

Kapil Kumar Sharma vs . Ashok Kanodia on 1 November, 2021

Kapil Kumar Sharma vs
Civil Suit

IN THE COURT OF MS. SONAM SINGH, CIVIL JUDGE-07,
CENTRAL DISTT., TIS HAZARI COURTS, DELHI

Civil Suit No: 600976/2016 (Old Suit No. 67/15)
CNR No: DLCT030033422015

Date of Institution: 30.05.2015
Date of Reserving the Judgment: 16.09.2021
Date of Decision: 01.11.2021

Kapil Kumar Sharma
S/o H.K.L Sharma
R/o 101/102, Gaju Katra,
Sona Halwai Wali Gali
Bara Bazar, Shahdara, Delhi.

-versus-

Ashok Kanodia
3101, Dassan Street,
Hauz Quazi, Delhi-110006.

Suit for Recovery of Rs. 3,00,000/- (Rs Three Lakhs Only) for damages on account
of Malicious Prosecution and Defamation

Present: None for plaintiff.
None for defendant.

JUDGMENT

1) The present suit is instituted for decree in favor of plaintiff and against defendant for a sum of Rs 3,00,000/- towards damages/compensation on account of losses suffered by plaintiff Civil Judge 07, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 in terms of money and reputation and for filing false and frivolous criminal complaint case, along with future interest @18% per annum from the date of suit till its realization.

Averments in plaint:

2) Plaintiff has come with the averments that plaintiff is working as a civil engineer and enjoying a good reputation in his field. It is averred that plaintiff received a legal notice dated 02.02.2013 alleging therein that defendant is carrying the business of aluminum and also stockiest of Bharat Aluminium Co. Ltd. and proprietor of M/S Metal India. Defendant also alleged that plaintiff through broker- Kanti Bhai Damani approached defendant for purchase of aluminum and after inquiry from common acquaintance namely- Dwarka Prasad Goel, defendant agreed to sell the required goods to plaintiff and vide invoice no.

2342 dated 27.05.2011 bill for Rs 6,88,317/- was raised and in lieu thereof part payment was made by plaintiff to defendant by issuing a cheque dated 11.12.2012 bearing no. 915159 for Rs 5,00,000/- drawn on Standard Chartered Bank, Parliament Street, New Delhi which was returned unpaid on its presentation. It is averred that plaintiff had no business relationship with defendant and no such transaction had ever taken place between parties as alleged by defendant in his legal notice dated 02.02.2013. It is averred that the above legal notice was duly replied by plaintiff through his counsel vide reply dated 18.02.2013 and defendant was a stranger to plaintiff and had never dealt with plaintiff and also never issued or handed over the said cheque to defendant. The true facts as stated by plaintiff are that Sh. Dwarka Prasad Goel is a friend of plaintiff and in June 2010 plaintiff had taken a friendly loan of Rs 15,000/- from him for three months only and against the said friendly loan plaintiff had delivered a signed blank cheque no. 915159 drawn on Standard Chartered Bank, Parliament Street, New Delhi only as security cheque to Sh. Dwarka Prasad Goel. After three months plaintiff had paid the above loan and asked Sh. Dwarka Prasad Goel to return the cheque to which he was told that he would have to search the cheque and after getting it, he would return the same to plaintiff. After few months plaintiff again asked Sh. Dwarka Prasad Goel to return the cheque but he was told that it has been misplaced and felt sorry. Believing the version of Sh. Dwarka Prasad Goel, plaintiff never asked him again to return the cheque. It is averred that plaintiff had also filed one complaint regarding the said incident at P.S. Farsh Bazar, Delhi. It is further Civil Judge [b7, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 averred that thereafter defendant filed a criminal complaint case under Section 138 of NI Act bearing CC No. 7433/1/13 before the Ld. CMM, Central District, Delhi in which plaintiff was acquitted vide judgment and order dated 29.05.2014 and from the observation of the Hon'ble Court it is crystal clear that defendant filed a false and baseless complaint case against plaintiff with a view to falsely implicate him, to defame plaintiff and to cause him loss and injury to the reputation of plaintiff. It is averred that plaintiff had to face the trial of complaint case filed by defendant without any reasonable cause and suffered great pain, agony, shock and mental torture besides financial losses to contest the false and baseless litigation. It is averred that defendant had been propagating openly against the plaintiff about the false allegations leveled complaint case and prosecution was initiated & continued by defendant against plaintiff without any reasonable and probable cause and maliciously on false and frivolous facts. It is averred that the news of dispute qua the dishonored cheque and criminal complaint spread like wild fire amongst the clients of plaintiff who started behaving in an altogether different manner as if plaintiff is an unreliable person and have apprehensions that tomorrow plaintiff may not deal with them in the same manner and so it would be better to stop dealing with plaintiff. It is further averred that due to false and frivolous criminal complaint case filed by defendant, it has tarnished the image and reputation of plaintiff in a big way

and after filing of the said case, plaintiff has started suffering business loss as defendant hasn't stopped spreading rumors that no one should deal with plaintiff as he is facing criminal trial and as a result of this, plaintiff's reputation has lowered in his circle- financially, socially and otherwise amongst his professional circle, friends, relations and has suffered in terms of money and is further likely to suffer the same in future also. It is further averred that the ill intention of defendant did not stop and even after the acquittal of plaintiff, defendant again sent a false and baseless demand notice dated 23.07.2014 which was duly replied by plaintiff on 04.08.2014. It is averred that although no amount of compensation would suffice for the losses suffered by plaintiff, yet plaintiff claims barely a sum of Rs 1,50,000/- for the loss of reputation & money suffered by him, and further Rs 1,50,000/- for false and malicious prosecution of case under section 138 of NI Act in which plaintiff was acquitted, and hence the present suit has been instituted by plaintiff for decree of Rs 3,00,000/- against defendant along with interest @18% per annum from the date of suit till its realization.

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Version of defendant:

3) In his written statement, defendant has raised preliminary objections that plaintiff has not disclosed any cause of action against defendant and submitted that defendant has filed a civil suit for recovery of amount for which the cheque in question was issued and same is pending for adjudication before the court of Ld. ADJ, Tis Hazari Court, Delhi. It is objected that plaintiff has not come to the court with clean hands and has suppressed the material facts from the Court and has filed the present suit with sole ulterior motive to usurp the legally recoverable money of defendant. Defendant has stated that plaintiff through broker- Kanti Bhai Damani approached him for purchase of goods (Aluminum) and after inquiry from common acquaintance namely- Dwarka Pd. Goel, defendant agreed to sell and the same was duly supplied to plaintiff vide invoice no. 2342 dated 27.05.2011, and accordingly bills were duly raised against plaintiff for Rs 6,88,317/-. It is stated that the said goods were duly received and acknowledged by plaintiff and every record of purchases made by plaintiff along with invoice/bill in ledger account is maintained by defendant and a debit closing balance of Rs 6,88,317/- was due as on 31.03.2012. It is further stated that defendant has duly filed the audited account of his firm for year ending 31.03.2013 with the concerned authority and further deposited VAT to the government with respect to sale transaction in question. It is averred that plaintiff after a long follow up issued a cheque dated 11.12.2012 bearing no. 915159 for Rs 5,00,000/- drawn on Standard Chartered Bank, Parliament Street, New Delhi which was duly signed by plaintiff. It is averred that when this cheque was presented by defendant to his banker- Punjab National Bank, Chawari Bazar, Delhi-110006 for encashment, it was returned dishonored by banker of plaintiff on 22.01.2013 with remarks "funds insufficient" vide memo dated 22.01.2013.

Thereafter, defendant immediately informed plaintiff about the said dishonor of cheque via telephone and sent a legal notice dated 02.02.13 under section 138 of NI Act through speed post and

the same was duly received/delivered to plaintiff. However, plaintiff didn't make payment and therefore defendant filed a complaint case under section 138 of NI Act wherein the Ld. Court was pleased to acquit plaintiff vide its judgment dated 29.05.2014 and the Hon'ble High Court was also pleased to dismiss the criminal leave to appeal against the said judgment. It is further stated in WS that defendant sent a legal demand Civil Judge□7, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 notice dated 23.07.2014 for payment of Rs 6,88,317/- along with interest @18% p.a. since June 2011 till its realization to plaintiff and the same was duly served and replied by plaintiff on 04.08.2014, however, he failed to honor his commitment and thus, defendant was left only with the remedy to file suit for recovery. Apart from this, defendant has denied all the averments of plaintiff and prayed that plaint be dismissed being false, fabricated and devoid of any merit.

Replication by plaintiff:

4) In his replication, plaintiff has denied the averments of defendant made in written statement and submitted that plaintiff had never acknowledged any bill/challan of goods from defendant at any point of time. It is stated that defendant has created a false and fabricated ledger account and would have deposited VAT only to fulfill the formality to show the sale transaction by creating false documents. It is further stated that the cheque only bears the signature of plaintiff and the rest of particulars were not filled by plaintiff and was manipulated by defendant in collusion with Dwarka Prasad Goel. Apart from this, plaintiff has reaffirmed and reiterated the contents of plaint.

Settlement of Issues:

5) In view of the pleadings of parties, following issues were settled by the Ld. Predecessor Court vide order dated 22.07.2016:

1. Whether plaintiff is entitled for recovery of the suit amount i.e. Rs 3 lacs as prayed? OPP
2. Whether the plaintiff is entitled to the interest, if so, at what rate and for what period? OPP
3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Whether the present suit is maintainable in view of another case pending on the same facts between the parties? OPD
5. Relief.

Plaintiff's evidence:

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6) To prove his case, plaintiff himself stepped into the witness box as PW-1 and tendered his evidence by way of affidavit which is Ex. PW-1/A. During his examination, plaintiff has relied upon the following documents:

Ex. PW-1/1	Certified copy of judgment dated 29.05.2014
Mark-A	Copy of complaint filed by defendant under Section 138 of NI Ac
Mark-B `	Copy of notice dated 23.07.2014
Mark-C	Not mentioned in the affidavit
Mark-D	Copy of reply dated 04.08.2014

Thereafter, plaintiff was duly cross examined by the ld. counsel for defendant. During cross-examination, certified copy of plaintiff's police complaint dated 31.07.2013 is exhibited as Ex. PW-1/DX. Vide his separate statement, plaintiff's evidence was closed on 03.01.2019.

Defendant's evidence:

7) To resist the claim of plaintiff and to prove his own version, defendant tendered his evidence as DW-1 by way of affidavit which is Ex. DW-1/1. During his examination, defendant has relied upon the following documents:

Mark A	Copy of invoice no. 2342 dt 27.05.2011
Mark B	Cheque dated 11.12.2012 bearing no. 915159 for Rs 5,00,000/-
Mark C	Memo dated 20.01.2013
Mark D	Legal notice dated 23.07.2014
Mark E	Reply dated 04.08.2014

Thereafter, defendant was duly cross examined by the ld. counsel for plaintiff. During cross-examination, the witness was confronted with statement recorded before the court of then Sh. Rakesh Kumar Singh, Ld. MM/C-01/THC/ Delhi and the same is Ex. DW1/A1.

Vide his separate statement, defendant's evidence was closed on 15.03.2019.

8) It is pertinent to mention that in the present suit, evidence was led by parties before the Ld. Predecessor of this Court, however, final arguments have been advanced before this Court. Plaintiff has relied upon two judgments, namely: (i) Roop Singh & another v.

Civil Judge□b7, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 Amarjit Singh & others (Hon'ble P&H High Court) and (ii) AIR 1926 PC 46. Defendant has relied upon the following judgments: (i) West Bengal State Electricity v. Dilip Kumar Ray (Hon'ble Supreme Court) (ii) Deepak Rathaur & anr v. Shashi Bhushan Lal Dass (Hon'ble Delhi High Court)

(iii) Trilok Chand Bansal v. Bharat Bhushan Bansal (Hon'ble Delhi High Court) (iv) Vineet Kumar v. Asha Rani (Ld. Principal District & Sessions Judge, Karkardooma Courts, Delhi)

9) I have heard the final arguments of both the ld. counsels and also perused the record carefully. My issues wise findings with reasons thereof are as follows:

Findings:

Issue 1: Whether plaintiff is entitled for recovery of the suit amount i.e. Rs 3 lacs as prayed? OPP

10) As stated above out of Rs 3,00,000/- plaintiff has claimed Rs 1,50,000/- from defendant as damages for loss of reputation and money and balance Rs 1,50,000/- as compensation for malicious prosecution. It is the case of plaintiff that plaintiff was falsely and maliciously prosecuted by defendant under Section 138 of NI Act wherein plaintiff was acquitted by the court of Ld. MM, Central District, Delhi vide its judgment dated 29.05.2015. Plaintiff has deposed that from the observations of the Hon'ble Court it is clear that defendant has filed a false and baseless complaint against him with a view to falsely implicate and defame him to cause loss and injury to the reputation of plaintiff. It is further deposed that plaintiff has to face the trial of complaint case filed by defendant without any reasonable cause and suffered great pain, agony, shock and mental torture besides financial losses to contest the false and baseless litigation. It is alleged by plaintiff that due to defamatory remarks and false criminal case u/s 138 of NI Act containing false averments, plaintiff's reputation in his circle- professional, social, financial and otherwise has lowered and he has suffered in terms of money and reputation and is also further likely to suffer. It is also deposed by plaintiff that the news of dispute with regard to dishonor of cheque and criminal case spread like wild fire amongst the clients of plaintiff and as a result, many regular old clients of plaintiff started to behave in an altogether different manner as if he is Civil Judge□7, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 an unreliable person and they have also apprehensions in their minds qua dealings with plaintiff.

Now, perusal of Ex. PW-1/1 which is the certified copy of judgment dated 29.05.2014 shows that the Ld. Court therein has observed that complainant's (defendant herein) story of supply of aluminum to accused (plaintiff herein) has become highly improbable and the accused has succeeded in rebutting the presumptions by raising a probable defence which could be believed by the said court. It was further observed therein that complainant has failed to prove his case beyond reasonable doubt as the essential ingredient of the offence under section 138 of NI Act that is issuance of cheque in discharge of legally enforceable debt was not complied with, and accordingly, the accused/plaintiff was given the benefit of doubt and acquitted for offence u/s 138 of NI Act on 29.05.2014. In his cross-examination, plaintiff has stated that the cheque dated 11.12.2012 bears his signature and except signature, rest of particulars were not written by him. He has further stated that he had not mentioned the names of his client and nature of business with them. The witness

(plaintiff) has further stated that he has not filed any balance sheet, profit and loss account of any year in the present case which shows that he has suffered any business loss due to filing of case under section 138 of NI Act. On the other hand, during cross-examination of defendant as DW-1, he has stated that employee of plaintiff took the material from his godown but he doesn't remember his name nor does he know how he took the material. He has further stated that it is wrong to suggest that plaintiff was stranger to him. During cross-examination, defendant has stated that he's maintaining the commission accounts of Kanti Bhai Dimani and was confronted with statement Ex. DW1/A1 (recorded before the court of then Sh. Rakesh Kumar Singh, Ld. MM/C-01/THC/Delhi) where witness stated that he does not maintain the commission account of Kanti Bhai Dimani. As already stated, the present suit has been instituted by plaintiff seeking damages and compensation from defendant on account of malicious prosecution and defamation for losses suffered by plaintiff in terms of money and reputation and for filing false and criminal complaint case by defendant against plaintiff. In an action for malicious prosecution, plaintiff must prove the following as laid down in Ratanlal & Dhirajlal (25th Edition, 2006 at page 321-322):

1. That he was prosecuted by the defendant.

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2. That the proceedings complained of terminated in favor of the plaintiff if from their nature they were capable of so terminating.

3. That the prosecution was instituted against him without any reasonable or probable cause.

4. That the prosecution was instituted with a malicious intention, that is, not with the mere intention of carrying the law into effect, but with an intention which was wrongful in point of fact.

5. That he has suffered damage to his reputation or to the safety of person, or to the security of his property.

In Tarwinder Kumar Bedi v. Jit Parkash (2014 SCC Online P&H 20259) the Hon'ble P&H High Court has held that: "6. In order to succeed in a suit for damages for malicious prosecution, plaintiff has to prove:-

- a) that the plaintiff was prosecuted by the defendant;
- b) that the prosecution ended in favour of plaintiff;
- c) that the defendant acted without reasonable and probable cause;
- d) that the defendant was actuated by malice."

Further, the Hon'ble High Court in para no. 9 of its judgment has observed as follows:

"....The onus to prove that the proceedings were initiated without any reasonable cause is always on the person who asserts in affirmative i.e. the plaintiff in the present case who seeks damages on account of alleged false accusation. The conditions precedent for filing the suit for malicious prosecutions are the aforesaid conditions which should coexist before the defendant in a suit for malicious prosecution can be burdened with liability. No doubt it is true that the acquittal of a person in a criminal case sometimes gives presumption that there was no reasonable cause for his prosecution, but this presumption is rebuttable in nature and there cannot be any universally accepted phenomenon that in case prosecution fails then the accused would be entitled for damages. Otherwise in all those cases where prosecution fails, would give rise to damages in favour of the accused. In view of this, it would be more in consonance with justice and equity to weigh the lodging of accusation on the threshold of principles as enumerated above. The question which has been posed for consideration before the court is whether the prosecution lodged against the person before a criminal court of law, if found having been instituted falsely or maliciously can lay the foundation for filing suit for damages for malicious prosecution. The proposition has been seen in the context of complicity whether simply, setting the criminal law in motion on account of presentation of complaint (whether the same is found false subsequently) gives arise to any cause of action. If the action is dismissed by the court in the very inception as the same does not disclose any complicity, then in such eventuality, the finding of the criminal court cannot be presumed to be conclusive in nature. The second situation arises, where acquittal is recorded by the Court or a complaint is dismissed on the ground that it does not disclose Civil Judge□7, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 any cognizable offence. The findings recorded in such process may or may not have contained a finding that the prosecution case is based on falsehood and is thus frivolous. Recording of such findings are only for the purpose of dismissal of the complaint or criminal prosecution. A sharp distinction has to be drawn between the aforesaid course and the course which is required for an action for a malicious prosecution. In an action for malicious prosecution if the ingredients as mentioned above are not satisfied, then the courts are not obliged to connect the lis simply on the basis of alleged accusation based on filing of the complaint simpliciter. The court is required to record finding in an action for malicious prosecution on all the aforesaid ingredients with reference to evidence on record...."

The meaning of malice and malicious prosecution has been explained by the Hon'ble Supreme Court in West Bengal State Electricity Board v. Dilip Kumar Ray (2007) 14 SCC 568 as follows:

"Malicious Prosecution Malice. Malice means an improper or indirect motive other than a desire to vindicate public justice or a private right. It need not necessarily be a feeling of enmity, spite or ill-will. It may be due to a desire to obtain a collateral advantage. The principles to be borne in mind in the case of actions for malicious prosecutions are these: Malice is not merely the doing a wrongful act intentionally but

it must be established that the defendant was actuated by mains animus, that is to say, by spite of ill- will or any indi- rect or improper motive. But if the defendant had reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause.' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

OTHER DEFINITIONS OF "MALICIOUS PROSECUTION".

"A judicial proceeding instituted by one person against another, from wrongful or improper motive and with- out probable cause to sustain it."

"A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure."

"A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor or thorough mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause."

"A prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of pub- lic policy."

The term "malicious prosecution" imports a causeless as well as an ill-intended prosecution. 'MALICIOUS PROSECUTION' is a prosecution on some charge of crime which is wilful, wanton, or reck - less, or against the prosecutor's sense of duty and right, or for ends he knows or its bound to know are wrong and against the dictates of public policy.

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In malicious prosecution there are two essential elements, namely, that no probable cause existed for institut- ing the prosecution or suit complained of, and that such prosecution or suit terminated in some way favor- ably to the defendant therein.

1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause. 2. The cause of action resulting from the institution of such a proceeding. Once a wrongful prosecution has ended in the defendant's favor, lie or she may sue for tort damages - Also termed (in the context of civil pro - ceedings) malicious use of process. (Black, 7th Edn., 1999) "The distinction between an action for malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect - the improper use of a regularly issued process. For in- stance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process, but is governed by substantially the

same rules as the malicious prosecution of criminal proceedings." 52 Am. Jur. 2d Malicious Prosecution S. 2, at 187 (1970).

The term 'malice,' as used in the expression "malicious prosecution" is not to be considered in the sense of spite or hatred against an individual, but of *malus animus*, and as denoting that the party is actuated by im - proper and indirect motives.

As a general rule of law, any person is entitled though not always bound to lay before a judicial officer information as to any criminal offence which he has reasonable and probable cause to believe has been committed, with a view to ensuring the arrest, trial, and punishment of the offender. This principle is thus stated in *Lightbody's case*, 1882, 9 *Rettie*,

934. "When it comes to the knowledge of anybody that a crime has been committed a duty is laid on that person as a citizen of the country to state to the authorities what he knows respecting the commission of the crime, and if he states, only what he knows and honestly believes he cannot be subjected to an action of damages merely because it turns out that the person as to whom he has given the information is after all not guilty of the crime. In such cases to establish liability the pursuer must show that the informant acted from malice, i.e., 'not in discharge of his public duty but from an illegitimate motive, and must also prove that the statements were made or the information given without any reasonable grounds of belief, or other information given without probable cause; and Lord SHAND added (p. 940): "He has not only a duty but a right when the cause affects his own property."

Most criminal prosecutions are conducted by private citizens in the name of the Crown. This exercise of civic rights constitutes what with reference to the law of libel is termed a privileged occasion: but if the right is abused, the person injured thereby is, in certain events, entitled to a remedy. (See *H. Stephen, Malicious Prosecution*, 1888; *Builen and Leake, Prec. P1., Clerk and Lindsell. Torts, Pollock, Torts; LQR. April 1898; Vin., Abr., tit. "Action on the Case" Ency. of the Laws of England.*) "MALICIOUS PROSECUTION" means that the proceedings which are complained of were initiated from a malicious spirit, i.e, from an indirect and improper motive, and not in furtherance of justice. [10 CWN 253 (FB)] The performance of a duty imposed by law, such as the institution of a prosecution as a necessary condition precedent to a civil action, does not constitute "malice". (*Abbott v. Refuge Assurance Co., (1962) 1 QB 432*).

Civil Judge 7, Central, Delhi *Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016* "Malicious prosecution" thus differs from wrongful arrest and detention, in that the onus of proving that the prosecutor did not act honestly or reasonably, lies on the person prosecuted." (per DIPLOCK J in *Dailison v. Caffery, (1965) 1 QB 348*)). (Stroud, 6th Edn., 2000).

'Malice' means and implies spite or ill-will. Incidentally, be it noted that the expression "mala fide" is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances. (See *Pra- bodh Sagar v. Punjab State Electricity Board and others. (2000) 5*

SCC 630."

Furthermore, the Hon'ble High Court of Delhi in Tirlok Chand Bansal v. Bharat Bhushan Bansal (decided on 23.03.2017) has observed as follows:

"22. In my view all prosecutions ending in an acquittal cannot be said to be malicious. I have in Sannam Bharti Vs. D.T.C. 2013 SCC Online Del 3104 and in Akbar Ali Vs. State 2014 SCC Online Del 1547 held so. There is no presumption in law of a prosecution ending in an acquittal being malicious. Thus a plaint in a suit for compensation for malicious prosecution merely stating that the plaintiff was prosecuted by or at the instance of the defendant and was acquitted, would not disclose a cause of action.

23. There can be manifold reasons for acquittal. Every acquittal is not a consequence of the prosecution being malicious. It cannot be lost sight of that the remedy of compensation has been provided for "malicious prosecution" and not for "wrongful or uncalled for or failed prosecution".

24. Black's Law Dictionary Eight Edition defines „malice“ as the intent, without justification or excuse, to commit a wrongful act and as reckless disregard of the law or of a person's legal rights and ill will or wickedness of heart. It defines „malicious prosecution“ as the institution of a criminal or civil proceeding for an improper purpose and without probable cause. The tort of malicious prosecution requires proof of (a) initiation or continuation of a lawsuit; (b) lack of probable cause; (c) malice; and, (d) favorable termination of lawsuit. The plaintiff in a suit for malicious prosecution has to necessarily disclose in the plaint the ulterior reason or purpose for which the defendant prosecuted him." In light of aforesaid legal principles and discussion, it is observed that plaintiff in order to succeed in the present suit has to prove the ingredients of malicious prosecution as mentioned above. In the present case, no doubt the ingredients of prosecution by defendant u/s 138 of NI Act and termination in favor of plaintiff has been duly shown by plaintiff, however, other ingredients, that is, institution of prosecution without any reasonable doubt or probable cause, malicious intention, and damage/loss suffered by plaintiff have not been shown and proved. Perusal of evidence lead by plaintiff shows that whereas he has deposed in his affidavit that a false and frivolous case under section 138 of NI Act was instituted by defendant on the basis of a blank security cheque issued/signed by plaintiff in lieu Civil Judge's Office, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 of a friendly loan taken from one Sh. Dwarka Prasad Goel and in the said case, plaintiff was acquitted by the Id. Court on 29.05.2014 and further deposed that the said complaint case was filed by defendant without any reasonable cause due to which plaintiff suffered great pain, agony, shock and mental torture besides financial losses and which also caused his reputation to be lowered in the estimation of his known professional circle, friends and relations; however, in order to establish the same, plaintiff has only produced the certified copy of the judgment dated 29.05.2014 which is Ex. PW-1/1 and copies of complaint filed u/s 138, notice dated 23.07.14 and its reply dated 04.08.2014 Marked as A, B and D respectively. Perusal of the judgment dated 29.05.2014 shows that the plaintiff was acquitted for offence u/s 138 NI Act on the basis of benefit of doubt and probable defence raised. In the said judgment the Id.

Trial court has not given any finding that defendant had initiated a false and frivolous case against plaintiff out of malice and without any reasonable cause. Further, mere acquittal of plaintiff does not mean that defendant had initiated a false and frivolous case against plaintiff out of malice and without just and reasonable cause. It was for the plaintiff to show and prove that defendant had initiated a false and frivolous case causing great pain, agony, shock and mental torture to plaintiff, besides financial losses and also causing his reputation to be lowered in the estimation of his known professional circle, friends and relations, by leading evidence in the present suit as findings of criminal court by themselves are not evidence of malice or lack of reasonable and probable cause and it is for civil court to look into evidence and decide if any malice existed or not. At this stage, I find it pertinent to reproduce the observations of the Hon'ble High Court in Suparti v. Shamshuddin (AIR 1928 All 337) as follows: "In our opinion the judgments of the criminal Courts are conclusive for the purpose of showing that the prosecution terminated in favour of the plaintiff, but we doubt if the findings of the criminal Courts by themselves are any evidence of the malice or want of reasonable and probable cause. It is for the civil Court to go into all the evidence and decide for itself whether such malice or cause existed or not."

In Deepak Rathaur & anr v. Shashi Bhushan Lal Dass (2016 SCC Online Del 5319) the Hon'ble Delhi High Court on this point has observed that:

"8. The issue therefore is as to whether on account of the appellants/plaintiffs being acquitted in the criminal case this by itself can show that there is malicious prosecution of the appellants/plaintiffs by the respondent/defendant. In my opinion, the answer to that has to be in the negative because mere fact that there has been acquittal in the criminal case will not automatically prove malicious prosecution in as much Civil Judge 07, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 as what is relevant to succeed in a civil suit for seeking damages for malicious prosecution is that it must be found that a criminal complaint case or an FIR was initiated without reasonable and probable cause....

10.... the Supreme Court has categorically held in the judgment in the case of Vishnu Dutt Sharma v. Daya Sapra (Smt.) (2009) 13 SCC 729 that judgment in a criminal case between the parties which has resulted in acquittal is not binding on the civil court and any finding in the criminal proceedings by no stretch of imagination would be binding between civil proceedings. Therefore, I reject the argument urged on behalf of the appellants/plaintiffs that this Court should hold the respondent/defendant guilty on the basis of reasoning and conclusions contained in the Judgment dated 6.8.2007 of the Additional Sessions Judge. The relevant para of the judgment of the Supreme Court in the case of Vishnu Dutt Sharma (supra) is para 23 and the same reads as under:

"23. It brings us to the question as to whether previous judgment of a criminal proceeding would be relevant in a suit. Section 40 of the Evidence Act reads as under:

"Previous judgments relevant to bar a second suit or trial-- The existence of any judgment, order or decree which by law prevents any Courts from taking Cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial."

This principle would, therefore, be applicable, inter alia, if the suit is found to be barred by the principle of res judicata or by reason of the provisions of any other statute. It does not lay down that a judgment of the criminal court would be admissible in the civil court for its relevance is limited. (See Seth Ramdayal Jat v. Laxmi Pras). The judgment of a criminal court in a civil proceeding will only have limited application, viz., inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding."

Reverting to the present suit, plaintiff has relied upon the judgment dated 29.05.2014 of the NI Court wherein he was acquitted and no witness other than plaintiff himself has been examined. Even Sh. Dwarka Prasad Goel who as per the averments of parties, seems to be known to both plaintiff as well as defendant and who has been deposed to be the friend of plaintiff from whom friendly loan was taken by plaintiff and it is against this very loan that the impugned blank signed cheque was delivered by plaintiff which is alleged to have been misused- even this witness has not been examined by plaintiff in the present suit. Neither Sh. Dwarka Prasad Goel nor any other witness has been examined by plaintiff to establish the malice, or reasonable or probable cause as well as damage/ loss suffered by plaintiff due to institution of complaint case by defendant. Further, plaintiff has also failed to examine any witness from his professional circle, friends and relatives to show that due to rumours and defamatory remarks and false criminal case u/s 138 of NI Act, his reputation amongst these people/circle has lowered and thus he has suffered in terms of Civil Judge□b7, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 money and reputation and is further likely to suffer in future also. Furthermore, in his cross-examination, plaintiff has also stated that he has not filed any balance sheet, profit and loss account of any year in the present suit to show that he has suffered any business loss due to filing of case u/s 138 of NI Act. Thus, it was for the plaintiff to prove that he has suffered damages and great pain, agony, shock and mental torture as well as financial losses, which also caused his reputation to be lowered in the estimation of his known professional circle, friends and relations, however, none of these has been substantiated by requisite evidence by plaintiff. Plaintiff has, thus, merely made allegations without any material to substantiate the same. The observations of the Hon'ble High Court of Delhi in this regard in Tirlok Chand Bansal v. Bharat Bhushan Bansal (decided on 23.03.2017) may be noted herein:

"29. The counsel for the plaintiff generally argued that the defendant wanted to harass and humiliate the plaintiff and drew attention to the said averments in the plaint. 30. I am not satisfied that such general averments would qualify as a plea of malice. Though the counsel for the plaintiff has not cited any case law in this regard but the counsel for the defendant has drawn attention to Gangadhar Padhy Vs. Prem Singh 211 (2014) DLT 104 where I have on a conspectus of case law held that it is imperative for a plaintiff in a suit for compensation for malicious prosecution to show

that the proceedings against him were instituted by the defendant for malicious motives i.e. for indirect or improper motive and that only when the plaintiff has led some evidence to this effect can the defendant be called upon to show the existence of such a cause and the onus lies heavily upon the plaintiff, even though the rule may appear to require the plaintiff to prove a negative."

Thus, mere acquittal in criminal case would not always automatically lead to the inference that there was malicious prosecution or defamation of plaintiff by defendant. The burden to prove the reasonable and probable cause as well as damage/loss suffered lies upon the plaintiff by proving the facts afresh and he cannot merely rely upon the criminal judgment passed in his favour as the judgment of criminal court in a civil proceeding will only have limited application for the purpose as to who was the accused and what was the result of the criminal proceedings, and any finding in a criminal proceeding would not be binding in a civil proceeding. Hence, the fact that plaintiff has been acquitted is not prima facie evidence that the charge was unreasonable and false. The proceedings in a criminal court are not evidence in a civil court and in a suit for recovery of damages for malicious prosecution, the production of the judgment in criminal case is not sufficient for plaintiff to discharge the burden of proving want of reasonable and probable cause for the Civil Judge-07, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 prosecution. Further, malice is not to be inferred merely from the acquittal of plaintiff, and plaintiff must prove independently of acquittal that his prosecution was malicious and without reasonable and probable cause. As has been observed by the Hon'ble P&H High Court in Tarwinder Kumar Bedi v. Jit Prakash (2014 SCC Online P&H 20259) that:

"No doubt it is true that the acquittal of a person in a criminal case sometimes gives presumption that there was no reasonable cause for his prosecution, but this presumption is rebuttable in nature and there cannot be any universally accepted phenomenon that in case prosecution fails then the accused would be entitled for damages. Otherwise in all those cases where prosecution fails, would give rise to damages in favour of the accused." It has been further observed that "Mere filing of complaint does not give rise to any malicious prosecution resulting in causing loss of reputation in general public, friends, relatives of the person who is so targeted. On this front also in the absence of any evidence in affirmation, no loss can be presumed."

Similarly, with respect to claim for damages for defamation, plaintiff in the present suit has neither proved publication of defamatory statement by defendant, nor set out the actual words used nor stated or proved that they were published or spoken to some named individuals or specified the time and place when and where they were published. Plaintiff has also not examined any witness to show that his reputation has lowered amongst his professional circle, friends and relatives or that there are apprehensions in the minds of his regular old clients as alleged and deposed by him. Plaintiff has, thus, not been able to prove that he has suffered damages due to filing of criminal complaint by defendant and defamation is caused to him as alleged. Damage and compensation as pleaded by plaintiff have not been substantiated by requisite evidence. Issue no. 1 is accordingly, decided against plaintiff and in favour of defendant.

Issue No.2: Whether the plaintiff is entitled to the interest, if so, at what rate and for what period?
OPP

11) This issue need not be decided in view of findings of issue no.1 discussed above.

Issue No.3: Whether the plaintiff has no cause of action to file the present suit? OPD

12) The burden to prove this issue was on defendant. Defendant has argued that he has two remedies: (i) criminal case- u/s 138 of NI Act, and (ii) civil suit for recovery of amount due against plaintiff for which the suit is already pending in the court of Ld. ADJ. It is argued that the judgment of acquittal of plaintiff in criminal case is not binding in this court or in Civil Judge Box 7, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 civil court. It is, thus, argued by defendant that cause of action has not yet started in view of already pending civil suit between parties.

The meaning of cause of action in common legal parlance is a bundle of facts which is necessary for plaintiff to prove in order to succeed in the suit. The Hon'ble Supreme Court in Rajasthan High Court Advocates' Assn. v. Union of India, (2001) 2 SCC 294 has explained the meaning of cause of action. Para 17 of the said judgment may be reproduced as follows:

"The expression "cause of action" has acquired a judicially-settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises."

In the present suit, plaintiff has stated that cause of action arose when defendant sent false and frivolous legal notice dated 02.02.2013 and again arose when he filed a false and frivolous complaint case under section 138 of NI Act. It is averred that cause of action arose when defendant indulged in nefarious activities and damaged the reputation by making false and slanderous imputations against plaintiff by filing false and frivolous case under section 138 of NI Act. It is further averred that cause of action further arose on 29.05.2014 when plaintiff was acquitted for malicious prosecution u/s 138 NI Act by the court and the cause of action is still continuing as plaintiff is suffering loss of money and reputation by the conduct of defendant.

It is settled law that cause of action consists of a bundle of facts which gives a ground to enforce a legal right which plaintiff must prove so as to get a judgment in his favor. In order to decide whether a suit has a subsisting cause of action or not, the court has to look at the plaint and nothing else. Further, there is a difference between a plea that the plaint does not disclose cause of action and

plea that there is no cause of action for instituting a suit. For determining whether the plaint discloses the cause of action or not, averments in the plaint alone are relevant and material. On perusal of the plaint and materials available, the Court is of the view that there is a cause of action for which plaintiff has instituted the present suit to recover the amount claimed from defendant by way of compensation and Civil Judge□7, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 damages for causing loss of reputation, money and malicious prosecution, and the court while deciding this issue need not look into the proof of cause of action by plaintiff. Issue no. 3 is accordingly decided in favor of plaintiff and against defendant.

Issue No.4: Whether the present suit is maintainable in view of another case pending on the same facts between the parties? OPD

13) On behalf of defendant, it is argued that two remedies are available to defendant as already stated above: (i) criminal case- u/s 138 of NI Act, and (ii) civil suit for recovery of amount due against plaintiff for which the suit is already pending in the court of Ld. ADJ. It is argued that the judgment of acquittal of plaintiff in criminal case is of no effect herein and thus the present suit would not lie as a civil suit is already pending between parties. Plaintiff, on the other hand, has argued that both- civil and criminal cases are different, and the present suit for damages for malicious prosecution and defamation is filed on the basis of complaint of defendant under section 138 of NI Act, and thus the cause of action in both the cases are different.

On perusal of pleadings of parties, it transpires that criminal complaint case filed by defendant against plaintiff under section 138 of NI Act has already been decided by the Ld. MM Court wherein plaintiff was acquitted on benefit of doubt vide judgment dated 29.05.2014. Thereafter, one civil suit for recovery of amount has been instituted by defendant against plaintiff qua the impugned cheque issued/signed by plaintiff and the same is pending for adjudication before the Ld. ADJ Court. The present suit has been instituted by plaintiff against defendant for damages and compensation from defendant on account of losses suffered by plaintiff in terms of money and reputation due to false and frivolous criminal complaint case and malicious prosecution by defendant against plaintiff. In Vishnu Dutt Sharma v. Daya Sapra (2009) 13 SCC 729 the Hon'ble Supreme Court has held that: "There cannot be any doubt or dispute that a creditor can maintain a civil and criminal proceeding at the same time. Both the proceedings, thus, can run parallel. The fact required to be proved for obtaining a decree in the civil suit and a judgment of conviction in the criminal proceedings may be overlapping but the standard of proof in a criminal case vis-à-vis a civil suit, indisputably is different. Whereas in a criminal case the prosecution is bound to prove the commission of the offence on the part of the Civil Judge□7, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 accused beyond any reasonable doubt, in a civil suit "preponderance of probability" would serve the purpose for obtaining a decree.

....

23. It brings us to the question as to whether previous judgment of a criminal proceeding would be relevant in a suit. Section 40 of the Evidence Act reads as under:

"40. Previous judgments relevant to bar a second suit or trial.--The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial."

This principle would, therefore, be applicable, inter alia, if the suit is found to be barred by the principle of res judicata or by reason of the provisions of any other statute. It does not lay down that a judgment of the criminal court would be admissible in the civil court for its relevance is limited. (See Seth Ramdayal Jat v. Laxmi Prasad [(2009) 11 SCC 545 : (2009) 5 Scale 527] .) The judgment of a criminal court in a civil proceeding will only have limited application viz. inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding."

It is, thus, clear that a civil suit and a criminal case can run parallel between the parties. The present suit is not regarding the recovery of impugned cheque for which criminal complaint case has already been decided by the Ld. MM Court, rather, the dispute herein is with respect to malicious prosecution resulting in damage and loss of reputation and money of plaintiff due to filing of false and frivolous case u/s 138 of NI Act by defendant against plaintiff. On the contrary, the civil suit qua recovery of amount of impugned cheque has been instituted by defendant in the court of Ld. ADJ and the same is pending for adjudication, whereas, the cause of action in the present suit is altogether different and the same is stated to have arisen when the plaintiff was acquitted u/s 138 of NI Act vide judgment dated 29.05.2014. Further, in para no. 7 of preliminary submissions of written statement, defendant has stated that against the judgment of acquittal dated 29.05.2014, a criminal leave to appeal was preferred by defendant before the Hon'ble High Court of Delhi and the same was dismissed. Thus, it is not the case here that the present suit was filed during the pendency of appeal against the order of acquittal in which case the present suit would have been premature. The present issue is thus decided against accordingly.

Issue No. 5: Relief.

14) In view of the discussion and findings of this court particularly issue no.1, the present suit of plaintiff seeking a decree against defendant towards damages/compensation on account Civil Judge-7, Central, Delhi Kapil Kumar Sharma vs. Ashok Kanodia Civil Suit No: 600976/2016 of losses suffered by plaintiff in terms of money and reputation and for filing false and frivolous criminal complaint case, along with future interest is hereby dismissed without cost.

15) Decree sheet be prepared accordingly.

16) File be consigned to record room after necessary compliance.

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Pronounced in open court:

Dated: 01.11.2021

(Sonam Singh)
Civil Judge-07, Cen
Tis Hazari Courts,

Note: This Judgment contains twenty pages and all pages have been checked and signed by me.

(Sonam Singh) Civil Judge-07, Central, Tis Hazari Courts, Delhi Civil Judge□07, Central, Delhi