 to 5, as sought in prayer (e), are only consequential reliefs founded on prayer (a).

4. Predominantly, paragraphs 2-7 and 10-11 of the plaint are only regarding the character and antecedents of Defendant No. 1, which, according to the Plaintiff, are facetious. Plaintiff is primarily aggrieved by the contents of the impugned book, which according to him, are damaging to communal peace and harmony, and uses derogatory and denigrating language against Prophet Muhammad (PBUH).¹ It is also contended by the Plaintiff that contents of the book are offensive, hateful and distressing to even a casual reader, let alone a follower of Islam or an admirer of Prophet Muhammad (PBUH). Plaintiff avers that the Defendant No. 1 is not protected under the ambit of the fundamental right to Freedom of Speech and Expression as guaranteed under Article 19(1)(a) of the Constitution of India, 1950. The averments in the plaint, which sum up the cause of action, are extracted hereinbelow:

“8. That most recently the Defendant No. 1 committed acts and uttered statements that are clearly damaging to communal peace and harmony, being derogatory and denigrating the Prophet Muhammad (PBUH), in pursuance of the release of a book titled Muhammad, wherein the Defendant No. 1 has used derogatory and hurtful language against the Prophet. The contents of the said book are so offensive that they would be distressing to even the casual reader, let alone a follower of the religion of Islam or any person being an admirer of the Prophet Muhammad (PBUH). Therein, the Defendant No. 1 has laid slander upon slander, accusing the Prophet Muhammad (PBUH) of being mentally unstable, being a womanizer, and using force and violence to satisfy his whims and to consolidate power. The Defendant No. 1 has used such vitriolic and venomous words and made such slanderous and calumnious statements against one of the most revered and influential personalities of the world that make the stomach turn and make the blood boil. Such statements and remarks made by the Defendant No. 1 are only indicative of the Defendant No. 1's own ignorance

¹ Peace Be Upon Him.

and vileness, having made such libelous remarks against the Prophet Muhammad (PBUH). It is pertinent to note that the Defendant No. 1 is and was fully aware of the status and sanctity afforded to the Prophet Muhammad (PBUH) by Muslims worldwide, having been a member of the Muslim community himself, however superficially, and was thus conscious of the ramifications and consequences of his malicious acts and words. It is further respectfully submitted that since Defendant No. 1 also unfortunately belongs to Shia community therefore, the acts and deeds of Defendant No. 1, as enumerated in detail in foregoing paras of the plaint, are detrimental to the interests of Shia community in India as a wider message is being propagated that the entire Shia community is being represented by the Defendant No. 1 and ² further, that the said Shia community is indulged into maligning and demeaning the religion as well as Prophet Muhammad (PBUH). Further, it is respectfully submitted that the conduct of the Defendant No. 1 is prejudicial to the inter-community harmony.

xx ... xx ... xx

12. That the Plaintiff being a scholar as well as being a follower of the religion of Islam is directly affected by the hurtful acts and words of the Defendant No. 1 and have thus approached this Hon'ble Court with a view to seek remedy for the agony and pain caused by the Defendant No. 1 by making the abovementioned statements. The Plaintiff represents the concerned citizens of India as well as religious followers of religion of Islam and as such seeks kind indulgence of this Hon'ble Court to restrain the Defendant No. 1 from continuing with his nefarious designs and ulterior motives aimed towards purposely demeaning and maligning the religion of Islam, Prophet Muhammad (PBUH).

xx ... xx ... xx

14. That it is respectfully submitted that the purposeful derogatory and demeaning words in the form of interviews and the purported book, as mentioned above, being published by the Defendant No. 1 could not be said to be protected by the fundamental right of right to freedom of speech and expression as guaranteed under Article 19(1)(a) of the Constitution of India as the said demeaning, slanderous and libelous statements being made by the Defendant No. 1 are being purposely done to incite communal disharmony. It is submitted that there exists a fine line between right to freedom of speech and expression and license to insult. It is further submitted that the said fundamental right pertaining to freedom of speech and expression, by no stretch of imagination, allows any person to enjoy "Freedom of hate speech". The Defendant No. 1, purposely and willfully, is trying to ignite communal tension across the country for his wrongful gains. It is further submitted that the Defendant No. 1, being a notorious criminal, having been charged with serious cognizable offences, is a threat to public policy and law and order situation and if the Defendant No. 1 is not restrained, in terms of the prayer as prayed for in the present Suit, the acts and deeds of Defendant No. 1, in addition to maligning, defaming and demeaning the religion of Islam, could also lead to serious law and order issues. It is further submitted that the fundamental of right of right to freedom and expression is not an absolute right and is indeed subject to

² (PBUH)- Peace Be Upon Him

restrictions. It is further submitted that as per a catena of judgments propounded by the Hon'ble Apex Court and various Hon'ble High Courts, it is well settled that the said fundamental right, as mentioned foregoing, is not absolute and is subject to reasonable restrictions in the interest of sovereignty and integrity of the nation, security of the state, friendly relations with foreign states, public order, decency and morality, and contempt of Court, defamation and incitement to an offence.”

[emphasis supplied]

5. Initially, as filed, the suit was based on the introduction of the impugned book, which was annexed with the plaint. However, subsequently, *vide* an application under Order VII, Rule 14 (3) of the Code of Civil Procedure, 1908 [*hereinafter*, “CPC”] the counsel for the Plaintiff filed the book in its entirety, as downloaded from the relevant website. While the said application is not listed, since a physical copy of the publication was handed over to the learned Court Master yesterday, the same is taken on record.

6. Without going into the merits of the case, *ex facie*, it is noticed that the plaint does not invoke any provision of the CPC under which the Plaintiff has filed the instant suit. Prayer (a) is clearly in the capacity of a representative action, and further since the plaint states at paragraph 12 that he “*represents the concerned citizens of India as well as religious followers of religion of Islam*”, the Court has queried Dr. Farrukh Khan, counsel for the Plaintiff, *apropos* its maintainability. Initially, the matter was listed yesterday, and Dr. Khan took a day’s time to respond on this issue. Today, in his reply, Dr. Khan has placed reliance on Sections 9 and 19 of CPC, which, in the opinion of the Court, are not relevant and do not confer any maintainability upon the present suit, as discussed hereinafter.

7. A representative suit for a public nuisance or other wrongful acts

affecting, or likely to affect the public, has to fulfil the requirements of law and it needs to be specifically averred. For such suits, amongst other requirements as provided under Section 91 of CPC, a suit if not filed by the Advocate General, has to be filed by two or more persons with the leave of the Court. Under this provision, a party can perhaps approach the Court for an illegal act which in its nature tends to cause injury of public at large. However, for a representative action, it is indispensable that reliance is placed upon such provisions of the statute. No such pleadings are found in the instant case. Thus, during the course of the hearing, the Court put to Dr. Khan a question as to whether the scope of the present suit lies within Section 91 or Order I, Rule 8 of CPC. Dr. Khan responded by affirming that the present suit was not filed under either of the provisions. Rather, he argued that the Plaintiff has approached in his individual capacity and seeks to exercise a right *in rem* as he is aggrieved by an insult to his religious sentiments. Dr. Khan also argued that the objectionable content of the impugned book harms his personal reputation as a Muslim.

8. Indeed, the Plaintiff has not invoked Order I, Rule 8 or Section 91 of the CPC, and thus, the present suit does not fall within the purview of the afore-noted provisions. In these circumstances, the suit lacks foundation particularly since the reliefs sought are representative and not *in personam*.

9. Yet, the Court is willing to consider Dr. Khan's other arguments to find a tinge of maintainability in the present matter. Section 9 of CPC provides that Courts shall have jurisdiction to try all suits, subject to the provisions contained in the Code, excepting suits, the cognizance of which is either

expressly or impliedly barred. Thus, when a legal right and its infringement is alleged and disclosed, a Civil Court is bound to take cognizance. Obligated by such a duty under law, the Court shall now attempt to probe into the Plaintiff's legal right arising from the facts as disclosed.

10. On the afore-noted issue, the Court notes that, first, the decree for damages as sought by the Plaintiff is purely a right *in personam*. Further, the Plaintiff is seeking permanent and mandatory injunction on behalf of the followers of the religion of Islam – which is a right *in rem*. For such reliefs, the Court has also gone to the length of considering if such an action can lie in tort law. To maintain such a suit, it is essential that there should be a personal legal right, a corresponding personal legal injury, and an act which gives rise to legal or actual damage. Guided by the fact that Dr. Khan admits to there being no reference/ remarks/ allegations of a derogatory or defamatory nature against the person of the Plaintiff; and further that the remarks/ allegations as alleged to be made are against his religion and its tenets as a whole, the Court is of the opinion that the plaint certainly does not disclose any such legal right. Any injury or hurt to personal religious sentiments of the Plaintiff are not an actionable wrong under the law of torts. At best, a case may have been made under provisions of criminal law, which has certainly neither been pleaded nor would bestow any maintainability to the case before this Court.

11. No caselaw has been shown by Mr. Khan in support of the proposition advanced by him. A vague mention was made to an Allahabad High Court case from 1918, but even after granting a pass-over today, the same could not

be produced before the Court. A reference was also made to Law Commission Report No. 267 on 'Hate Speech', which too, is of no consequence. Though the fulcrum of the Plaintiff's argument centres around the reasonable restrictions to the Defendant's right of freedom of speech and expression, these are arguments on merits, and once the jurisdiction of this Court is ousted, the same cannot be examined by this Court in the present proceedings.

12. In view of the above, this Court is of the considered opinion that in the absence of disclosure of infringement of any legal right, the Plaintiff's prayer seeking injunction and damages on account of being offended or aggrieved by the contents of a book – which allegedly is hurtful to his religious sentiments – would not give him any right to approach this Court by way of the present suit.

13. No other provision under law has been shown to the Court which can come to the assistance of the Plaintiff to maintain the present suit, and accordingly, it is held that the present suit is not maintainable. The plaint is liable to be rejected.

14. Before parting, the Court would like to underscore that while the present suit has been deemed as not maintainable, the merits or contents of the impugned book have not been examined, and the Plaintiff is entitled to exercise all his rights and remedies under the law. The Court, in fact, has not even called upon the counsel for the Plaintiff to make any submissions on the contents of the said book and has only examined the present suit on the question of maintainability.

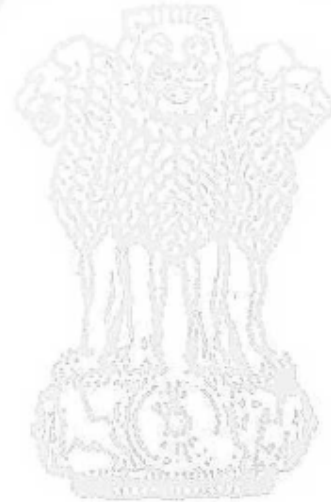
15. The plaint is thus rejected for the afore-going reasons. Pending applications are also disposed of.

16. The file is consigned to the record room.

DECEMBER 23, 2021

as

SANJEEV NARULA, J



नस्यमेव जयते