

JUDGMENT SHEET
PESHAWAR HIGH COURT D.I.KHAN BENCH
JUDICIAL DEPARTMENT

RFA No. 66-D of 2011

Date of hearing 03.06.2015

Appellant / petitioner Muhammad Jamil by

Mr. Saleem Ullah Khan Ranazai advocate

Respondent Irfan Ellahi by Haji Muhammad Shakeel
 advocate

MUHAMMAD GHAZANFER KHAN J.-This appeal is directed against the judgment and decree dated 11/7/2011 passed by the learned Civil Judge-VIII D.I.Khan, whereby suit of the appellant Muhammad Jamil Khan was dismissed.

2. Brief resume of the case leading to filing of instant appeal is that the appellant Muhammad Jamil Khan filed a suit against the defendants Amanullah and Irfan Elahi for recovery of damages to the tune of Rs. five million in equal shares for loss of reputation, profession, mental torture, disturbance and involving him in criminal proceedings. However, the name of Amanullah defendant was deleted from the case on request of the plaintiff and only respondent/defendant Irfan Elahi contested the case who filed written

statement. From the divergent pleadings of the parties, the learned trial Judge framed as many as eleven issues including relief, whereafter pro and contra evidence of the parties was recorded and after hearing arguments of their learned counsels, the suit was dismissed vide judgment and decree dated 11/7/2011.

3. Feeling aggrieved, the plaintiff has now sought the indulgence of this Court through the appeal in hand to set at naught the aforesaid judgment of the trial Court and to decree his suit as prayed for in the plaint.

4. I have carefully gone through record of the case and anxiously considered the valuable arguments of learned counsel for the parties.

5. Perusal of record divulges that the plaintiff had not been able to substantiate his cause through any tangible evidence brought on file. In a suit for malicious prosecution, the plaintiff has not only to prove that the prosecution ended in his favour but also that was without reasonable and probable cause. He has also to prove any enmity, grudge, ill will, hatred or malice with the defendant.

6. The claim of the plaintiff was that the respondent/defendant has caused damage to his reputation, profession and made him to suffer mental torture and agony. Though the plaintiff has proved himself to be an advocate by profession having been enrolled with the District Bar Association D.I.Khan for the last 16/17 years, but he has miserably failed to prove that he was engaged in numerous cases, because he could not produce a single wakalatnama to show his appearance before the competent court of law. The plaintiff has further alleged to have suffered professional loss in monetary terms, but still there is no documentary proof of his professional income nor has produced payment of any income tax in support of his monthly income of Rs.40/50 thousands.

7. As is evident from contents of the plaint, the appellant had neither been arrested nor even remained in police custody or judicial lock up for a single movement. Even otherwise, the proceedings under section 107 Cr.PC are preventive in nature and not punitive. Furthermore the order on the basis of which the appellant has brought the suit is for discharge of the accused and not an order for acquittal. A cursory glance on the contents of the impugned order makes it explicitly clear that the trial

Court has exercised its jurisdiction and power under Section 249-A Cr.PC for which no stage is fixed. The trial of appellant in the case in hand was not completed and certain proceedings were yet to be carried out. At this juncture, another legal question crops up for consideration is whether the termination of further proceedings and its ultimate culmination into discharge of the appellant is legally tantamount to his acquittal as well and can be made a valid base for claiming damages, or the same embody two different meanings. The definite answer to the said question is that acquittal and discharge are two different terminologies and are diametrically not synonymous. *“Acquittal means to declare a person accused of a crime to be innocent, while on the contrary, discharge means to release someone from custody, or allow someone to leave, or to pay off. What can irresistibly be derived from the aforesaid definition is that the impugned order of the appellant was not that of acquittal, rather it was tantamount to his discharge under section 249-A Cr.PC, for which no special damages can be claimed”.*

8. For the reasons discussed above, the learned trial Judge has properly appraised the evidence brought

on record while drawing the conclusion herein impugned to which no exception can be taken by this Court.

9. Resultantly, the appeal being devoid of any meritable consideration is hereby dismissed.

ANNOUNCED **JUDGE**
3/6/2015.