

Judgment Sheet**IN THE LAHORE HIGH COURT, LAHORE**

(JUDICIAL DEPARTMENT)

R.F.A.No.52942 of 2022**Afzaal Ahmed Vs. Sadia Safdar and another****JUDGMENT**

Date of Hearing	16.05.2024
Appellant by:	Mr. Muhammad Haroon Gondal, Advocate.
Respondent by:	Mr. Usman Minhas, Advocate.

MUHAMMAD RAZA QURESHI, J. This Regular First Appeal has been preferred to call into question the legality, findings and reasons contained in the impugned judgment and decree dated 22.06.2022 passed by the learned Civil Judge 1st Class, Phalia whereby suit for recovery of damages of 59,000,000/- for malicious prosecution filed by the appellant was dismissed by the learned Trial Court.

2. The facts culminating into the impugned judgment and decree emanate from the subject matter suit which was filed by the appellant against respondents No.1 and 2 on the ground that after giving divorce to respondent No.1, she lodged a private complaint against him titled Sadia Safdar vs Afzal Ahmad etc. with frivolous allegations from which ultimately the appellant stood acquitted. As per contents of the plaint the appellant suffered from business losses for which he claimed damages for Rs.5,000,000/-, for mental agony Rs.3,500,000/-, for tarnishing reputation and defaming him Rs.50,000,000/- were claimed as damages whereas Rs.500,000/- were claimed as miscellaneous expenses. As per contents of the plaint the appellant claimed that since the respondent No.1 his ex-wife had levelled false allegations against him, therefore, the suit was also liable to be decreed against her. The suit was contested by the respondents and learned Trial Court through order dated 19.01.2021 framed as many as following four issues:-

i. *Whether the plaintiff is entitled to decree for recovery as prayed for?OPP*

ii. *Whether the plaintiff has not come to the court with clean hands?OPD*

iii. *Whether the suit is false and frivolous, same should be dismissed with cost?OPD*

iv. *Relief.*

3. After completion of trial, learned Trial Court arrived at a conclusion that the appellant had failed to prove his case and as a consequence thereof dismissed the subject matter suit.

4. According to learned counsel for the appellant the impugned judgment and decree is illegal and unlawful and same is liable to be set aside. Contends that learned Court below misread the evidence on record and failed to appreciate the fact that the appellant stood acquitted from the criminal proceedings initiated at the behest of respondent No.1. According to learned counsel the impugned judgment and decree is liable to be set aside. Learned counsel for the appellant in support of his arguments relied upon the case law cited as Mumtaz Ali Shah vs. Chairman, Pakistan Telecommunication Company Ltd., H.Q., Islamabad and 6 others (PLD 2002 SC 1060) and Muhammad Yousaf vs. Abdul Qayyum (PLD 2016 SC 478).

5. Conversely learned counsel for respondents submits that the appellant not only failed to substantiate his claim for damages but also failed to prove that he was maliciously prosecuted. According to learned counsel, respondent No.1 rightly lodged a complaint against the appellant who failed to establish that initiation of such proceedings had an element of *malice*.

6. Arguments of learned counsel for the parties have been heard, record of appeal as well as lower Court has been perused, the pleadings of the parties have been examined and the oral as well as documentary evidence has been analyzed by us.

7. The canvass framed by the appellant by laying a challenge to the impugned judgment and decree revolves around resolution of scope and ambit of a suit for malicious prosecution. Therefore, it is important to note that in order to succeed in an action for malicious prosecution, the plaintiff must in the first instance prove (i) that the action was actuated by *malice* (ii) that the initiator acted without reasonable and probable cause (iii) that the plaintiff was prosecuted by the defendant on a criminal charge (iv) that the prosecution terminated in favour of the plaintiff (v) that the proceedings had interfered with plaintiff's liberty and had also affected his/her reputation, and (vi) that the plaintiff had suffered damages. To succeed in a case for malicious prosecution all these ingredients must coexist. Reliance in this regard is placed on Raja Braja Sunder Deb versus Bamdeb Das (AIR 1944 PC 1), Abdul Rasheed versus State Bank of Pakistan and another (PLD 1970 Karachi 344), United Bank Limited and 5 others versus Raja Ghulam Hussain and 4 others (1999 SCMR 734) and Muhammad Yousaf versus Abdul Qayyum (PLD 2016 Supreme Court 478). Therefore, this Court has to examine whether the test of co-existence of ingredients were satisfied by the appellant/plaintiff.

8. While deciding this Appeal, the Court has also to strike a balance between two parties as the initiator of a criminal proceedings has freedom of action against a wrong and to set law in motion to bring criminal to justice without a fear of being prosecuted in case of being unsuccessful. In contrast the rights and protection of an innocent party who is being victimized by misuse of the process of law and possibly that is why, in the wisdom of *Raja Braja Sunder Deb's* case supra, the fundamental ingredient considered by Privy Council was a malicious defendant and an action without reasonable and probable cause as according to Privy Council the *malice* has been set to mean any wrong or indirect motive, but a prosecution is not malicious merely because it is inspired by anger. However, wrongheaded prosecutor may be if he honestly thinks that the accused has been guilty of a criminal offence

he cannot be initiator of malicious prosecution. But *malice* alone is not enough, there must also be shown to be absence of reasonable and probable cause. It is to be proved by the plaintiff that the prosecution was initiated without any justifiable reason and it was due to malicious intention of the defendant and not with the mere intention to carry law into effect.

9. In the facts and circumstances, the merits of the case and evidence led by respective parties are to be evaluated on the touchstone of principles of law mentioned above. The appellant did not appear in the witness box and presented his two witnesses namely; Mohammad Inayat being his Special Attorney and Sarfraz Ahmad as PW-1 and PW-2 respectively. It is pertinent to mention here that both the witnesses appearing on behalf of appellant did not produce any documentary evidence and all the documents exhibited during course of arguments were adduced in statement of learned counsel for the appellant. During the cross-examination PW-1 candidly conceded that in *nikahnama* the appellant was mentioned as bachelor, which was contrary to the fact as in cross-examination PW-1 conceded that appellant got married thrice, however, he divorced all the wives. PW-1 also admitted that he did not produce any evidence on record with respect to abortion by respondent No.1. The plaint of the suit throughout reflected that the reason for divorcing respondent No.1 was her voluntary abortion of first child conceived by her out of wedlock of appellant and respondent No.1.

10. In witness box throughout the appellant failed to produce any document on record to substantiate that respondent No.1 got aborted her pregnancy. The perusal of private complaint reflects that the sole ground agitated by respondent No.1 to lodge a private complaint was fraudulent conduct of appellant to present himself as bachelor at the time of *nikah* and since upon attaining knowledge the respondent No.1 obtained divorce, therefore, she filed a private complaint. The perusal Exh.P-5 which is a judgment passed by Magistrate Section 30, Phalia reflects that the Court did not declare that complaint filed by respondent

No.1 was false and frivolous rather while acquitting the appellant from the charge the appellant was given benefit of doubt due to weak evidence presented by the prosecution.

11. All these facts were duly considered by learned Court below and rightly evaluated that the co-existence of the ingredients meant to initiate malicious prosecution were not established in the facts and circumstances of the case. Co-existence of all those ingredients was a condition precedent to maintain the suit and appellant failed to prove through his witnesses any *malice* in initiating of private complaint against him. The perusal of evidence specially the judgment rendered by the Judicial Magistrate clearly prove one thing that the initiation of criminal proceedings against the appellant was based on reasonable or probable cause. Reliance is placed upon judgment reported as Abdul Majeed Khan vs. Tawseen Abdul Haleem and others (2012 CLD 6).

12. The cause of action claimed in the Suit had its genesis in initiation of criminal proceedings by the Respondent No.1, but mere fact that prosecution instituted by respondent/defendant against the plaintiff ultimately failed, cannot expose the former to effect the malicious prosecution, unless it is proved by the plaintiff that the prosecution was initiated without any reasonable and probable cause and it was due to malicious intention of the defendant and not with a mere intention of carrying the law into effect. Reliance in this respect is placed upon the judgment reported as Subedar (Retd.) Fazale Rahim vs. Rab Nawaz (1999 SCMR 700).

13. In addition thereto, the claim for damages in the case of malicious prosecution carries two facets relating to (i) general damages and (ii) special damages. The general damages refers to special character, condition or circumstances which accrue from immediate, direct and approximate result of wrong complained of. Special damages follow as a natural and approximate consequence in a particular case by reason of special circumstances or condition. In the instant case the appellant failed to substantiate on record through cogent and

unimpeachable evidence for award of general damages and in this regard only examination-in-chief of witnesses is valueless. So far as special damages are concerned, for that he had to prove that all the ingredients of malicious prosecution had co-existed to establish his claim of damages which throughout he could not prove.

14. The learned Trial Court while deciding issue No.1 took all legal aspects into consideration and rightly arrived at a conclusion that the appellant had failed to establish his claim for malicious prosecution and his evidence was bereft of any substance with respect to damages. The said damages in the case of malicious prosecution could only be awarded on production of strict proof thereof by the claimant and since the appellant failed to establish his case of malicious prosecution, therefore, the standard or quantum of said damages does not arise at all. Reliance in this respect is placed upon the case law cited as Abdul Rauf vs. Abdul Razzak and another (PLD 1994 SC 476).

15. The upshot of the above discussion is that we are not persuaded that while passing the impugned judgment and decree the learned Trial Court had committed any illegality and therefore the same do not warrant any interference by us. Consequently, this Appeal is **dismissed** with no order as to cost.

(CH. MUHAMMAD IQBAL) (MUHAMMAD RAZA QURESHI)
JUDGE JUDGE

Amjad