

Legal Court of Appeal - Abu Dhabi

Case No. 188/1996 - Ministry of Justice,

United Arab Emirates [Jabir' Case]

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Legal Court of Appeal - Abu Dhabi

UAE Final Judgment

Jabir' Case, Abu Dhabi

Case No. 188/1996



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In the name of Allah the beneficent the merciful

United Arab Emirates
Ministry of Justice
Department of Legal Judgment
Legal Court of Appeal -Abu Dhabi

Fourth Dept.

In the public session held on 2nd Muharram 1417 H corresponding to 19/5/1996 under presidency of the Judge: Abdul Baqi Abdul Hakam and the membership of the two judges:

1. Hasan Shareef Al- Jafri
2. Mohammad AI -Aboodi

and in the presence of the secretary Mr.Najeeb Ahmed, we have pronounced the following judgment regarding the appeal recorded under NO. 188/1996 dated 18/4/1996

Raised by: The public prosecution Abu Dhabi

Against: (The Accused / the Appellees here in as mentioned)

1. Panikkaveetil Kottilugal Jabir. (Indian National)
2. Panikkaveetil Moideen Abdul Jabbar, Indian National related the judgment pronounced by the legal Court of first incident on 10/4/1996 regarding the case NO. 152/1996 offenses

The Court

After hearing the defense, looking into the matter and deliberation and whereas the facts show that the Public Prosecution has charged both the appellee that they had used force against government employee Ahmed Abdullah Abdul Kadir, to prevent him from discharging his duties. They did not achieve their objective as it is shown in the documents.



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They purposely hit the plaintiff Mr. Hasan Saeed Hasan inflicting on him injuries which were indicated in the medical report and which has prevented him from performing his own work for a period of 20 days approximately.

The Court of first incident has looked into the case as it is shown in the registers of this session. In the session dated 27/3/1996 the Court listened to the statement of the plaintiff Mr. Hasan Saeed Hasan, who declared that he has no evidence that both the appellee have assaulted him except the state of the policeman Ahmed Abdullah further added that he disclaim from his complaint and no more claims from both the appellees.

The lawyer of the appellee submitted a declaration affirmed before notary public on 17/3/1996, encompasses the denouncement of the policemen from his complaint.

In the session of 7/4/1996, the Court heard the statement of the first appellee who declared that the first plaintiff came to his office along with the second plaintiff with the intention of attack on him and his brother therefore he tried to contact the police, but Mr. Ahmed Abdul Kadir pulled the phone from him then he called for help and so Mr. Zulfiqar (Pakistani) called the police. The police rushed to the spot and assaulted them both in the street and in the van .

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In the session of 8/4/1996 the second appellee denied the charges against him. In the session of 10/4/1996 the Court listened to the evidence Mr. Saleem Raza who said that both the plaintiff have come to the appellees shop while one of them stood outside the shop while the shop was closed. The first appellee asked me to call the police. The other who was standing outside the shop was holding an iron rod of one meter of length in his hand with which he was hitting the door of the shop and warning anyone from coming near the shop and was saying "Pakistani, Bengali, Indian all are thieves and procurers".

Accordingly when Saleem called the police they rushed to place and Jabir opened the door. The two policeman assaulted both the accused. The Court then listened to the statement of Mr. Zulfiqar A1i who gave similar statement, the previous witness moreover he added-that the appellee have



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neither resisted the police nor they have beaten anyone from the patrolling squad and that the appellee are of good nature "I am a Pakistani and they are Indian, no relations are between us, and my testimony is based on truth only further the Court listened to the statement of the 3rd witness Mr. Shirban Kalobar whose testimony came similar to the declaration of the first two witness, therefore in the presence of all parties the Court declared the judgment of being both the appellee innocence from charges levied upon them, and to forward the documents to the public prosecution to investigate the incident of assault committed by the plaintiff and the policeman mentioned in the papers....

The Court of first instance in its judgment mentioned that the public prosecution did not submit any evidence to condemn the both accused and the witnesses to whom the Court of first instance and public prosecution listened had witnessed that the both the appellees neither attacked the plaintiffs nor they resisted the police men. The Court is satisfied about his matters due to disclaims of the first plaintiff before the Court. while the second plaintiff renounced the same before notary public. The Court further added that the above evidences prove that the both plaintiffs have assaulted the appellees as well as the policeman, and the Public Prosecution did not carry any investigation with them in relation there to. Therefore Court deems it necessary to send them to the Public Prosecution to conduct the investigations with them in accordance with the provision of article 17 from the penal procedure code.

The public prosecution contested this judgment on 18/4/1996 and submitted a memorandum reasoning the contestation in which it has mentioned that the evidence of accusation is manifested in the statement of both the plaintiffs that the defendants have attacked and used force against them and the statements of the witnesses during the investigation of the Public Prosecution shows that they have not seen the incident but they only heard the voice of one of the defendants saying " policeman " while the investigator Mr. Ahmed Abdul Kadir was kicking the door with an iron bar in his hand with which he was- trying to open the door for the defendant who was imprisoned inside by them. This is an evidence.

Which was overlooked by the Court of first instance and it did not discuss the

same to act upon it. It should be noted that this evidence could effect on changing the option about this legal proceeding. In addition to that the article 208 procedure provides for non-obligation of the Court by the what is recorded in the initial investigation. And that the Court is entitled to investigate the case in its own way and give judgment based upon the result of the first investigation. If the Court do not do this, its argument will be imperfect with lacking reasoning and improper inference and by contravention of what is testified by documents therefore it should be invalidated.

Further, the Public Prosecution has further asked formal acceptance of the appeal and in connection there to, to cancel the appealed judgment and prejudging with agreement of points of views to inflict the legally stated punishment on the accused.

The Court of appeal looked in to the contestation in the session of 5/5/1996. The public prosecution asked for a judgement on the appeal according to what has come in the memorandum of appeal. Both the appellees denied the charge directed to them and the first appellee stated that the policeman did not identify himself and the plaintiff Mr. Hasan Saeed was accompanying the plaintiff and as they avoided at his work place they assaulted him and he is not satisfied them. The second appellee stated that he had seen two persons beating his brother the first appellee. His brother asked him to close the door and inform the police about the incident. The Court decided to enclose a copy of the arrest warrant and to hear the statement of the plaintiffs.

In the Session of 13/5/1996, the Court listened to the statements of the policeman Ahmed Abdullah who stated that he was ordered by lieutenant Saif Al- Khaili to arrest the first appellee to arrest the first appellee, so he took a copy of the arrest warrant in his hand and went to the place of the required person wanted in his informal dress and the plaintiff accompanied him. Then he met the wanted person wanted and saluted him and the first appellee replied the salute, Saif Al- Khaili handed the copy of the arrest warrant to the first appellee who went on reading it and invited the lieutenant for a cup of tea but he refused the invitation and told him to move to the police station. At that moment, the first appellee ordered the second appellee to close the door and he did. Jabir caught Hamad Abdullah from the



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back and they assaulted him by hands. However he could get the key and went out of the shop but Hasan could not get out and remained there. The policeman who was outside the shop heard the quarrel inside, so he took an iron bar in his hand and stood at the door to prevent gathering of Indians there, and he heard both appellee saying that they are thieves, then he called the police who rushed to the place and the appellees were arrested. The arrest warrant is in the register because he handed the copy which was to the police headquarters after arresting both the appellees while questioning Hasan Saeed, he stated that he has made an agreement with first appellee to invest in a building and therefore the first appellee gave Mr. Hasan Saeed a cheque of 74,000 Dirham. Thereafter, he came to know that the cheque was dishonoured consequently we informed the police. And after some day's first appellee informed him that he has raised a civil case against him in connection to the matter, and that he has deposited for him an amount of 74000 Dirham in the Court. But he did not believe that.

Later on, he found the first appellee in the company so he contacted the police this remaining declaration was similar to that of the policeman.

And whereas the Court has ordered the police prosecution to submit a copy of the arrest warrants, and on checking the same, it was found that it was dated on 26/10/1995 and concludes that the first appellee was wanted by the police of the capital under the accusation of issuing a cheque of 74000 Dirham in favor of the he complaint Mr. Hasan Saeed without having balance in account.

Where as the Court has decided to hold the case for pronouncing the judgment on today's session and as the appeal has raised at proper time therefore it is accepted formally, and whereas it related to the matter, the public prosecution has brought up both the appellees under the charge of applying force against a government employee for purpose of preventing him from discharging his duties. However, they could not achieve their aim, and they have assaulted the plaintiff Mr. Hasan Saeed inflicting injuries prevented him from his work for a period of 20 days.

There is not any evidence which can prove the first accusation but in contrary it is proved from the saying of the policeman that the first accused



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has received him hospitably when invited him for a cup of tea, and all the accused has done was that he ordered his brother, " the second accused" to close the door and to call the police, which is logical conduct and free from any resistance or prevention to the policeman from performing his duties. All the evidences indicates to the properness of his behavior, some of these evidences are :-

1. The accused was confident being innocent as he has informed in advance that he has deposited the amount of the cheque - Which is subject of accusation at the treasury of the legal Court and the plaintiff has confirmed the same in the investigation. (Note: the papers include a receipt of deposit of the amount vide printed NO. 19608 dated 25/20/1995 i.e. before the said incident.)
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2. The policeman and the plaintiff came in civil dress on 26/3/1995, which means that the plaintiff by this time was aware that the amount is deposited in the Court. Moreover, the policeman was holding shackles, inspite of all that, the first accused has only ordered his brother to close the door and asked him to contact the police, which is a logical matter that can be adopted by any man in such a situation.
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3. The policeman said that he was frightened after the door was closed so he was scared of what? it is confirmed that only the accused and his brother were in the shop, and the plaintiff was with the policeman.
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4. The policeman declared that he has taken the key, opened the door and went out. This means that there was no resistance from both the accused and if they had prevented Hasan from going out, it was because they understood that he came to attack them , after they had informed him
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5. They had deposited the due amount of cheque in the Court.
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6. The escape of the policeman from the shop proves that he was wrong and has no legal authority to arrest the accused. And what the both accused have done was that they only asked to inform the Police about the matter. In fact the policeman should do this and he has to



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wellcome this action, and he should not run away and stand at the door holding an iron bar in hand threatening anyone who come near the place, and the witness Saleem Riza Ozri was the one who informed the police.

..(Refer to his statement before the Court of first incidents..)

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7. It is confirmed that the policeman moved with the plaintiff upon oral instruction to summon the first appellee. On the reading the arrest warrant, a copy of which was presented before the Court of appeal, it seems that the warrant encompassed that the first appellee was to appear before the police of the capital, and no where it is mentioned to arrest the appellee and it was duty of policeman to act according to the contents of the warrant ,i.e., to asked the accused to come with him to the police station and if he refuses then the policeman had to contact the headquarter which will there after take suitable decision regarding the accused as the accused is not red handed according to the provisions of article 42 of Penal Procedures and the following.
..
 8. Verily the Islamic Law and the entire Positive Laws have honoured Man and protected his freedom, his honour, his property and his soul. Hence, if a man was killed, while protecting these, he is considered to be a martyr. And limitation of his freedom without any rights is an unforgiving crime and the same is mentioned in the provisions of articles 2 and 3 of the Penal Procedures Code. And it is proved in this case that the policeman along with the plaintiff went to arrest the accused and to limitate his freedom.... Therefore, it is right of the accused to verify the reason behind which he going lo be arrested, and to take help of the security men and to defend his freedom. The accused had exactly done the same when he asked to inform the police to inquire into the matter and to conduct the necessary Investigation in respect of this assault.
..
 9. It is strange to find a declaration enclosed with the papers executed by the policeman, attested by the Notary Public under number 2314/96 dated 17/3/1996 concluding his disclaims from his rights in this legal case which is a clear cut evidence showing that he felt his mistake and



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so he wanted to relinquish ! The Court is wondering, from what he wants to relinquish ? Does he want to abandon the security of the country? Then this is a solid evidence that both the accused did not resist the policeman.

All the above mentioned presumptions confirm that both the accused are free from accusation of applying force against the policeman. In reply to the contestation of the Public Prosecution that the Court of first incident did not consider the statement of the plaintiff that both the appellees have committed both the crimes imputed to them. The Court says that the sayings of the plaintiff must be supported by any other evidence or presumption and the Court can not rely upon their simple statement because the Prophet Mohammad may Peace and Blessing of Allah the Almighty be upon him said: (If people were to be given according to their claims, some would have claimed the blood and belongings of others, but the plaintiff is the one which should prove it.)

And it is proved as mentioned above, that all the presumptions affirm the innocence of both the accused from the charges imputed to them, as well as the evidences indicate to falsehood of the narration of both the plaintiffs. In respect of the statement of the Public Prosecution that the policeman was standing at the door of the closed shop with an iron bar in hand trying to open the door to take out the plaintiff, it is considered to be an irresponsible conduct from the policeman. Instead of that he should have informed the concerned police authority to come, and this is what both appellees had done. And about the Public Prosecution's statement that the Court of the first incident should have investigated the matter itself, it is proved also that the Court of first incident had done its job in the best manner. It has called the witnesses and heard their statement and all of them stated as it is affirmed from their sayings recorded in connection to this judgment, that both the defendants did not commit any mistake there.

..

In this connection, the Court has nothing in hand but to show that the thing that put the policeman in an unenviable position is the falsehood of the plaintiff in his complaint as he has informed the police about the place of the accused to arrest him with ill intention although he knows that the amount of the dishonoured cheque is already deposited at the Legal Court. And in



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the claim of the plaintiff Mr. Hasan Saeed that both the appellee have assaulted him, is not supported by any legal evidence to affirm it. And his falsehood in this claim is proved by his denouncement of the same at all the stages of the investigation.

Further, the medical report dated 26/10/1995 showed that the above mentioned is afflicted with an abrasion and some scratching on his left arm. These wounds occurred while he was trying to get out from the shop when he felt that he had committed a mistake against both the appellees, and the situations are against him after complaining the police with ill intention to arrest them though he knows that the amount of the cheque is already deposited at the safety the Court. In addition to that he stated that he had no evidence to prove both the appellees have assaulted him except statement of the policeman. In this connection, the Court can not rely upon the statement of the policeman because he was accompanying the above mentioned.

And the all witnesses to whom the Court of first incident listened, have disproved these sayings and they stated that both the appellees did not attack any body, but they were attacked and injuries were found on them according to medical report.

Hence, the true form of the incident as mentioned in the papers is that the both the appellees have prevented the plaintiff Mr. Hasan from going out so he tried to get out forcibly, but he could not exit. and at that time he was injured. Similarly the injuries of both the appellees happened and the appellees were in position of defenders protecting their freedom by holding the person who came to infringe and to put a limit to this freedom without any right, which necessitates the innocence of both appellees from this charge also.

Whereas and upon the above mentioned and for the reasons that the Court of first incident presented which are in confirmity with these reasons and for implementation of article 211 of Penal Procedure Code, it is obligatory to pronounce the following judgment, therefore :

The Court has adjudged to accept the appeal formally, and subject wise to



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reject the appeal and to confirm the previous judgment.

May Peace and Blessings of Allah the Almighty be upon His Messenger Mohammad, and his family and his companions.

SD ()
Fuad Ali Mahmood .
Secretary

SD ()
Abdul Baqi Abdul Hakam
Head of the Jury

Judgment (Legal Court of First Instance) of Ministry of Justice, Abu Dhabi, UAE
Is available at the following Links:-

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