

IN THE COURT OF HAQ NAWAZ,
SESSIONS JUDGE, ORAKZAI (AT BABER MELA)

CRIMINAL APPEAL NO. : 4/10 OF 2025
DATE OF INSTITUTION : 13.10.2025
DATE OF DECISION : 13.11.2025

MEHDI HASSAN S/O KHIAL HASSAN, CASTE BAR MUHAMMAD
KHEL, TEHSIL LOWER, DISTRICT ORAKZAI
..... (APPELLANT/CONVICT)

-VERSUS-

STATE THROUGH SHAL MUHAMMAD SHO, POLICE STATION
KALAYA
..... (RESPONDENT)

Present : Syed Muzahir Hussain Advocate for appellant/convict.
: Sr. PP, Abul Qasim for the State.

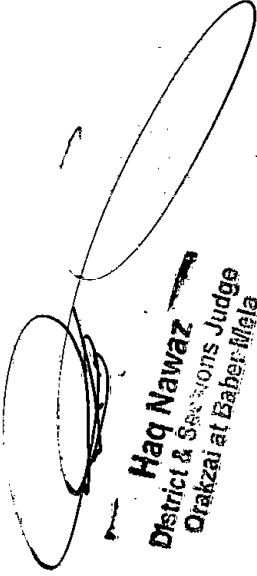
JUDGEMENT
13.11.2025

This criminal appeal was preferred by the appellant/convict against the judgment dated 10.10.2024 of the Court of learned Judicial Magistrate, Tehsil Courts Kalaya, District Orakzai passed in case No. 64/2 of 2022 whereby the appellant was convicted in case FIR No. 75, Dated 11.08.2022, registered at Police Station Kalaya and sentenced to 02 years rigorous imprisonment with fine of Rs. 50,000/- each under Sections 295-A and 298-A PPC. In default of payment of fine, the convict was directed to undergo 06 months simple imprisonment under the said Sections of law. The benefit of Section 382-B CrPC was extended to him.

2. According to averments of the FIR, the local police received information that Sub-Inspector Mehdi Hassan had shared several posts from his mobile through Facebook ID and also shared a post containing derogatory remarks in respect of

holy personage i.e., Sahaba-e-Karam (R.A) outraging religious sentiments of Ihl-e-Sunah on the eventful day which could result in sectarian clashes. The SHO checked the ID of the convict in his own mobile set and found the derogatory posts in the social media account of the accused. He took screenshots of the posts and charged the convict for the commission of offence.

3. After completion of investigation, complete challan was put in Court. The accused was summoned. Copies were provided to him u/s 241-A CrPC and he was formally charged. The accused pleaded not guilty and claimed trial. The prosecution produced a total of 06 witnesses before the Court of Judicial Magistrate whereafter statement of the accused was recorded. During the course of arguments, the learned defence counsel raised objection upon cognizance of the case by the Court without sanction of the Competent Authority. Hence, the case file was returned back to the prosecution on 09.03.2024. The case was resubmitted on 25.05.2024 with the Ex-Post Facto Sanction No. 822/DC-Ork/Litigation Cell Dated 13.05.2024 accorded by the Deputy Commissioner, Orakzai. The accused was again charged formally, to which he pleaded not guilty and claimed trial. The prosecution witnesses were again produced before the Court. After completion of prosecution evidence, statement of the accused was recorded. He again denied the allegations and submitted that he never shared



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and uploaded any post to outrage the religious feelings of any sect or have used any derogatory remarks against the holy personages. He, however, neither recorded his statement on oath nor produced any evidence in defence.

4. The learned trial, after hearing both the parties, convicted and sentenced the accused as mentioned above; hence, this appeal was preferred.
5. The procedure for registration of a case under Section 295-A PPC and other offences against the State is provided u/s 196 CrPC which is reproduced as below;

“No Court shall take cognizance of any offence punishable under Chapter VI [or IXA] of the Pakistan Penal Code (XLV of 1860) (except section 127), or punishable under section 108A, or section 153A, or section 294A, [or section 295A] or section 505 of the same Code, unless upon complaint made by order of, or under authority from, [[Federal Government], or the Provincial Government concerned, or some officer empowered in this behalf by either of the two governments.]”

As such order of the Federal Government or the Provincial Government concerned or some officer empowered in this behalf by either of the two governments was required for lodging a complaint of an offense punishable under Chapter

VI or IX-A of the Pakistan Penal Code or punishable u/s 108-A, or Section 153-A, or Section 294-A, or Section 295-A, or Section 505 of the same Code. But the Ex-Post Facto Sanction Dated 13.05.2024 was accorded by the Deputy Commissioner, Orakzai after about 01 year and 09 months for prosecution and thus no prior or ex-post facto sanction was obtained for lodging/registration of the complaint as required u/s 196 CrPC. Reliance is made on 2015 PCrLJ 1305 which holds as under;

"A case under section 295-A, P.P.C. could not be registered against any person unless same has not made upon complaint made by order of or under authority from the central Government or the Provincial Government concerned, or some other officer empowered in this behalf by either of the two governments."

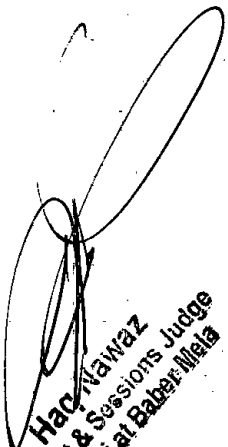
6. The said judgment elaborates the object of Section 196 CrPC as follows;

"The object of section 196, Cr.P.C. is to prevent unauthorized person from intruding in state affairs by instituting state prosecution and to secure that such prosecution shall only be instituted under the authority of the Government. It is, therefore, for the Government to decide whether an offence of

the kind mentioned in section 196, Cr.P.C. should be tried in court or whether it would be more in the interest of the people or administration to suppress the trial and since an offence assumes importance not only from its own nature but also from the personality of the offender, it would be in the power of Government to decide whether a particular person should be prosecuted or not."

7. So far, Section 298-A PPC, is concerned, the alleged use of the derogatory remarks in respect of Holy Personages by the accused through his Facebook ID were observed by the complainant in his own mobile set and he took screenshots of the same and printed it out. He saved the same in a USB which was handed over to the IO on 14.08.2022 after three days of the occurrence vide recovery memo Ex. PW 4/3 who sealed it in parcel No. 2. It was sent twice to FSL Peshawar and FSL Lahore, but was returned without any forensic report.

8. Similarly, the OPPO brand mobile set Model CPH 2083 of the accused was taken into possession by the complainant at the time of his arrest on 11.08.2022 vide recovery memo Ex. PW 2/2 and he sealed it in parcel No. 1, without checking the insulting or derogatory remarks in it through the alleged Facebook ID of the accused. The Investigation Officer, in his cross examination before the Court as PW-4,


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admitted that the mobile phone of the accused was not sent to FSL to determine whether the ID from which the derogatory posts were shared was fake or not.

9. Finally, the complainant alleged in the Murasila that there were public complaints against the accused in respect of the alleged offences, but the IO stated in his statement that he has not recorded the statement of any private person regarding involvement of the accused in the commission of offence.

10. In view of the above facts and circumstances, it is held that the prosecution remained failed to lodge the complaint in accordance with law and bring home the charges against the appellant beyond the shadow of doubt through confidence inspiring evidence. The appeal is, therefore, accepted and the impugned judgment is set aside. The appellant is acquitted of the charges levelled against him. File of this court be consigned to record room after its necessary completion and compilation.

Announced:
13.11.2025

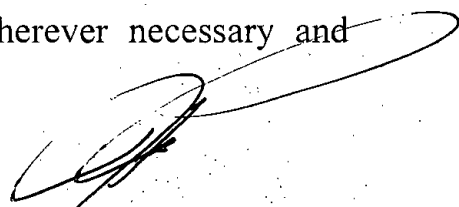


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CERTIFICATE

Certified that this judgment consists of six (06) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 13.11.2025



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Sessions Judge, Orakzai
at Baber Mela