

Commentary on the Supreme Court Decision (Criminal Circuit (A)), Sultanate of Oman, Appeal No. 661/2016, Issued on 7/3/2017

A Study and Commentary

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Abstract: This research comments on and analyzes the decision of the Supreme Court of Oman No. (661/2016), issued on 7 March 2017, concerning the crime of insult and defamation committed through information technology means, and the legal issues it raised regarding the limits of freedom of opinion and expression in the digital sphere and its relationship to the protection of honor, dignity, and reputation. The significance of the decision lies in its adoption of a balancing approach between the intent to offend and the intent to serve the public interest when assessing the existence of criminal intent in cases of electronic publication offenses.

The research problem centers on the extent to which the public interest may serve as a ground for negating criminal intent in the crime of online insult and defamation, as well as the limits of the trial court's discretionary authority in distinguishing between legitimate criticism and expression that infringes upon personal rights. To analyze this issue, the study adopts a critical analytical methodology by examining the reasoning of the judgment and linking it to the constitutional and legislative provisions governing freedom of expression, as well as to the established principles of international human rights law.

The research concludes that reliance on the public interest as a determinative criterion for negating criminal intent must remain subject to precise and objective safeguards to prevent it from becoming a justification for undermining individual dignity or damaging personal reputation. It further demonstrates that achieving a balance between freedom of expression and the protection of personal rights requires distinguishing between criticism related to matters of public concern and statements that exceed their critical function and amount to personal disparagement. The scholarly contribution

Key words: Freedom of Expression; Public Interest; Online Insult and Defamation; Criminal Intent; Personal Rights; Information Technology Crimes; Protection of Reputation; Permissible Criticism; Supreme Court of The Sultanate of Oman.

INTRODUCTION

Freedom of opinion and expression constitutes one of the most fundamental political rights and freedoms. Indeed, it is an inherent right inseparable from the human person¹, given its pivotal role in shaping public opinion, enabling individuals to exchange ideas, monitoring public affairs, and contributing to public administration on a foundation of dialogue, constructive criticism, and accountability.

This right has been clearly safeguarded by various international and regional instruments, as well as modern constitutions. Article 19 of the Universal Declaration of Human Rights asserts the right of every individual to freedom of opinion and expression. This protection is further reaffirmed by the International Covenant on Civil and Political Rights (ICCPR), and the Arab Charter on Human Rights, which guarantees the freedom of opinion and expression, alongside the right to seek, receive, and impart information and ideas². It is universally recognized that the exercise of this freedom, extensive as it may be, carries special duties and responsibilities. Consequently, any restrictions imposed upon it are only legitimate if they are prescribed by law and are necessary for respecting the rights or reputations of others, or for the protection of national security, public order, public health, or public morals³.

From a domestic constitutional framework, Article 35 of the Basic Statute of the State, promulgated by Royal Decree No. 6/2021, stipulates that the freedom of opinion and expression thereof, whether spoken, written, or through any other means of expression, is guaranteed within the limits of the law.

Thus, the constitutional protection afforded to this freedom is not absolute; rather, it is a legally regulated protection predicated on striking a balance between the prerequisites of liberty and the guarantees of human dignity. It balances an individual's right to voice an opinion against the right of others to preserve their honor, status, and reputation, while

¹ Khalid bin Abdullah bin Khamis Al-Khameesi, *Freedom of Opinion for Public Employees: A Comparative Study*, 1st ed., Al-Ghandour Center, Cairo, 2020, p. 317.

² Article 19 of the Universal Declaration of Human Rights of 1948; Article 19 of the International Covenant on Civil and Political Rights of 1966, to which the Sultanate acceded pursuant to Royal Decree No. 89/2025 dated 16/10/2025; and Article 32 of the Arab Charter on Human Rights of 2004, to which the Sultanate acceded pursuant to Royal Decree No. 16/2023 dated 21/3/ 2023.

³ Article 19 of the International Covenant on Civil and Political Rights of 1966, and Article 32 of the Arab Charter on Human Rights of 2004.

additionally taking into account considerations of public order, societal security, and the public interest.

Against this backdrop, the imperative of maintaining this balance becomes even more pronounced within the digital environment. In this realm, publishing platforms proliferate and information spreads exponentially, making the distinction exceptionally fine between permissible criticism—even if sharp—and legally punishable slander and defamation. It is precisely from this angle that the ruling under review derives its significance. Within the scope of applying Article 16 of the Cyber Crime Law, the judgment addresses the problematic delineation between legitimate expression tied to the public interest and unlawful infringement upon personal reputation and status—a dilemma that underscores the precision required in judicial balancing between freedom of expression and the protection of personal rights.

The Supreme Court, presided over by His Eminence Mr. Khalifa bin Said bin Khalifa Al-Busaidi, Vice-President of the Court, and membership of Their Eminences the Judges: Salim bin Said Al-Rahbi, Sultan bin Majid Al-Zaabi, Al-Arabi Al-Haroushi, and Majid Faraj Shoushan, rendered its judgment in the public hearing held on Tuesday, March 7, 2017, regarding Appeal No. 661/2016, Criminal Circuit (A).

First: The Facts

The facts of the case, as established by the appealed judgment and the entirety of the appeal documents, are that the Public Prosecution referred the accused (the Respondent) to the Court of First Instance in Nizwa (Criminal Circuit) for having, on a date prior to 27/10/2015 within the jurisdiction of Nizwa Police Station, used information technology means to insult and defame the Civil Claimants, as evidenced in the case file.

The Public Prosecution sought his punishment pursuant to Article (16) of the Cybercrime Law.

On 16/2/2016, the Court rendered a judgment in the presence of the accused (the Respondent), convicting him of the misdemeanor of using information technology means to infringe upon others through insult and defamation, criminalized under Article (16) of the Cybercrime Law. The Court sentenced him to one year's imprisonment, of which one month was to be enforced, and ordered his release pending appeal upon submission of a financial bail in the amount of OMR 200, unless detained for another reason. The Court further referred the civil claim to the competent civil court.

The convicted person (the Respondent) did not accept this judgment and appealed before the Court of Appeal in Nizwa (Misdemeanor Appellate

Division), which ruled on 23/5/2016 to admit the appeal in form and, on the merits, to overturn the judgment of the Court of First Instance and acquit the accused of the charge brought against him.

The Appellant (the Public Prosecution) objected to this verdict and appealed it by way of cassation before the Supreme Court under the present motion. The appeal was formally filed on June 27, 2016, with the Secretariat of the issuing court. On the same date, a memorandum of the grounds for appeal, signed by a Chief Public Prosecutor, was deposited. The Respondent was duly served with the appellate memorandum and replied through his legal counsel with a defense memorandum pleading for the dismissal of the appeal.

Furthermore, the Public Prosecution submitted an advisory memorandum to the Supreme Court, concluding that the appeal be admitted in form and dismissed on the merits.

The Court

Having reviewed the contested judgment and all the case files, and after hearing the report prepared and recited by the Judge-Rapporteur, and following legal deliberation:

Whereas the appeal has fulfilled all its statutory requirements, it is hereby admitted in form.

And whereas the Appellant (the Public Prosecution) impugns the contested judgment on the grounds of violation of the law, error in its application, defective inference, and deficiency in reasoning. The Appellant argues that the court below predicated its acquittal on the non-fulfilment of the material elements of the crime of utilizing information technology means to slander and defame others, despite their manifest presence. The Appellant contends that challenging the actions of a public official, a public representative, or a person entrusted with a public service constitutes defamation. Such defamation may materialize even if framed in terms of doubt, conjecture, probability, irony, sarcasm, or ridicule, whether explicitly stated or implied.

The accused explicitly confessed before the Public Prosecution, the court of first instance, and the Court of Appeal that he published several tweets on social media platforms. These tweets described the civil claimants (.....) using specific words and phrases embedded within the core and context of those tweets, as follows:

(...stupidity - falsehood and ugliness - deception - naivety - their shameful act - greed and selfishness - financial avarice - their ugly nocturnal deed - ignorance - greed, rapacity, and the pursuit of money and profit - here are the trustees of continuing tonight, after having killed the park, to block the stream of the Falaj with utter naivety - here are the trustees continuing their deeds tonight after destroying the park, wishing that the general public would not witness their shameful act - is

it not stupid to neglect it and kill its greenery? - and in an entire park is being killed - if only their consciences would regain their sanity - the falsehood of the claims - their tampering with and killing of the place - prioritizing private interest over public interest is naivety - their selfish search for money and profit - killing trees by their greed - this is how an abandoned, arid park looks today as a result of the complaint filed by the trustees of the endowment against the municipality, so that the park would become theirs out of financial avarice...)

The Appellant asserts that these specific words and phrases constitute the elements of slander and defamation against the civil claimants in their capacity as trustees of the (.....) and its park. Some of these expressions targeted the Claimants personally as trustees of the endowment or the Falaj, while others impugned and disparaged their official functions, given their duty to care for, serve, and preserve the endowment or the Falaj.

Consequently, the Appellant argues that the material element of the crime of using an information network or information technology means to infringe upon others via slander and defamation—consisting of publishing defamatory expressions—is fully established. Similarly, the mental element is present in the form of general, rather than specific, criminal intent, as the legislature did not require specific intent. Therefore, it suffices for criminal intent that the perpetrator’s will was directed toward using the information network or technological means to publish expressions bearing defamatory meaning, even if his intent was not directed at insulting, defaming, or harming others, so long as he committed the act of his own free and uncoerced will.

Furthermore, the Appellant contends that the contested judgment erred in interpreting and applying the law, as the court failed to investigate the Defendant when he denied the charges, by omitting necessary questioning, clarification, and examination of evidence, in violation of Article 193 of the Criminal Procedure Law, which stipulates:

“...If the accused denies that he is guilty or refuses to answer, the court must proceed with the investigation...”

The Appellant also notes that the contested judgment suffered from a deficiency in its reasoning, in violation of Article 220 of the Criminal Procedure Law, which requires judgments to contain the grounds upon which they are based. The court below acquitted the accused based on a single rationale—namely, the non-fulfilment of the elements of the crime, particularly criminal intent—without clarifying the facts upon which it anchored its verdict, all of which flaws the contested judgment and warrants its reversal.

Whereas it is well-established that the crime of slander and defamation via information technology means is an intentional offense that does not materialize unless the criminal intent of the perpetrator is

established, such that the perpetrator's will is directed toward committing this offense with full knowledge thereof.

It is equally established that, in order to determine the materialization or non-materialization of this crime, the court must examine the ultimate aims and objectives of the expressions for which the perpetrator is being tried, and ascertain their underlying tendencies to determine his criminal intent. If the published text contains expressions intended to defend a public interest, while concurrently containing language that may infringe upon others, the court must balance the two intents to determine which of them was predominant in the publisher's mind. This balancing is a question of fact within the exclusive discretion of the trial court (court of merits), based on its deduction of the facts of the case, provided that such weighing is anchored upon supportive evidence. In this regard, the trial court is not subject to the oversight of the Supreme Court, except regarding a deficiency in the judgment's reasoning.

And whereas the justification provided by the contested judgment for its acquittal—stating that the expressions published by the Accused (Respondent) on social media platforms were not intended to slander or defame the victims, but rather sought the public interest and the preservation of a historic heritage landmark (the park) from degradation and erasure—was soundly deduced from the totality of the circumstances reviewed closely and perceptively by the court below. Therefore, the arguments raised by the Appellant in his appeal amount to nothing more than a subjective dispute over the trial court's authority to weigh the elements of the case and form its conviction, a matter that may neither be raised nor litigated before the Supreme Court. Consequently, the appeal must be dismissed on the merits.

For These Grounds

(The Court hereby adjudges the appeal admissible in form, and dismissed on the merits.)

Second: The Legal Principle Established by the Judgment

Text of the Principle:

"The crime of slander and defamation via information technology means is an intentional offense that does not materialize unless the criminal intent of the perpetrator is established, such that the perpetrator's will is directed toward committing this offense with full knowledge thereof. In order to determine the materialization or non-materialization of this crime, the court must investigate and examine the criminal intent of the perpetrator. If the published text contains expressions intended to defend a public interest, while concurrently containing language that may infringe upon others, the court must balance the two intents to determine which of them was predominant in the

publisher's mind. This balancing is a question of fact within the exclusive discretion of the trial court (court of merits), based on its deduction of the facts of the case, provided that such weighing is anchored upon supportive evidence. In this regard, the trial court is not subject to the oversight of the Supreme Court."

Third: The Legal Issue Raised by the Judgment

The core legal issue raised by this judgment lies in determining whether defending a public interest constitutes a valid ground to negate the existence of criminal intent in the crime of online slander and defamation, even when the expression contains language that infringes upon the honor and reputation of others. Furthermore, it challenges the balancing standard employed by the court of merits to weigh legitimate freedom of expression against the protection of honor, reputation, and human dignity.

Fourth: Commentary and Analysis of the Extracted Principles in Light of the Facts of the Case

Article 16 of the Cyber Crime Law indicates that the Omani legislature has extended criminal protection to private life and personal reputation within the digital environment, criminalizing the use of the information network or information technology means to infringe upon others through slander or defamation. Consequently, applying this text to the facts of the case necessitates a precise delineation between critical expression that remains within the bounds of legality, and expressions that degenerate into an assault on honor and reputation, thereby fulfilling the material elements of the crime. Within this framework, it is evident that the crux of the dispute between the First Instance Court and the Court of Appeal did not concern the act of publication itself, but rather the legal characterization (qualification) of the published expressions, and whether they were sufficient to establish both the material element and the criminal intent concurrently.

On one hand, the Court of First Instance held that the words used in the tweets, by virtue of their explicit nature, context, and attribution to the trustees of the Falaj, inherently carried an injury to dignity and a derogation of social standing. Consequently, it deemed them to constitute the material element of the crime of slander and defamation via technological means. The court found that the Accused's will was directed at publishing them while fully aware of their harmful connotations toward others.

On the other hand, the Court of Appeal departed from this view. It reasoned that the contested expressions were made within the context of defending a cultural and historical landmark of economic and social significance. It found that the expressions did not target specific individuals so much as they voiced a stance aimed at protecting a public

interest. Accordingly, the court concluded that criminal intent was absent, thereby reversing the preliminary judgment and acquitting the Accused.

The Supreme Court subsequently affirmed this approach, ruling that online slander and defamation is an intentional crime, and that determining its materialization requires an inquiry into the aims and objectives of the expressions. It ruled that courts must balance the intent to defame against the intent to defend the public interest when both coexist, noting that prioritizing one over the other is a factual matter falling under the independent discretion of the trial court, provided its deduction is sound and anchored upon the facts of the case.

We concur with this ruling in its first part. It is a well-established tenet of criminal law that the crime of slander and defamation, even if committed via electronic means, does not materialize unless it is proven that the perpetrator published the expressions with knowledge of their meaning and with the intent to disseminate them in a manner that harms the honor, standing, or reputation of others. This understanding aligns with the intentional nature of the crime and comports with the constitutional and treaty frameworks that guarantee freedom of opinion and expression as a protected right—provided it is exercised within the limits of the law and without infringing upon human dignity and the rights of others.

However, we maintain reservations regarding the second part of this reasoning, which grants unfettered application to the concept of balancing the intent to defend a public interest against injurious language whenever they coexist.

In our view, the more precise methodology requires, first and foremost, a strict scrutiny of the words themselves, weighing them in light of their ordinary meaning, context, and surrounding circumstances. If the court finds that the expressions have degenerated from the sphere of permissible criticism into the realm of insult, disparagement, or imputations that malign honor and reputation, and that they targeted identifiable persons within the context of the discourse, then the elements of the crime are fully consummated. Under such circumstances, invoking the public interest cannot serve as a justification to strip the act of its criminal character.

To be sure, international human rights jurisprudence attaches premium value to public interest debates and recognizes that the public interest may serve as a defense in certain forms of criticism. However, this defense ought not to extend to language that serves no genuine

critical function but instead indulges in personal vitriol⁴. Defending the public interest can be achieved through various legitimate and objective means, such as constructive criticism, advice, alerts, and presenting facts in a balanced and disciplined language, without compromising the dignity or reputation of individuals.

Consequently, expanding the concept of public interest in a manner that shields injurious language risks turning this concept into a pretext for encroaching upon personal rights heavily guarded by the Constitution and the law. A true public interest never conflicts with safeguarding individual dignity; rather, the two complement each other.

Fifth: Conclusion and Opinion

It is inferred from the judgment that the crime of slander and defamation via information technology means is an intentional offense. Its materialization cannot be established merely by proving the act of publication; rather, both the material element and the mental element must coexist. This obligates the court of merits to verify whether the publisher's will was directed toward insulting or derogating the reputation of others, and to strictly scrutinize the meaning of the expressions within their specific context and underlying purposes. Furthermore, the court of merits holds the discretionary authority to determine whether the publication was oriented toward protecting a public interest or encroaching upon the honor and reputation of others, provided that it anchors this determination upon sound and logically deduced reasoning.

Nevertheless, we maintain that this discretionary authority must be exercised within narrow limits. The public interest must not be deployed as a pretext to justify language that compromises human dignity and personal standing. This is because freedom of expression, although constitutionally guaranteed, must be exercised within the parameters of the law and in a manner that does not result in an infringement upon the personal rights of others.

Accordingly, legitimate criticism is that which is characterized by objectivity and balance, remaining entirely free from disparagement and defamation. Conversely, if the discourse degenerates into explicit insult, invoking the public interest should not serve as a ground for legalization or as a shield against legal accountability.

And with Allah lies all success...

⁴ United Nations Human Rights Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, issued on September 12, 2011, United Nations. See the electronic link (accessed May 17, 2026):
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