LAHORE HIGH COURT

1994

Mr. Justice Khalil-ur-Rehman Khan

Mr. Justice Sh. Muhammad Zubair

Mr. Justice Mian Nazir Akhtar

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Mr. Justice Sh. Muhammad Zubair

Mr. Justice Mian NazirAkhtar

RIAZ AHMAD and 3 others ..... Petitioners

versus

THE STATE ..... Respondent

Criminal Miscellaneous No.140/B of 1994,

Decided on 9th June 1994

Khawaja Sarfraz Ahmad for Petitioners.

Nazir Ahmad Ghazi, A A.-G. for the State.

Rasheed Murtaza Qureshi for Pakistan Christian party and Pakistan Masihi Kashatkar Party.

Dates of hearing 10th and 11th April, 1994.

JUDGMENT

KHALIL-UR-REHMAN KHAN, J.—This Full Bench was constituted by the learned Chief Justice for determination of the questions framed by the learned Single Judge in a bail petition moved by Riaz Ahmad and 3 others, petitioners, in a case under section 295-C of the

Pakistan Penal Code registered vide F.I.R. No.160 dated 20th November, 1993, with Police Station Piplan, District Mianwali. The questions are:—

(a)Whether the police can investigate into a criminal case after receiving the complaint and without formally entering the F.I.R. in the daily diary?

(b)Whether in such like sensitive cases, under section 295-C, P.P.C., the delay in registering the same emanating from the police practice of obtaining permission from the superior officers can be given any weight?

(c)Whether the language used by the accused (as per the allegation made in the F.I.R.) which is said to be in accord with the teachings of Mirza Ghulam Ahmad is derogatory to the Holy Prophet Hazrat Muhammad ﷺ and constitute the offence under section 295-C, P.P.C.?"

(d)Whether section 295-C, P.P.C. is in conflict with any provision of the Constitution of the Islamic Republic of Pakistan, 1973?

2. Khawaja Sarfraz Ahmad Advocate, addressed arguments on behalf of accused-petitioners. Mr. Nazir Ahmad Ghazi, Assistant Advocate-General appeared for the State. Mr. Rashid Murtaza Qureshi Advocate, argued the matter on behalf of the complainant as well as on behalf of Pakistan Christian Party and Pakistan Masihi Kashtkar Party.

3. Learned counsel for the petitioners argued that section 154 read with sections 156 and 157 of the Code of Criminal Procedure make it obligatory for a police officer to enter the complaint in the prescribed book, that is, F.I.R. register and then embark upon the investigation. He added that normally no investigation can commence without recording formal F.I.R. He was further of the view that a police officer legitimately can consult the superior and

seek guidance before registration as well as during investigation of a criminal case. With regard to third question, learned counsel submitted that we should refrain from expressing opinion, as any observation made by us what to say of determining the question, would prejudice the accused at their trial. The position taken with regard to fourth question was that section 295-C, P.P.C. is not in conflict with any provision of the Constitution. He explained that he had not raised any such contention before the learned Single Judge and as such the learned counsel who raised this question is to substantiate the plea that section 295-C, P.P.C. is violative of any provisions of the Constitution of the Islamic Republic of Pakistan.

4. Mr. Nazir Ahmad Ghazi, Assistant Advocate-General argued that on receipt of a complaint relating to commission of a cognizable offence, the substance thereof is to be noted in the daily diary before commencing investigation and even if no entry is recorded in the daily diary and the police officer entertaining a suspicion holds inquiry into genuineness or otherwise of the complaint the inquiry/investigation so initiated may amount to mere irregularity but the same does not have the effect of vitiating the investigation or the trial. Reference was made to observations in the case of Taj Muhammad alias Tajoo v. The State 1991 PCr.LJ 2167. He also referred to the case of Harsan v. The State 1989 PCr.LJ 809 wherein the two cases Anwar v. The State 1975 PCr.LJ 750 and Muhammad Haneef v. The State PLD 1977 Lah. 1253 expressing the view that "the sanctity attached to the F.I.R. vanishes where the police had first visited the scene of incident and thereafter recorded the F.I.R." were noticed and the learned Judges, however, preferred to place reliance on the following observations made in the case of Nazir Ahmad v. The State 1976 PCr.LJ 993:-

> **"It makes no difference if the F.I.R. had been recorded on the spot, because although it is not an approved practice, F.I.R. not being a substantive piece of evidence, the recording of the same on the spot does not mean that the entire case of the prosecution**

should be thrown aside."

The learned Assistant Advocate-General also referred to the case of Gul Nawaz Lone and another v. Station House Officer PLD 1990 Lah. 428 to submit that even an information apparently covered by section 154, Cr.P.C. is first to be entered in the Station Daily Diary and it is only when the Officer Incharge of the Police Station has reasons to suspect the commission of a cognizable offence, that he is required to enter such information in the First Information Report Register. Reliance was also placed on Ch. Shah Muhammad v. S.H.O., Rahimyar Khan 1977 PCr.LJ 2 to show that if the police, suspecting that there was no reasonable ground for recording the F.I.R. or making the investigation, has refused to proceed in the matter, the action of the police cannot be said to be without lawful authority.

5. Mr. Rashid Murtaza Qureshi, Advocate, restricted his submissions to the last question. He argued that section 295-C, P.P.C. disregards the mandate contained in Articles 2-A and 3 of the Constitution of the Islamic Republic of Pakistan as firstly the punishment of defiling the sacred name of Holy Prophet Muhammad ﷺ is death and lesser punishment of imprisonment for life provided alongwith death sentence is contrary to the law of Almighty Allah and secondly section 295-C, P.P.C. fails to incorporate the other essential ingredients of the offence prescribed by Islam to the effect that defiling the name of other Prophets is also an offence punishable with same punishment of death. He argued that this Court should make the necessary declaration in respect of these matters.

6. Learned counsel representing the Masihi parties submitted that Christians respect all the revealed religions and its Prophets and that section 295-C, P.P.C. as has the objective of securing peace in the society by upholding sanctity of the Holy Prophet of Islam is not violative of so-called human rights and this section should rather be amended suitably in order to prohibit contumacious reproaches of Jesus Christ so that those who indulge in

defiling the name of Holy Christ are also punished. He added that such an amendment will be in line with the provisions of section 295-A, P.P.C. (added in 1927) which make deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs, punishable.

Learned counsel further submitted that respondent Christian parties are also of the view that the so-called human right organisations which are mouth pieces of foreign human right bodies and not the representative bodies of the masses, if are of the view that prohibition to defile the name of the Holy Prophet is violative of the human rights, then they should first raise their voice in the Christian countries in which the common law offence of blasphemy provides punishment for attacking the Christian religion only. Learned counsel " referred in this respect to Halsbury's Laws of England, Fourth Edition, Volume 11, para. 1009 as it is recorded therein "blasphemy is an indictable offence at common law consisting in the publication of words attacking the Christian religion only. It is not blasphemy to attack any religion except Christianity".

According to learned counsel, these bodies and others at the behest of enemies of Pakistan are raising these slogans only to create disharmony amongst the Christians and Muslims despite the fact that Islam and Christianity are revealed religions and both promote love, amity and peace amongst human beings. Learned counsel submitted that this Court with a view to promote amity and to secure peace of society declare that defiling of the name of Holy Christ is also an offence according to tenets of Islam and section 295-C, P.P.C. in this respect is deficient and as such violative of the scheme of the Constitution of Islamic Republic of Pakistan.

7. We have given serious consideration to the respective contentions and pleas of the learned counsel for the parties. At the very outset, it is pertinent to record that in the context of the questions referred to us we are not

called upon to comment on the motives and objectives of certain human right bodies or Christian parties in criticizing the provisions of section 295-C, P.P.C. Suffice it say that peace of the society is the paramount consideration and every effort by all concerned, the parliament, the executive, the judiciary and the citizens of all shades of opinion and religions should be directed towards maintenance of harmony, cohesion, amity and peace of the society. This object should not be difficult to achieve as Islam more than any other religion upholds and respects all the revealed religions and also the faith of others. Islam does not believe in sermons only but emphasizes on practising in letter and spirit all that it ordains to believe. Every Muslim citizen is duty bound to follow the ordains contained in Verse 108 of Sura 6 (Al-Inam) which reads:—

"ولا تسبوالذين يدعون من دون الله فيسبوا الله عدواً بغير علم كذالك زينا لكل امة عملهم ثم الى ربهم مرجعهم فينبهم بما كانو يعملون"

"Revile not ye
Those whom they call upon
Besides God, lest
They out of spite Revile God
In their ignorance.
Thus have We made
Alluring to each people
Its own doings.
In the end will they
Return to their Lord,
And We shall then
Tell them the truth
Of all that they did."

The Muslim citizen who constitute 97% of the population by respecting faith of others and through tolerance, patience and orderly behaviour can defeat the nefarious activities and designs of disruptionists and thus secure peace of society. As regards the declarations mentioned by Mr. Rashid Murtaza Qureshi, Advocate, reference to judgment of the Federal Shariat Court in the

case of Muhammad Ismail Qureshi v. Pakistan through Secretary, Law and Parliamentary Affairs PLD 1991 FSC 10 will be pertinent as in this judgment, it was held that the words "or imprisonment for life" in section 295-C, P.P.C. shall cease to have effect since 30th April, 1991. The Federal Shariat Court further observed that a clause be added to section 295-C so as to make the same acts or things when said about other Prophets, also offence with the same punishment. The matter of making addition to section 295-C, we were told, is under active consideration of Pakistan Law Commission as well as the Islamic Ideology Council constituted under the Constitution. Section 295-C as per submissions of the learned counsel for the petitioners, the Assistant Advocate-General is not in any manner violative of the provision of the Constitution. The pleas advanced by Mr. Rashid Murtaza Qureshi, learned counsel for complainant and the Christian Parties also do not show any repugnancy. Our answer to the fourth question is, "that nothing could be pointed out to show that the provisions of section 295-C are violative of any provision of the Constitution".

8. As regards third question, the learned counsel for the parties were of the view that this question should not have been raised for determination by the Full Bench as its determination would prejudice the accused at the trial and in any case determination of this question as essentially pertains to the merits of the case, would not result in decision of a question of law of general application. We are in agreement with the learned counsel. This question is premised on facts which for their proof require recording of evidence. It is also correct that determination of this question is likely to prejudice the accused at trial and statements attributed, words used or publication made will have to be examined and their effect determined in each individual case and no principle of law of general applicability can be laid down. We, therefore, as requested refrain from examining this question.

9. Learned counsel for the parties with regard to the second question did not address detailed arguments as they

were of the view that the police officer can legitimately consult his superior officers and seek their guidance in serious and sensitive criminal cases and in the matter of registration as well as investigation of cases. The question as to what weight is to be given to the factor of delay in registering a criminal case specially in sensitive cases, cannot be answered by giving any formula or laying down any hard and fast rule. Such a matter of course has to be left for the trial Court to evaluate on the basis of the overall evidence available on record in a given case. These observations are sufficient for the disposal of the second question.

Now we take up the first question which reads:—

"Whether the police can investigate into a criminal case after receiving the complaint and without formally entering the F.I.R. in the daily diary."

The provisions relevant to the question are contained in sections 154 to 157, section 44 of the Police Act, Rule 24.1 and Rule 24.2 of the Police Rules. Section 154, Cr.P.C. provides in essence that every information relating to the commission of a cognizable offence shall be reduced into writing and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf.

Section 155 provides that when information is given to an officer in-charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate and that no police officer is to investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or send the same for trial to the Court of Session.

Section 156 then provides that any officer in charge of a police station may without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the

provisions of Chapter XV relating to the place of inquiry or trial, and that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. The offences under section 497 or section 498 of the Pakistan Penal Code are to be investigated upon a complaint made by the husband of the woman, or, in his absence, by some person who had the care of such woman on his behalf at the time when such offence was committed.

Section 157, subsections (1) and (2) may be reproduced for ready reference:

157 (1) If, from information received or otherwise an officer in-charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the Provincial Government may, by general or special order, prescribe in this behalf to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender: Provided as follows:—

(a)when any information as to the commission of any such offence is given against any person by-name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b)if it appears to the officer in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) .....

In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his said report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Provincial Government, the fact that he will not investigate the case or cause it to be investigated. Section 44 of Police Act, 1861 reads as under:—

"44. Police Officers to keep diary.— It shall be the duty of every officer in-charge of Police Station to keep of general diary in such form as shall, from time to time, be prescribed by the Provincial Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

Magistrate of the District shall be at liberty to call for and inspect such diary'."

Reference may also be made to the Police Rules contained in Chapter XXIV of Punjab Police Rules, 1934.

According to rule 24.4, "if the information or other intelligence relating to the alleged commission of a cognizable offence, is such that an officer in charge of a police station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant, if any, the fact that he will not investigate the case or cause is to be investigated."

In sub-rule (3) of Rule 24.4, it is further written that

when reasonable suspicion of such commission arises a First Information Report shall be recorded in the police station concerned and investigation under section 157, Criminal Procedure Code, shall be made. To the same effect is rule 24.1 of the Punjab Police Rules. These rules are in line with the proviso to section 157 and section 154 of the Cr.P.C. It was because of these provisions that in Shah Muhammad case (supra) the learned Judge observed that if the police suspecting that there was no reasonable ground for recording F.I.R. or making investigation, has refused to proceed in the matter, the action of the police cannot be said to be without lawful authority.

10. The question whether the criminal investigation commenced without recording the F.I.R. is illegal and has the effect of vitiating the arrest and the trial came up before the Courts earlier too. In the case of Emperor v. Khawaja Nazir Ahmad AIR 1945 Privy Council 18, it was observed as under:—

> **"In the case of cognizable offences, receipt and recording of a first information report is not a condition-precedent to the setting in motion of a criminal investigation. No doubt in the great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded in this way, but there is no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognizable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged. Section 157 when directing that a police officer, who has reason to suspect from information or otherwise that an offence which he is empowered to investigate under section 156 has been committed shall proceed to investigate the facts and circumstances supports this view."**

11. Again in the case of Parbhu v. Emperor AIR 1944 Privy Council 73, the contention of the accused that his

arrest having been effected in Jind territory by a British Indian Officer, was illegal and that the illegality of his arrest vitiated the whole subsequent proceedings, was repelled holding that when the accused was presented for trial at Rohtak he had been validly surrendered to the Court thereby the Jind authorities and so far as that Court was concerned, proceedings before them were regular and the validity of the trial and conviction of the accused was not affected by any irregularity in his arrest. The judgment cited by Mr. Nazir Ahmed Ghazi, learned Assistant Advocate-General depicts those category of cases which lay down the principle that F.I.R. not being a substantive piece of .evidence, any irregularity committed by the police in recording the same, cannot result in throwing aside the prosecution case in its entirety. The irregularity coming to notice in each case is to be considered in the light of overall evidence available on record. The delay if any, in recording the F.I.R. occurs the reason for the delay, the circumstances surrounding the occurrence, the position of the parties, the nature of the offence, the susceptibilities of the parties and their social conditions and the conduct of the police officials and all related factors will have to be considered while evaluating the evidence on record. The delay in recording the F.I.R. obviously is inconsequential if the prosecution case stands established on record beyond reasonable doubt. There may be cases where in the particular circumstances thereof F.I.R. may have been recorded even after the occurrence or the incident and arrest of the accused. The case of Taj Muhammad v. State represents such a situation. This very question was also considered in Full Bench case of M. Bashir Saigol and another v. The State and another PLD 1964 (W.P.) Lah. 148. Sardar Muhammad Iqbal, J. in para. 6 relying on the Privy Council Judgment in Khawaja Nazir Ahmed's case observed that "I agree in principle that it is not necessary that the first information report should mention the names of all or any of the accused so as to empower the investigating agency to set in motion. In fact the recording of a first information report is not a condition-precedent and the police, on the receipt of credible information that a

cognizable offence has been committed may, under the Code of Criminal Procedure or other statute or law authorising them in this behalf, start investigation without recording or drawing up a formal first information report. Again in Rehman and others v. The State PLD 1968 Lah. 464. the Division Bench also following the Privy Council case of Khawaja Nazir Ahmed and Full Bench case of Bashir Saigol and others observed as under:—

'Any person may set the criminal law in motion, by making a report under section 154 of Criminal Procedure Code, 1898. The information so given is called the First Information. It is the basis upon which an investigation is commenced under Chapter XIV (Part V) of the Code of Criminal Procedure. However, receipt and recording of first information report is not a condition-precedent to the setting in motion of criminal investigation. It is true that the absence of F.I.R. deprives the accused of his right to cross-examine the first informant on its basis. However, the fact that no F.I.R. was made or was proved at the trial, would not vitiate the conviction."

The same view was reported in Shakeel Ahmed v. The State PLD 1972 Lah. 374. This Court's view was also followed by the Federal Shariat Court, in the case of Ghulam Muhammad v. The State PLD 1981 FSC 120. These are the cases in which the legality of the investigation and proceedings taken or the trial held were challenged on account of violation of provision of sections 154, 156 and 157, Cr.P.C. The answer returned was that receipt and recording of F.I.R. is not a condition-precedent to setting in motion of criminal investigation and that illegality committed in this respect does not per se vitiate the arrest or the trial. This is one aspect of the matter.

12. The other aspect is represented by other set of cases where the superior Courts have pointed out the duty enjoined on a Police Officer under sections 154, 155, 156 and 157. In respect of this view reference may be made to the Full Bench decision in M. Anwar, Barrister-at-Law v.

The Station House Officer, Civil Lines, Police Station, Lahore and another PLD 1972 Lah. 493. Sardar Muhammad Iqbal, J., who was member of the Full Bench in the case was also member in case of M. Bashir Saigol and another v. The State and another PLD 1964 (W.P.) Lah. 148, speaking for the Full Bench observed:—

"Before parting with the case, we would like to observe that if there is an information relating to the commission of a cognizable offence, it falls under section 154 of the Code of Criminal Procedure, and a police officer is under a statutory obligation to enter it in the prescribed register. The condition-precedent is simply two-fold; first, it must be an information and secondly, it must relate to a cognizable offence on the face of it and not merely in the light of subsequent events. A police officer is bound to receive a complaint when it is preferred to him, or where the commission of an offence is reported to him orally he is bound to take down the complaint. If he does not incorporate in the register a complaint so made, he fails to perform a statutory duty as a public servant and, therefore, renders himself to be dealt with by his superior officers for neglect of duty. Thus, it does not depend on the sweet will of a police officer who may or may not record it. The information referred to in section 154 of the Code of Criminal Procedure appears to us to be something in the nature of a complaint, or accusation, or at least information of a crime, given with the object of putting the police in motion in order to investigate. In the case of a first information, it is not required by law that the police officer is to receive it only if it is given in writing and to record it only if in his opinion it is correct. The question whether or not it is correct depends on the investigation which a police officer is to conduct under section 157 of the Code of Criminal Procedure. The guarantee of the correctness of the first information is ensured by section 182 of the Pakistan Penal Code under which if any person gives the first

information statement to a police officer which is recorded under section 154 of the Code of Criminal Procedure, and if it ultimately turns out to be false, the informant shall be liable to punishment with imprisonment of either description for a term which may extend to six months, or with the fine which may extend to one thousand rupees, or with both.

13. This case thus lays emphasis on the performance of a statutory duty by the police officer as a public servant, and police officer failing to comply with the mandate of law contained in sections 154 and 155, Cr.P.C. renders himself liable to be dealt with in accordance with law. These provisions on the one hand curb arbitrariness of the police officer and on the other secure to citizen a record to be referred to for the purpose envisaged by law. The freedom of movement and personal liberty of citizens is sought to be secured by enjoining the police officer to record the F.I.R. or at least substance thereof in the daily diary. At the same time, it is to be kept in mind that for commencement of investigation, in a crime, the recording of F.I.R. is not a condition-precedent. What is the effect of non-performance of a statutory duty is a separate question and its effect in a given case is to be canvassed by the parties and will be determined by the Court in the circumstances of each given case. We, therefore, answer the first question accordingly.

14. Bail applications will now be put up for hearing after receiving order from the Honourable Chief Justice.

(Sd.)

KHALIL-UR-REHMAN KHAN,
JUDGE.

SH. MUHAMMAD ZUBAIR, J.--I agree.

MIAN NAZ1R AKHTAR, J.—I have had the advantage of going through the judgment proposed to be delivered by my learned brother Khalil ur-Rehman Khan, J. I fully agree with the reasoning and the answers to the various questions under reference but would like to add a

few lines in respect of question (d).

2. The provisions of section 295-C of the P.P.C. have made it possible to bring the culprits to book through the judicial process and has set a trend in the society to resort to the law. The registration of a criminal case under the above-referred section of the Pakistan Penal Code provides a lease of life to an accused with full opportunity to defend himself in a Court of law through a counsel of his choice and in case of conviction, to avail of the remedies of appeal revision etc., in the higher Courts. No person, muchless a Muslim, can possibly oppose this law as it curtails arbitrariness and promotes the rule of law. If the provisions of section 295-C of the P.P.C. are repealed or declared to be ultra vires to Constitution, the time old method of doing away with the culprits at the spot would stand revived. Being conscious of this aspect of the matter learned counsel for the Pakistan Christian Party and Pakistan Masihi Kasntakar Party has urged that the provision be made more comprehensive so as to make blasphemy qua other Prophets including the Holy Christ, punishable with the same sentence of death. The matter is already being considered by the Government and it is hoped that the needful would be done in the near future.

(Sd.)

MIAN NAZIR AKHTAR,
JUDGE.

MIAN NAZIR AKHTAR, J.- The petitioners seek bail in a case registered against them vide F.I.R. No.160, dated 21-11-1993 for an offence under section 295-C of the P.P.C. at Police Station Piplan, District Mianwali. Riaz Ahmad, pet.tioner No.l is father of Basharat Ahmad, petitioner No.2 and uncle of Qamar Ahmad and Mushtaq Ahmad petitioners Nos.3 and 4.

2. The case was registered against the petitioners on a written application dated 17-11-1993 submitted by Muhammad Abdullah son of Muhammad Muzaffar to the

S.H.O. of Police Station Piplan in respect of an occurrence which had taken place on 11-11-1993. The contents of the F.I.R. are reproduced below:—

''میں تحفظ ختم نبوت کا کارکن ہوں۔ میں اپنے گاؤں کے قریب مورخہ ۹۳۔۱۱۔۱۱ ٹائم ۱۱ بجے دن تقریباً اپنے **Cousin** کے ساتھ سڑک پر کھڑا تھا کہ مسمی ریاض احمد ولد رستم خان، بشارت احمد ولد ریاض احمد، قمر احمد ومشتاق احمد پسران محمود احمد جو کہ غیر مسلم (قادیانی) ہیں ہمیں دیکھ کر ہماری طرف بڑھے اور طنزاً کہنے لگے کہ یہ سرکاری مسلمان ہیں اور ہمارے مذہبی جذبات مجروح کئے۔ لیکن ہم خاموش کھڑے رہے اور جواباً کچھ نہ کہا۔ لیکن اس کے باوجود الزام علیہان مسلسل حضور ﷺ کی شان کے خلاف گستاخانہ کلمات کہتے رہے اور یہ کہا کہ ہم مرزا غلام احمد کو سچا نبی مانتے ہیں جو کہ حضور پاک ﷺ کی شان سے کم نہ ہیں اور ساتھ ہی حضرت محمد مصطفیٰ ﷺ کی ذات کی بابت ناقابل برداشت کلمات کہتے ہوئے انہوں نے یہ کہا کہ ہمارے نبی کے تین لاکھ معجزات ہیں۔ لیکن آپ کے نبی کے تین ہزار معجزات تھے۔ اسی بحث کے دوران قمر احمد ولد محمد حسن، نذیر احمد ولد بابو خان ہمارے قریب آ گئے۔ انہوں نے بھی الزام علیہان کے بیان کردہ نازیبا کلمات اور گفتگو سنی اور وہ مسلمان ہونے کی حیثیت سے سچ بات کی شہادت دیں گے۔ اگر مذکورہ حالات کو مدنظر رکھ کر الزام علیہان کے خلاف کارروائی نہ کی گئی تو ہمارے علاقے کے مذہبی جذبات جو کہ دبے ہوئے ہیں، جنگل کی آگ کی طرح بھڑک اٹھیں گے اور امن عامہ کے نقص کے علاوہ مذہبی اختلافات پورے ملک کو لپیٹ میں لے لیں گے۔ لہٰذا الزام علیہان کے خلاف مقدمہ درج فرما کر مشکور فرمائیں۔ نوازش ہوگی۔''

3. The petitioners filed an application for grant of bail in the Court of the learned Sessions Judge, Mianwali who dismissed the same vide the order dated 3-1-1994. A relevant part of the order is reproduced below:—

"Whatever is stated above, prima facie amounts to defiling the sacred and exalted name of Holy Prophet Hazrat Muhammad (peace be upon him) because in

this manner his position is lowered to that of Mirza Ghulam Ahmad. Hence there are reasonable grounds for believing that the petitioners have committed an offence under section 295-C of the P.P.C., which falls within the prohibitory clause of section 497, Cr.P.C."

4. The petitioners' learned counsel contends as under:—

(i)There is serious background of enmity against each petitioner. On 9-12-1991, Muzaffar, father of the complainant, moved an application before the District Magistrate for removal of Riaz Ahmed, petitioner No.l, from the office of Lambardar as he belonged to Quadiani Sect and was not liked by the majority of residents of the area. His application was accepted vide order, dated 6.6.1993. Petitioner No.1 went in appeal before the Commissioner, Sargodha Division who allowed it vide order, dated 31.7.1993. Muzaffar, father of the complainant, went in revision before the Board of Revenue to assail the appellate order passed by the Commissioner, Sargodha Division which is still pending.

(ii)One Ghulam Qadir resident of Chak No.15 made a report before the police on 4-6-1993 against Nazir Ahmad and Abdullah complainant and a few others for commission of the offence of trespass, criminal intimidation and mischief. After proper investigation, the police found the case to be false and recommended its cancellation. Thereafter, he filed a private complaint in the Court of Ilaqa Magistrate on 16-8-1993. Qamar and Mushtaq, petitioners Nos.3 and 4 appeared as prosecution witnesses in the private complaint referred to above. After perusing the preliminary evidence, the Court summoned Abdullah etc vide order, dated 31-10-1993 (Annexure C/4).

(iii)The case against the petitioners is cooked up and an outcome of the above-referred enmity.

Moreover, the report was lodged with the delay of six days which makes the prosecution story doubtful.

(iv)The petitioners being 'Ahmadis' follow the teachings of Mirza Ghulam Ahmad, founder of Ahmadia community who never proclaimed to be equal to the Holy Prophet Hazrat Muhammad ﷺ In fact, none can make such a claim. Mirza Sahib had declared that he was subservient to the Holy Prophet Hazrat Muhammad ﷺ. Moreover, Mirza Sahib never directly compared himself with Rasool-e-Pak ﷺ. The writings of Mirza Sahib reflect profound reverence and love for the Holy Prophet Hazrat Muhammad ﷺ. In this connection, the following references may be seen"—

1.	کشتی نوح	20-21
2.	آئینہ کمالات اسلام	15-160-164-224-226
3.	چشمہ معرفت	302
4.	پیغام صلح	459-461
5.	تریاق القلوب	141
6.	لیکچر سیالکوٹ	206
7.	قادیان کے آریہ اور ہم	456
8.	براہین احمدیہ	101-104

(v)The petitioners' faith is that Mirza Ghulam Ahmad was merely "Mehdi Maood" or "Masih Maood" and nothing else.

(vi)The Full Bench has left the question as to whether the language used by the accused is derogatory to the Holy Prophet Hazrat

Muhammad ﷺ and constitutes an offence under section 295 of the P.P.C., to be decided by the trial Court. Hence this Court should not examine this question.

(vii)At any rate, the petitioners' faith has necessarily to be seen while determining the question as to whether, prima facie, they have committed the offence alleged against them. The petitioners' learned counsel particularly relied on para. 5 of the judgment in the case of Nasir Ahmed v. The State 1993 SCMR 153 which is reproduced below:—

"After hearing the learned counsel for the parties at some length, we find that serious question which requires examination is whether "defiling" takes place ex facie by the written or spoken words or the act of the person accused of the offences or that this is to be seen keeping in view the totality of the milieu, including necessarily the faith, the intention, the object and the background of the person using them. We have got the impression prima facie that ex facie, use of these expressions does not create in a Muslim, or for that matter anyone else, any of the feelings of hurt, offence or provocation etc. etc. nor is it derogatory to the Holy Prophet Muhammad (peace be upon him) or the Muslims. It is only when the person reading or hearing them goes deep into the background of the person using them and brings his own special knowledge of the faith, beliefs and latent intentions of such an accused that the alleged results are likely to follow."

5. On the other hand, Mr. Nazir Ahmad Ghazi, learned Assistant Advocate-General submits as under: —

(i)The police investigation shows that the occurrence had actually taken place.

(ii)Admittedly, there is civil litigation between Muzaffar, father of the complainant, and Riaz Ahmed, petitioner No.1. However, despite the said litigation, Muzaffar or his son Abdullah never came forward with such allegations earlier. Moreover, if he wanted to involve him in a false case, he could have involved him under any other provision of the Penal Code and would not have gone to the extent of falsely bringing in the sacred name of the Holy Prophet Hazrat Muhammad ﷺ who is dearest to his heart and soul, like any other Muslim.

(iii)Even if some hostility exists between the complainant and the accused party, there is no enmity or hostility between the accused persons and the three eye-witnesses who are independent and fully supported the complainant's version during the course of investigation.

(iv)The delay in reporting the matter, in the circumstances of the present case, does not adversely affect the prosecution case. Had the complainant been a liar he would have conveniently stated that the occurrence had taken place on 17th of November, 1993 when the report was actually lodged. The police is competent to conduct investigation even before formal registration of the F.I.R. The case does not involve any recovery or circumstantial evidence. Hence, the delay does not affect the veracity of the prosecution case. The case entirely depends upon the oral evidence furnished by the complainant and the three eye-witnesses. If the witnesses are believed then it is not possible to say that the occurrence had not taken place. Even in ordinary criminal cases, delay per se, is not sufficient to throw out the prosecution case, if reliable evidence regarding commission of the offence is available. Reliance is placed on the following judgments:—

(i)Taj Muhammad alias Tajoo v. The State 1991

PCr.LJ 2167.

(ii)Ch. Muhammad v. S.H.O., Rahim Yar Khan and 2 others 1977 PCr.LJ 2.

(iii)Harsari v. The State 1989 PCr.LJ 809.

(iv)Gul Nawaz Lone and another v. S.H.O. PLD 1990 Lah. 428.

(v)Ghulam Siddique v. S.H.O. Saddar Dera Ghazi Khan and 8 others PLD 1979 Lah. 263.

(vi)Muhammad Hassan v. S.S.P., Faisalabad and 7 others 1992 PCr.LJ 2307.

(vii)Alam Sher and 5 others v. The State 1975 PCr.LJ 1188.

(v)The petitioners' learned counsel has contended that nobody can claim equality with or superiority over the Holy Prophet Hazrat Muhammad ﷺ and that the petitioners being followers of Mirza Ghulam Ahmad can never think of uttering the words attributed to them in the F.I.R. However, the words used by the petitioners are not merely their own words but are the part of the teachings of Mirza Ghulam Ahmad. In this connection, para. 82 of the judgment in the case of Zahir-ud-Din v. The State 1993 SCMR 1718 may be seen. The language used by the accused is almost the-same which has been used by Mirza Ghulam Ahmad in his book "Barahin-e-Ahmadia", Vol. V, Chapter II (NusratuI Haq), page 56 and "Haqeeqat-ul-Wahi", page 67. The words uttered by the accused are in accord with their faith.

(vi)Prima facie, the language used by the accused constitutes an offence under section 295-C of the P.P.C. which falls within the prohibitory clause of section 497 of the Cr.P.C. The petitioners have

lowered the position of the Holy Prophet to that of Mirza Ghulam Ahmad who is not a Muslim within the meaning of Article 260(3)(a) of the Constitution of Pakistan. Moreover, Mirza Ghulam Ahmad was planted to serve the interests of British imperialism and any one who treats him as equal to Hazrat Muhammad ﷺ dishonours the Holy Prophet.

(vii)The question whether the petitioners have committed the offence shall be finally decided by the trial Court but at bail stage a tentative appraisal of the material can be made and a prima facie view formed regarding commission of the offence.

6. There is considerable force in the argument of the learned Assistant Advocate-General that the delay in reporting the matter to the police, in the circumstances of the present case, is not sufficient to doubt the prosecution case. The case does not involve any circumstantial evidence or recovery and depends upon ocular testimony furnished by the complainant and the three eye-witnesses. In ordinary criminal cases promptness of F.I.R. is insisted upon to avoid deliberations before reporting the matter to the police and to enable the Investigation Agency to secure circumstantial evidence in order to ascertain the correctness or otherwise of the complainant's version. Moreover, there was nothing to slop the complainant from alleging that the occurrence had taken place on 17-11-1993 (when the written complaint was submitted before the S.H.O.). As regards investigation conducted before formal registration of the F.I.R., suffice it to say that while dealing with this aspect of the matter the Full Bench of this Court vide its order dated 25-4-1994 had held, "receipt and recording of F.I.R. is not a condition-precedent to setting in motion of criminal investigation and that illegality committed in this respect does not, per se, vitiate the arrest or the trial". Hence at this stage, I am not inclined to doubt the veracity of the complainant due to the delay in reporting the matter to the police.

7. The facts narrated by the petitioners' learned

counsel do establish background of hostility between the petitioners and the complainant as well as his father, Muzaffar. In the facts and circumstances of a particular case, it may be possible to hold, even at bail stage that probably an accused person has been roped in due to past enmity or hostility with the complainant party. However, in the present case I am not persuaded to hold so far the following reasons:

(a)The hostility between Muzaffar father of the complainant dates back to 9-12-1991 when he had moved an application before the District Magistrate for removal of Riaz Ahmed, petitioner No.1 from the office of Lambardar. Since then he or for that matter his son did not attempt to involve him in any criminal case, either to create a ground for his removal or otherwise to wreak vengeance upon him.

(b)Despite civil and criminal litigation, no untoward incident had taken place between the parties from December, 1991 till before the present occurrence which had taken place on 11-11-1993.

(c)The case is supported by three other witnesses namely Nazir Ahmed son of Babu Khan, Muhammad Qamar son of Muhammad Hassan and Qadir Ahmed son of Nazir Ahmad, who do not seem to have any motive to falsely depose against the accused-petitioners.

(d)The Investigating Officer has come to the conclusion that the occurrence narrated in the F.I.R. had taken place.

8. Therefore, I am not inclined to agree with the petitioners' learned counsel that the case is entirely cooked up due to past hostility of the complainant party against the petitioners. Anyhow, the above view is purely tentative and it would be open to the trial Court to decide the matter finally in the light of the evidence adduced by the parties.

The petitioner's learned counsel did not argue whether the language said to have been used by the petitioners was, in any manner derogatory to Hazrat Muhammad ﷺ and whether it amounted to defiling his exalted and sacred name. He mainly urged that the prosecution case was false and a product of past enmity. Moreover, his attempt was that at bail stage this Court should not go into this question and leave it to be decided by the trial Court, moreso when in the present case the Full Bench of this Court had also preferred the same course vide its order dated 25-4-1994.

9. It is settled law that for purposes of disposal of a bail petition, tentative assessment of the material on the record has to be made. In this connection I may refer to the judgment of the Hon'ble Supreme Court in the case of Khalid Javed Gilan v. The State PLD 1978 SC 256.

10. According to the allegations made in the F.I.R., the petitioners had stated that Mirza Ghulam Ahmed was a true prophet not in any manner lesser in dignity than Hazrat Muhammad ﷺ. While comparing him with the Holy Prophet Hazrat Muhammad ﷺ they stated that number of miracles of Hazrat Muhammad ﷺ was three thousand but that of Mirza Ghuiam Ahmad was three lacs.

11. It is not unlikely that a Quadiani would utter the above referred words because the same are also found in the writings of Mirza Ghuiam Ahmad. The number of three thousand miracles of the Holy Prophet Hazrat Muhammad ﷺ is mentioned in Mirza Ghuiam Ahmad's Book Tohfa Golarvia, contained in book "Roohani Khazain", Vol. 17, page 153. The relevant part reads as under:—

''کوئی شریرالنفس ان تین ہزار معجزات کا کبھی ذکر نہ کرے جو ہمارے نبی ﷺ سے ظہور میں آئے اور حدیبیہ کی پیش گوئی کو بار بار ذکر کرے کہ وہ وقت اندازہ کردہ پر پوری نہیں ہوئی۔''

12. As regards himself, originally Mirza Ghuiam Ahmad gave the number of his miracles as over three thousand and thereafter gave higher number of one lac, three lacs and ten lacs in his different books. The relevant

extracts from his books are given below:—

(الف) ''خدا کے عظیم الشان نشان بارش کی طرح میرے پر اتر رہے ہیں اور غیب کی باتیں میرے پر کھل رہی ہیں۔ ہزار ہا دعائیں اب تک قبول ہو چکی ہیں۔ اور تین ہزار سے زیادہ نشان ظاہر ہو چکا ہے۔''

(تریاق القلوب ص **6** مشمولہ روحانی خزائن، جلد **15**، صفحہ **140** از مرزا قادیانی)

(ب) ''میں اس امر میں صاحب مشاہدہ ہوں۔ خدا مجھ سے ہم کلام ہوتا ہے اور ایک لاکھ سے بھی زیادہ میرے ہاتھ پر اس نے نشان دکھلائے ہیں۔''

(ضمیمہ النبوۃ فی الاسلام، صفحہ **341** ۔ مصنف: مولوی محمد علی لاہوری، چشمہ معرفت، حصہ دوم، صفحہ **60** روحانی خزائن ج **23** ص **428** مصنف مرزا غلام احمد قادیانی)

(ج) ''میری تائید میں اس نے وہ نشان ظاہر فرمائے ہیں کہ آج کی تاریخ سے جو ۱۶ جولائی ۱۹۰۶ ہے۔ اگر میں ان کو فرداً فرداً شمار کروں تو میں خدا تعالیٰ کی قسم کھا کر کہہ سکتا ہوں کہ وہ تین لاکھ سے بھی زیادہ ہیں۔

(حقیقت الوحی، صفحہ **67** روحانی خزائن ج **22** ص **70** از مرزا قادیانی)

(د) ''اور میں اس خدا کی قسم کھا کر کہتا ہوں جس کے ہاتھ میں میری جان ہے کہ اسی نے مجھے بھیجا ہے اور اسی نے میرا نام نبی رکھا ہے اور اسی نے مجھے مسیح موعود کے نام سے پکارا ہے اور اس نے میری تصدیق کے لئے بڑے بڑے نشان ظاہر کئے ہیں جو تین لاکھ تک پہنچتے ہیں۔

(حقیقت الوحی، [تتمہ] صفحہ **68** مندرجہ روحانی خزائن ج **22** ص **503** از مرزا قادیانی)۔

Mirza Ghulam Ahmad was not satisfied even with his claim of three lac miracles and at another place laid a claim that number of Allah's signs (miracles) in respect of his prophecies exceeded ten lacs. The relevant part from his book Baraheen Ahmadia is given below:-

''ان چند سطروں میں جو پیشگوئیاں ہیں وہ اس قدر نشانوں پر مشتمل ہیں جو دس لاکھ سے زیادہ ہوں گے اور نشان بھی ایسے کھلے کھلے ہیں جو اول درجہ پر خارق عادت ہیں۔ سو ہم اول صفائی بیان کے لئے ان پیشگوئیوں کے اقسام بیان کرتے ہیں۔ بعد اس کے یہ ثبوت دیں گے کہ یہ پیشگوئیاں پوری ہوگئی ہیں۔ اور درحقیقت یہ خارق عادت نشان ہیں اور اگر بہت سی سخت گیری اور زیادہ سے زیادہ احتیاط سے بھی ان کا شمار کیا جائے تب بھی یہ نشان جو ظاہر ہوئے، دس لاکھ سے زیادہ ہوں گے۔''

(براہین احمدیہ، جلد پنجم، صفحہ **56** مندرجہ روحانی خزائن ج **21** ص **72** از مرزا قادیانی)

13. The petitioner's learned counsel strongly urged that the petitioners merely believe that Mirza Ghulam Ahmad was Maseeh Maud and Medhi Maud and nothing else. He was subservient to the Holy Prophet Hazrat Muhammad ﷺ and was lower to the position of Rasool-e-pak ﷺ Mr. Nazir Ahmad Ghazi the learned Assistant Advocate-General with equal force repudiated the above argument of the petitioners' learned counsel and urged that the petitioners are admittedly Quadiani who believe that Mirza Ghulam Ahmad was a Prophet and had acquired this status with the stamp of the Holy Prophet Hazrat Muhammad ﷺ. In this connection he referred to the pamphlet captioned as (ایک غلطی کا ازالہ) written by Mirza Ghulam Ahmad. The contents of the pamphlet fairly support the contention of the learned A.A.G. He also referred to the following quotation from Mirza Ghulam Ahamd's book Nazool-e-Maseeh.

Mirza Sahib has attributed to himself a number of Oura'nic verses revealed in respect of Hazrat Muhammad ﷺ. A few references are given below: —

''میں رسول اور نبی ہوں یعنی باعتبار ظلیت کاملہ کے میں وہ آئینہ ہوں جس میں محمدی شکل اور محمدی نبوت کا کامل انعکاس ہے۔ اگر میں کوئی علیحدہ شخص نبوت کا دعویٰ کرنے والا ہوتا تو خدا تعالیٰ میرا نام محمد، احمد اور مصطفیٰ اور مجتبیٰ نہ رکھتا اور نہ خاتم الانبیاء کی طرح خاتم الاولیاء کا مجھ کو خطاب دیا جاتا بلکہ میں کسی علیحدہ نام سے آتا۔ لیکن خدا تعالیٰ نے ہر ایک بات میں وجود محمدی میں مجھے داخل کر دیا۔'' (نزول المسیح، صفحہ 3 مندرجہ روحانی خزائن ج 18 ص 381 از مرزا قادیانی)

Mirza Sahib has attributed to himself a number of Qura'nic verses revealed in respect of Hazrat Muhammad ﷺ. A few references are given below:-

1۔ وما ارسلنک الا رحمة للعالمین.

(حقیقت الوحی، ص 82 تذکرہ ص 64 طبع چہارم)

2۔ سبحن الذی اسریٰ بعبدہ لیلاً.

(حقیقت الوحی، ص 78 تذکرہ ص 543, 63 طبع چہارم)

3۔ انا اعطینک الکوثر.

(حقیقت الوحی، ص 102 تذکرہ ص 306 طبع چہارم)

4۔ انا فتحنا لک فتحاً مبیناً.

(حقیقت الوحی، ص 74 تذکرہ ص 199, 72,39 طبع چہارم)

5۔ فتدلی فکان قاب قوسین او ادنیٰ.

(حقیقت الوحی، ص 86 تذکرہ ص 542,54 طبع چہارم)

6۔ الرحمن. علم القرآن.

(حقیقت الوحی، ص 72 تذکرہ ص 178,35 طبع چہارم)

7۔ قل ان کنتم تحبون اللّٰہ فاتبعونی یحببکم اللّٰہ.

(تذکرہ ص 62, 48,37 طبع چہارم)

8۔ یسن. انک لمن المرسلین.

(حقیقت الوحی، ص 107 تذکرہ ص 522 طبع چہارم)

9۔ هو الذی ارسل رسوله بالهدیٰ ودین الحق لیظهره علی الدین کله.

(تذکرہ ص 194, 37 طبع چہارم)

10۔ مارمیت اذرمیت ولکن اللّٰه رمیٰ.

(تذکرہ ص 194 طبع چہارم)

11۔ قل انما انا بشر مثلکم یوحیٰ الی انما الهکم اله واحد.

(تذکرہ ص 199, 70 طبع چہارم)

Further Mirza Ghulam Ahmad claimed that he deserved Darood-o-Salam and that his followers could legitimately write with his name ﷺ (for reference see Arbaeen No.2, page 6). The Book "Tazkira" which according to the Quadianis consists of revelations of Mirza Ghulam Ahmad contains the following one at page 777 ﷺ Mirza Ghulam Ahmad has also referred to the following relevation in his Book (حقیقت الوحی), Chapter 4, page 74-75.

"اصحاب الصفه وما ادرك ما اصحاب الصفه ۔ تری اعینهم تفیض من الدمع ۔ یصلون علیك"

(حقیقت الوحی ص 75,74 مندرجہ روحانی خزائن ج 22 ص 78 از مرزا قادیانی)

Thus, becomes abundantly clear that according to the claims of Mirza Ghulam Ahmad he was a Prophet, was named as Muhammad and Ahmad by Allah, was sent as (رحمة اللعالمین) was Muhammad incarnate reflecting the complete image and Prophethood of Hazrat Muhammad ﷺ and deserved Darood-o-Salam like the Holy Prophet Hazrat Muhammad ﷺ. Hence it was not unlikely for the petitioners to have declared that Mirza Ghulam Ahmad was not lesser in his dignity or status than the Holy Prophet Hazral Muhammad ﷺ. The petitioners' learned counsel has referred to a number of books of Mirza Ghulam Ahmad in which he has expressed deep reverence and love for the Holy Prophet Hazrat Muhammad ﷺ. A few references are quoted below: —

(الف) ''نوع انسان کے لئے روئے زمین پر اب کوئی کتاب نہیں مگر قرآن۔ اور تمام آدم زادوں کے لئے اب کوئی رسول اور شفیع نہیں۔ مگر محمد مصطفیٰ ﷺ۔ سو تم کوشش کرو کہ سچی محبت اس جاہ وجلال کے نبی کے ساتھ رکھو اور اس کے غیر کو اس پر کسی نوع کی بڑائی مت دو۔''

(کشتی نوح ص 13 مندرجہ روحانی خزائن ج 19 ص 13 از مرزا قادیانی)

(ب) ''بعد از خدا بعشق محمد مخمرم گر کفر ایں بود بخدا سخت کافرم''

(لیکچر سیالکوٹ ص 46 مندرجہ روحانی خزائن ج 20 ص 248 از مرزا قادیانی)

(ج) ''ہم نے ایک ایسے نبی کا دامن پکڑا ہے جو خدا نما ہے کسی نے یہ شعر بہت ہی اچھا کہا ہے:

محمد عربی بادشاہ ہر دوسرا کرے ہے روح قدس جس کے در کی دربانی

اسے خدا تو نہیں کہہ سکوں پر کہتا ہوں کہ اس کی مرتبہ دانی میں ہے خدا دانی

(چشمہ معرفت مندرجہ روحانی خزائن، جلد 23، صفحہ 302 از مرزا قادیانی)

(د) ''اسلام سے کچھ دن پہلے تمام مذاہب بگڑ چکے تھے اور روحانیت کھو چکے تھے۔ پس ہمارے نبی ﷺ اظہار سچائی کے لیے ایک مجدد اعظم تھے جو گم گشتہ سچائی کو دوبارہ دنیا میں لائے۔ اس فخر میں ہمارے نبی ﷺ کے ساتھ کوئی بھی نبی شریک نہیں کہ آپ نے تمام دنیا کو ایک تاریکی میں پایا اور پھر آپ کے ظہور سے وہ تاریکی نور سے بدل گئی۔''

(لیکچر سیالکوٹ مندرجہ روحانی خزائن، جلد 20، صفحہ 206 از مرزا قادیانی)

(ہ) ''مخالفین نے ہمارے رسول ﷺ کے خلاف بے شمار بہتان گھڑے ہیں اور اپنے اس دجل کے ذریعہ ایک خلق کثیر کو گمراہ کر کے رکھ دیا ہے۔ میرے دل کو کسی چیز نے بھی کبھی اتنا دکھ نہیں پہنچایا جتنا کہ ان لوگوں کے ہنسی مذاق نے پہنچایا ہے جو وہ ہمارے رسول پاک ﷺ کی شان میں کرتے رہتے ہیں۔ ان کے دل آزار طعن وتشنیع نے جو وہ حضرت خیر البشر ﷺ کی ذات والا صفات کے خلاف کرتے ہیں، میرے دل کو سخت زخمی کر رکھا ہے۔ خدا کی قسم اگر میری ساری اولاد اور اولاد کی

اولاد اور میرے سارے دوست اور میرے سارے معاون و مددگار میری آنکھوں کے سامنے قتل کر دیے جائیں اور خود میرے ہاتھ اور پاؤں کاٹ دیے جائیں اور میری آنکھ کی پتلی نکال پھینکی جائے اور میں اپنی تمام مرادوں سے محروم کر دیا جاؤں اور اپنی تمام خوشیوں اور تمام آسائشوں کو کھو بیٹھوں تو ان ساری باتوں کے مقابل پر بھی میرے لئے یہ صدمہ زیادہ بھاری ہے کہ رسول اکرم ﷺ پر ایسے ناپاک حملے کئے جائیں۔ پس اے میرے آسمانی آقا تو ہم پر اپنی رحمت اور نصرت کی نظر فرما اور ہمیں اس ابتلاء عظیم سے نجات بخش۔''

(ترجمہ عربی عبارات آئینہ کمالات اسلام، صفحہ 15 مندرجہ روحانی خزائن ج 5 ص 15 از مرزا قادیانی)

If the faith of the followers of Mirza Ghulam Ahmad is confined to his above-referred writings in which love and reverence for the Holy Prophet has been expressed, no Muslim can have any grievance against them. But unfortunately there are other writings of Mirza Ghulam Ahmad in which he not only ventured to claim complete equality and identity with the Holy Prophet Hazrat Muhammad ﷺ but also showed disrespect to him. This aspect of the matter was considered by the Hon'ble Supreme Court of Pakistan in the case of Zaheer-ud-Din (relied upon by the learned Assistant Advocate-General). The Court was pleased to observe in para. 82 of the judgment, "Not only that, Mirza Sahib, in his writings tried to belittle the glory and grace of the Holy Prophet (peace be upon him), he even ridiculed him occasionally". In this connection the Hon'ble Supreme Court was pleased to refer to the following quotations from the books of Mirza Ghulam Ahmad.

"(i)The Holy Prophet could not conclude the propagation of Islam and I complete the same. (Hashia Tohfa Golarvia, page 165).

(ii)The Holy Prophet could not understand some of the revelations and he made many mistakes

(Izalatul Auham, published by Lahori Press).

(iii)The Holy Prophet had 3 thousand miracles"
(Tohfa Golarvia, page 67 published at Rabwah).

(iv)I have one million signs."

(Braheem Ahmadia, page 56).

The Hon'ble Supreme Court further noted that the belief of the Quadianis is that Mirza Ghulam Ahmad is (God forbid) Muhammad incarnate. In this connection, reference was made by the Court to the following quotation from Mirza Sahib's Khutbah Illhamia (page 171): "One who distinguishes between me and Muhammad, he has neither seen me nor known me."

Since the Quadianis believe in the totality of the teachings of Mirza Ghulam Ahmad which include his claim of possessing all the qualities and titles of honour of the Holy Prophet, they feel no hesitation in declaring him as a Prophet not lesser in position, dignity or honour than the Holy Prophet Hazrat Muhammad ﷺ. The learned Assistant Advocate-General has urged that such a declaration is derogatory to the Holy Prophet Hazrat Muhammad ﷺ because Mirza Ghulam Ahmad and his followers are non-Muslims under the provisions of Article 260(3) (a) and (b) of the Constitution of Pakistan and are treated so by the Muslim Umma throughout the world. He posed a question as to how the greatest Prophet of Allah can be relegated to the position of an imposter and a non-Muslim who was essentially planted to serve the cause of the British Imperialism? To substantiate his assertion, the learned A.A.G. has referred to the following writings of Mirza Ghulam Ahmad:—

(الف) ''میں بار بار اعلان دے چکا ہوں کہ میرے بڑے بڑے پانچ اصول ہیں۔ اول یہ کہ خدا تعالیٰ کو وحدہ لاشریک اور ہر ایک منقعت، موت اور بیماری اور لاچاری اور درد اور دکھ اور دوسری نالائق صفات سے پاک سمجھنا۔ دوسرے یہ کہ خدا تعالیٰ کے سلسلۂ نبوت کا خاتم اور آخری شریعت لانے والا اور نجات کی حقیقی راہ

بتلانے والا حضرت سیدنا ومولانا محمد مصطفیٰ ﷺ کو یقین رکھنا۔ تیسرے یہ کہ دین اسلام کی دعوت محض دلائل عقلیہ اور آسمانی نشانوں سے کرنا اور خیالات غازیانہ اور جہاد اور جنگجوئی کو اس زمانہ کے لیے قطعی طور پر حرام اور متمع سمجھنا اور ایسے خیالات کے پابند کو صریح غلطی پر قرار دینا، چوتھے یہ کہ اس گورنمنٹ محسنہ کی نسبت جس کے ہم زیر سایہ ہیں یعنی گورنمنٹ انگلشیہ کوئی مفسدانہ خیالات دل میں نہ لانا اور خلوص دل سے اس کی اطاعت میں مشغول رہنا۔ پانچویں یہ کہ بنی نوع سے ہمدردی کرنا اور حتیٰ الوسع ہر ایک شخص کی دنیا اور آخرت کی بہبودی کے لیے کوشش کرتے رہنا اور امن اور صلح کاری کا موید ہونا اور نیک اخلاق کو دنیا میں پھیلانا۔ یہ پانچ اصول ہیں جن کی اس جماعت کو تعلیم دیجاتی ہے۔

(کتاب البریہ، ص330 مندرجہ روحانی خزائن ج13 ص348 از مرزا قادیانی)

(ب) ''سو میرا مذہب جس کو میں بار بار ظاہر کرتا ہوں یہی ہے کہ اسلام کے دو حصے ہیں۔ ایک یہ کہ خدا تعالیٰ کی اطاعت کریں۔ دوسرے اس سلطنت کی جس نے امن قائم کیا ہو جس نے ظالموں کے ہاتھ سے اپنے سایہ میں ہمیں پناہ دی ہو۔ سو وہ سلطنت حکومت برطانیہ ہے۔ اگرچہ یہ سچ ہے کہ ہم یورپ کی قوموں کے ساتھ اختلاف مذہب رکھتے ہیں اور ہم ہرگز خدا تعالیٰ کی نسبت وہ باتیں پسند نہیں رکھتے جو انہوں نے پسند کی ہیں لیکن ان مذہبی امور کو رعیت اور گورنمنٹ کے رشتہ سے کچھ علاقہ نہیں۔ خدا تعالیٰ ہمیں صاف تعلیم دیتا ہے کہ جس بادشاہ کے زیر سایہ امن کے ساتھ بسر کرو۔ اس کے شکر گذار اور فرمانبردار بنے رہو سو۔ اگر ہم گورنمنٹ برطانیہ سے سرکشی کریں تو گویا اسلام اور خدا اور رسول سے سرکشی کرتے ہیں۔''

(شہادۃ القرآن ص84 مندرجہ روحانی خزائن ج6 ص380 از مرزا قادیانی)

14. Before proceeding further it would be advantageous to examine the provisions of section 295-C of the P.P.C. which read as under:—

"S. 295-C.--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 (may peace be upon him) shall be punished with death, or imprisonment for life, and shall be liable to fine."

After the pronouncement of the Federal Shariat Court in the case of Muhammad Ismaeel Qureshi v. Pakistan

through Secretary, Law and Parliamentary Affairs PLD 1991 FSC 10 the words "or imprisonment for life" in section 295-C of the P.P.C. have lost their efficacy w.e.f. 30-4-1991. Therefore, now the sentence for the offence is only death.

15. The word 'defile" means to corrupt purity or perfection of; to debase; to make ceremonially unclean; to pollute; to sully; to dishonour".

(Black's Law Dictionary, Fifth Edition page 380).

To violate the sacredness or sanctity of; to desecrate, profane; to sully the honour of, to dishonour."

(The Oxford English Dictionary, Volume III, page 136).

16. A bare reading of the above provision of law makes it clear that any word either spoken or written, or visible representation or any imputation which defiles the sacred name of the Holy Prophet Hazrat Muhammad ﷺ directly or indirectly or by an innuendo i.e. latent defamation, amounts to an offence under section 295-C of the Code. The petitioners, on the one hand, had asserted that the position and status of Mirza Ghulam Ahmed was not less than that of Hazrat Muhammad ﷺ and on the other, stated that number of miracles of Mirza Ghulam Ahmed was three lacs while that of the Holy Prophet Hazrat Muhammad ﷺ three thousand.

The argument of the learned Assistant Advocate-General that the petitioners dishonoured the Holy Prophet Hazrat Muhammad ﷺ by relegating his position to that of Mirza Ghulam Ahmad, who was not a "Muslim" within the meaning of Article 260(3)(a) of the Constitution of Pakistan and was a false claimant of Prophethood according to the firm belief of the Muslim Umma, has considerable force. Prima facie, the petitioners appear to have committed an offence under section 295-C of the P.P.C. The mere fact that Mirza Ghulam Ahmad in a number of his books (referred to by the petitioners' learned counsel) had expressed profound love and respect for the Holy Prophet Hazrat

Muhammad ﷺ is not enough to exonerate the petitioners who, according to the F.I.R, had used derogatory 'language about the Holy Prophet Hazrat Muhammad ﷺ and ventured to say that Mirza Ghulam Ahmad was not lesser in dignity or status than the Holy Prophet Hazrat Muhammad ﷺ. The offence being punishable with death falls within the prohibition of section 497 of the Cr.P.C.

17. The petitioners' learned counsel heavily relied on the judgment in the case of Nasir Ahmad v. The State 1993 SCMR 153 to urge that the question whether the petitioners had committed an offence under section 295-C of the P.P.C. may be left to be decided by the trial Court and that petitioners may be allowed bail at this stage. Of course, the final determination of the question regarding commission of the offence has to be done by the trial Court but at this stage a tentative view can be formed on the basis of the material on the record. Moreover, the facts of the precedent case are entirely different. In the said case certain Shaair-e-Islam were used by the Quadianis in a marriage invitation card. It was felt that deeper probe regarding the faith intention etc., of the accused was needed. It was observed that the use of the expressions like

"بسم الله الرحمن الرحيم ـ السلام عليكم ـ انشاء الله"

by any person, *prima facie*, "does not create feelings of hurt, offence or provocation etc. etc. nor is it derogatory to the Holy Prophet Muhammad ﷺ. It was further observed: "It is only when the person reading or hearing them goes deep into the background of the person using them and brings his own special knowledge of the faith, beliefs and latent intentions of such an accused that the alleged results are likely to follow." Meaning thereby that the alleged results of hurt or provocation to. Muslims or defilement of the sacred name of the Holy Prophet were likely to follow after going into the background of the accused, their faith, beliefs and intentions. Hence in the peculiar circumstances of the case, the Hon'ble Supreme Court left the matter to the decided by the trial Court and allowed bail to the

accused persons. The facts of the present case are singularly different. The petitioners who are Quadianis had allegedly used derogatory language about the Holy Prophet ﷺ and openly declared that Mirza Ghulam Ahmad was not lesser in his position and status than the Holy Prophet. They also gave higher number of miracles of Mirza Ghulam Ahmad apparently to place him on a higher spiritual pedestal. Therefore, in the present case the petitioners prima facie appear to have committed an offence under section 295-C of the P.P.C,

18. For the foregoing discussion, I am not inclined to grant bail to the petitioners at this stage. Resultantly, their bail petition is dismissed However, in order to avoid prejudice to them due to delay in conclusion of the trial the trial Court is directed to give priority to this case over others and make every effort to conclude the trial expeditiously, preferably, within a period of three months.

19. It is clarified that the trial Court shall independently decide the case in the light of the material or evidence adduced by the parties without being-influenced by the observations made above.

(Sd.)

(MIAN NAZIR AKHTAR),
JUDGE.

Bail refused.

(PLD 1994 Lahore 485)