

Before Malik Shahzad Ahmad Khan, J

ALAM DIN---Petitioner

versus

MUHAMMAD HUSSAIN and 2 others---Respondents

Civil Revision No.536 of 2009, decided on 16th November, 2011.

(a) Malicious prosecution---

----Damages for---Plaintiff was mentioned as one of the accused in the F.I.R.---Plaintiff after his arrest in the case remained in judicial lock-up for some period, but acquitted after trial by extending him benefit of doubt---Plaintiff's claim for recovery of damages for malicious prosecution---Proof---Police after holding detailed investigation had declared plaintiff guilty of charges and placed his name in Column No.3 of Challan submitted in Trial Court---Trial Court as well as High Court had dismissed plaintiff's application for his acquittal moved under S.249-A, Cr.P.C., during trial---Prosecution of plaintiff could not be declared to be malicious merely on ground of his acquittal in such case---Trial Court had acquitted plaintiff not on ground of registration of false case, but on ground of failure of prosecution to prove its case beyond reasonable doubt---Acquittal of plaintiff by extending him benefit of doubt would establish that defendant had not lodged such case without reasonable and probable cause and for having malice against plaintiff---Suit was dismissed in circumstances.

Hicks v. Faulkner (1881) 8 QBD 167; Denning L.J. in Tempest v. Snowden (1952) 1 KB 130; Sher Muhammad v. Maula Bux 1995 CLC 1134; Sadaruz Zaman v. The State 1990 SCMR 1277; Feroze Khan v. Fateh Khan and 2 others 1991 SCMR 2220; Mahmood Akhtar v. The Muslim Commercial Bank Ltd. and another PLD 1992 SC 240; Subedar (Retd.) Fazale Rahim v. Rab Nawaz 1999 SCMR 700; Abdul Rauf v. Abdul Razzak and another PLD 1994 SC 476 and United Bank Limited and 5 others v. Raja Ghulam Hussain and 4 others 1999 SCMR 734 **rel.**

(b) Malicious prosecution---

----Damages for---Factors essential to be proved by plaintiff stated.

The basic elements, on the basis of which a suit for recovery of an amount as damages for malicious prosecution can be accepted or rejected, are that: (a) the prosecution of the plaintiff by the defendant; (b) there must be a want of reasonable and probable cause for that prosecution; (c) the defendant must have acted maliciously i.e. with improbable motive and not to further the ends of justice; (d) the prosecution must have ended in favour of the person proceeded against; and (e) it must have caused damage to the party proceeded against.

Prosecutor may be wrong, but if he honestly believed that accused had committed a criminal offence, he cannot be initiator of malicious prosecution. Even otherwise, malice alone would not be enough, there must also be shown to be absence of reasonable and probable cause.

The maxim "the reasonable and probable cause" means that it is an honest belief in the guilt of the accused based upon full conviction, based on reasonable grounds of the existence of a state of circumstances, which assuming them to be true would reasonably lead any ordinary prudent man to the conclusion that the person charged was probably guilty of crime imputed.

If reasonable and probable cause is established, then question of malice becomes irrelevant.

Mere fact that prosecution instituted by the defendant against the plaintiff ultimately failed cannot expose the former to the charge of malicious prosecution, unless it is proved by the plaintiff that the prosecution was instituted without any justifiable reason and it was due to malicious intention of the defendant and not with a mere intention of carrying the law into effect.

Acquittal on extension of benefit of doubt does not mean that accused was falsely implicated and possibility would be excluded that accused might also have been involved in the matter.

Hicks v. Faulkner (1881) 8 QBD 167; Denning L.J. in *Tempest v. Snowden* (1952) 1 KB 130; *Sher Muhammad v. Maula Bux* 1995 CLC 1134; *Sadaruz Zaman v. The State* 1990 SCMR 1277; *Feroze Khan v. Fateh Khan and 2 others* 1991 SCMR 2220; *Mahmood Akhtar v. The Muslim Commercial Bank Ltd. and another* PLD 1992 SC 240; *Subedar (Retd.) Fazale Rahim v. Rab Nawaz* 1999 SCMR 700; *Abdul Rauf v. Abdul Razzak and another* PLD 1994 SC 476 and *United Bank Limited and 5 others v. Raja Ghulam Hussain and 4 others* 1999 SCMR 734 **rel.**

Atif Farzauq Raja for Petitioner.

ORDER

MALIK SHAHZAD AHMAD KHAN.---The petitioner has filed this Civil Revision against the impugned judgment and decree dated 2-4-2009 passed by the learned Additional District Judge, Talagang, whereby the appeal of the petitioner was dismissed and the judgment and decree dated 6-12-2006 passed by the learned Civil Judge, Talagang was maintained. The suit filed by the petitioner for recovery of Rs.15,00,000 as damages for malicious prosecution was dismissed by the learned Civil Judge, Talagang and the said judgment and decree was maintained by the learned Appellate Court vide the above mentioned judgment and decree dated 6-12-2006.

2. As per brief facts of the present case, the petitioner instituted a suit for recovery of Rs.15,00,000 as damages for malicious prosecution against the respondents with the averments that respondents got registered an F.I.R. No. 69 of 1997 dated 29-7-2011 offences under sections 506, 427, 148 and 149 of P.P.C. at Police Station Tamman, Tehsil Talagang, District Chakwal. The petitioner/plaintiff was nominated as one of the accused in the said F.I.R. He was arrested and he remained in judicial lock-up for many days. The petitioner/plaintiff, thereafter, was released on post arrest bail. At that time the petitioner/plaintiff was serving in Abu Dhabi and during his trial, he had to move to Abu Dhabi due to which his bail bonds were forfeited in favour of the State and he was declared a proclaimed offender. In this way, he was statedly humiliated. According to the plaintiff/petitioner, he suffered mental torture, injury to his reputation and suffered financial loss. After attending a number of dates of hearing he was acquitted on 30-5-

2000 and through the suit under revision the petitioner claimed the recovery of Rs.15,00,000 as damages for malicious prosecution.

3. On the other hand, the respondents filed their written statement and contested the suit, on different grounds including that the prosecution against the plaintiff was with reasonable and probable cause and also that the plaintiff was acquitted only by extending him the benefit of doubt.

4. Out of the divergent pleadings of the parties, following issues were framed by the learned trial court:--

ISSUES

(1) Whether the plaintiff is entitled to decree for recovery of Rs.15,00,000 as damages for malicious prosecution as prayed for? OPP.

(2) Whether the plaintiff has got no cause of action or locus standi to institute the suit? OPD.

(3) Whether the suit is defective hence is not maintainable in its present form? OPD

(4) Whether the suit is based on mala fide hence the defendants are entitled to special costs? OPD

(5) Relief

The parties led their evidence. The petitioner/plaintiff, Alam Din himself appeared as P.W.1 and reiterated the contents of the plaint. The petitioner/plaintiff also submitted attested copies of criminal case Exh.P-1, passport Mark-A, Ticket PIA Mark-B, photo copy of petition Mark-C, another photo copy of petition Mark-D, Photo copy of judgment dated 29-7-1997 Exh.P-2. Muhammad Hussain, respondent No. 1 appeared as DW-1 and reiterated the contents of the written statement. He had also submitted photocopy of report under section 173 of Cr.P.C, photocopy of judgment dated 11-11-1998 and photo copy of acknowledgement, as documentary evidence. The learned Civil Judge, Talagang, after conclusion of the trial, dismissed the suit filed by the petitioner/plaintiff and his appeal was also dismissed by the appellate court vide the above mentioned judgments and decrees respectively, hence, the instant Civil Revision.

5. It is contended by the learned counsel for the petitioner that the impugned judgments and decrees passed by both the courts below are against the law and facts of the present case; that the learned courts below have not considered the evidence of the plaintiff/petitioner in its true perspective; that the findings given by both the courts below are result of misreading and non-reading of evidence; that the petitioner remained in judicial lock-up for many days and, as such, he was subjected to humiliation; that at the time of registration of above mentioned criminal case, the petitioner was serving in Abu Dabi, therefore, he had to leave Pakistan and in his absence, he was declared a proclaimed offender and his bail bonds were forfeited, therefore, he suffered mental torture and injury to his reputation; that the petitioner was ultimately acquitted from the above mentioned case, which has established that the prosecution initiated against the petitioner was malicious and baseless; that the petitioner suffered financial loss in order to pursue the above mentioned criminal case lodged by the defendant/respondent; that the case of the petitioner for recovery of Rs.15,00,000 as damages for malicious prosecution was fully established through oral, as well as, documentary evidence, but the learned Civil Judge, Talagang has illegally dismissed the suit of the petitioner and the said judgment has wrongly been upheld by the learned Additional District Judge, Talagang;

that all the proceedings were launched against the petitioner with mala fide intention and ulterior motives; that all the ingredients of malicious prosecution are present in the petitioner's case, hence both the judgments and decrees passed by the courts below may be set aside and the suit of the petitioner/plaintiff may be decreed in his favour.

6. I have heard the arguments of the learned counsel for the petitioner and have also gone through the documents annexed with the present petition.

7. As per brief facts of the present case, the respondent/defendant lodged an F.I.R. No.69 of 1997, dated 29-7-1997, offences under sections, 506, 427, 148, 149 of P.P.C., Police Station, Tamman Tehsil Talagang, District Chakwal. The petitioner was named as one of the accused in the said case. The petitioner was arrested in this case. He remained in judicial lock-up for some period. He was ultimately acquitted by the learned Magistrate section 30, Talagang vide judgment dated 11-11-1998. The petitioner, after his acquittal, filed a suit for recovery of Rs.15,00,000 for malicious prosecution.

8. The above referred suit of the petitioner/plaintiff was dismissed and his appeal also failed. The claim of the plaintiff/petitioner is that his case for recovery damages was fully established and he was entitled to the recovery of claimed amount. It is better and appropriate to reproduce the basic elements on the basis of which a suit for recovery of an amount as damages for malicious prosecution could be accepted or rejected. The said ingredients are as follows:--

(a) The prosecution of the plaintiff by the defendant.

(b) There must be a want of reasonable and probable cause for that prosecution.

(c) The defendant must have acted maliciously i.e. with improbable motive and not to further the ends of justice.

(d) The prosecution must have ended in favour of the person proceeded against.

(e) It must have caused damage to the party proceeded against.

9. Now keeping in view the above principles, it is important to discuss certain relevant facts of the present case. In the above mentioned criminal case i.e. F.I.R. No.69 of 1997, lodged by the defendant/ respondent, the police declared the petitioner/plaintiff guilty of the charges, after holding a detailed investigation. The Investigating Officer submitted the challan/report under section 173 of Cr.P.C. before the learned trial court, wherein the petitioner was placed in Column No. 3 of the said report as he was found guilty, as per police finding. In the instant case, the petitioner/plaintiff (P.W.1) has admitted during his cross-examination that he moved an application under section 249-A of Cr.P.C. in the above mentioned criminal case, which was dismissed by the learned trial Court. He has further admitted that he moved an application for his acquittal before High Court, against the above mentioned order on application under section 249-A of Cr.P.C, but the said application was also dismissed by the High Court. It is also evident from the judgment of acquittal of the petitioner in the above mentioned criminal case (Mark.D-2), that the petitioner was acquitted by extending him the benefit of doubt. In the above-mentioned circumstances, it cannot be said that the respondent/defendant lodged the above mentioned case against the petitioner without reasonable and probable cause and having malice, against the petitioner/plaintiff. Prosecution of the petitioner could not be declared to be malicious merely because he was acquitted in the above mentioned case.

10. Prosecutor may be wrong, but if he honestly believed that accused had committed a criminal offence, he could not be initiator of malicious prosecution. Even otherwise,

malice alone, would not be enough, there must also be shown to be absence of reasonable and probable cause.

The maxim "The reasonable and probable cause" means that it is an honest belief in the guilt of the accused based upon full conviction, based on reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true would reasonably lead any ordinary prudent man to the conclusion that the person charged was probably guilty of crime imputed. See (1881) 8 QBD 167 Hicks v. Faulkner. It is also a settled principle of law that if reasonable and probable cause is established, then question of malice becomes irrelevant as observed by Denning L.J. in *Tempest v. Snowden* (1952) 1 K.B. 130.

As discussed earlier, the petitioner/plaintiff was declared guilty during police investigation, his application for acquittal moved under section 249-A of Cr.P.C. was dismissed by the learned trial court and his application whereby he challenged the above mentioned order of trial court, was also dismissed by High Court, therefore, it cannot be said that the prosecution against the petitioner was launched by the respondent "without any reasonable and probable cause".

11. It is pertinent to mention here that judgments of both the courts below are in consonance with the law laid down by the Hon'ble Supreme Court of Pakistan. It is by now, a well settled law that mere fact that prosecution instituted by the defendant against the plaintiff ultimately failed, cannot expose the former to the charge of malicious prosecution unless it is proved by the plaintiff that the prosecution was instituted without any justifiable reason and it was due to malicious intention of the defendant and not with a mere intention of carrying the law into effect. In the case reported as *Sher Muhammad v. Maula Bux* (1995 CLC 1134), the learned Single Judge of Sindh High Court at Karachi, observed as under:--

"Suit for damages against malicious prosecution---Essentials---Plaintiff in an action for malicious prosecution must prove, that prosecution was malicious; and that defendant had acted without reasonable and probable cause in launching such malicious prosecution---Prosecution could not be malicious merely because it was inspired by anger---Prosecutor, however, wrong headed may be, if he honestly thought that accused had been guilty of a criminal offence, he could not be initiator of malicious prosecution. Malice alone, would not be enough, there must also be shown to be absence of reasonable and probable cause."

The suit for recovery of damages on the basis of malicious prosecution was dismissed by the learned trial court in the above mentioned case of "Sher Muhammad" because the plaintiff failed to establish that the defendant had acted without reasonable or probable cause and the said decision was maintained by the Sindh High Court at Karachi.

12. As discussed earlier, the petitioner/plaintiff was acquitted in the above mentioned case, lodged by the defendant/respondent, not because of registration of a false case, but

because prosecution had failed to prove its case beyond any reasonable doubt. Acquittal on extension of benefit of doubt does not mean that accused were falsely implicated and possibility would not be excluded that accused might also have been involved in the matter. Reference in this context may be made to the cases reported as *Sadaruz Zaman v. The State* (**1990 SCMR 1277**), and *Feroze Khan v. Fateh Khan and 2 others* (**1991 SCMR 2220**).

13. In another case of *Mahmood Akhtar v. The Muslim Commercial Bank Ltd. and another* (PLD 1992 Supreme Court 240), the Hon'ble Supreme Court of Pakistan maintained the judgment of the High Court resulting in failure of case of malicious prosecution, where the plaintiff was acquitted by extension of benefit of doubt. Relevant paragraph of the said judgment reads as under:--

"Acquitted accused whose acquittal was by extension of benefit of doubt, failed in his subsequent case for malicious prosecution against the respondent---Prosecution witnesses in the case who had no malice against the said acquitted accused could not be said to have perjured themselves simply because the acquitted accused had been extended benefit of doubt---Petition for leave to appeal against order of High Court resulting in failure of case of malicious prosecution was dismissed."

14. In the case reported as *Subedar (Retd.) Fazale Rahim v. Rab Nawaz* (**1999 SCMR 700**), the Hon'ble Supreme Court of Pakistan maintained the Judgment of the High Court, whereby, the revision petition, filed by the defendant of a malicious prosecution case, was accepted on the ground that the plaintiff failed to establish that the defendant acted without reasonable and probable cause. In the above mentioned case, the plaintiff was discharged under section 169 of Cr.P.C. in criminal case, lodged by the defendant, and subsequently, the defendant was prosecuted by the police under section 182 of P.P.C., but the Hon'ble Supreme Court of Pakistan has held that even the discharge of the plaintiff from the criminal case, and prosecution of the defendant under section 182 of P.P.C. was not sufficient by itself to establish a case of malicious prosecution. The relevant paragraph of the above mentioned judgment is re-produced hereunder for ready reference:--

"Petitioner (plaintiff) failed to establish that the respondent (defendant) had invented such prosecution against him or that he had acted with malice or without reasonable or probable cause---Mere fact that petitioner was discharged in an earlier case under section 169, Cr.P.C. or that respondent was, subsequently, prosecuted by the police under section 182 P.P.C. was not sufficient to establish a case of malicious prosecution against the respondent---Entire onus in such case would be on the plaintiff which he failed to, discharge".

In another case reported as *Abdul Rauf v. Abdul Razzak and another* (**PLD 1994 Supreme Court 476**), the Hon'ble Supreme Court of Pakistan set aside the judgment of High Court of Sindh, whereby, the suit of plaintiff for recovery of damages on the basis of malicious prosecution, was decreed. In the said case, an F.I.R. was registered on the telegram sent by the defendant. The plaintiff was discharged by the trial court in the said criminal case, which led him to file a suit for recovery of damages on the basis of

malicious prosecution. Although, the plaintiff was discharged from the criminal case, lodged by the defendant, but even then the Hon'ble Supreme Court of Pakistan restored the decision of trial court whereby the suit of the plaintiff was dismissed, on the ground that as the police, after investigation, had submitted challan against the petitioner, therefore, it could not be said that the defendant acted without any reasonable or probable cause. The relevant para of the said judgment reads as follows:--

"Appellant had only sent a telegram and the police, after investigation, had submitted challan which showed that the Police, prima facie, was of the view that an offence had been committed by the accused person, respondent being one of them---Appellant, in circumstances, held, could not be said to have acted without reasonable or probable cause or with malice".

Similar view was taken by the Hon'ble, Supreme Court of Pakistan, in the case of United Bank Ltd. and 5 others v. Raja Ghulam Hussain and 4 others (**1999 SCMR 734**).

15. It is evident from the perusal of above mentioned judgments, passed by the Hon'ble Supreme Court of Pakistan that suit of the plaintiffs for recovery of damages on the basis of malicious prosecution was not decreed even in those cases where the accused/plaintiffs were discharged and even where the proceedings under section 182 of P.P.C. were initiated against the defendants/complainants, whereas, in the instant case, as discussed earlier, the petitioner was found guilty by the Investigating Officer. He was placed in Column No.3 of challan, his applications under section 249-A of Cr.P.C. and 561-A of Cr.P.C, for his acquittal, were initially dismissed by the learned trial court as well as, by the High Court respectively, therefore, it cannot be declared that the defendants/respondents had acted without reasonable or probable cause. In view of the above discussion, it is evident that basic ingredients to establish and prove a case for recovery of an amount as damages for malicious prosecution, are not established in the instant case, and in absence of said ingredients, the suit of the petitioner/plaintiff cannot be decreed in his favour.

16. The learned counsel for the petitioner could not point out any illegality or material irregularity in the concurrent findings of the courts below, therefore, this petition is without any substance and the same is, hereby, dismissed in limine.

S.A.K./A-228/L

Revision dismissed.