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Judgment Sheet  
**LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT

**R.F.A No.80927/2022**

Tariq Mehmood                      *Versus*                      Tahir Farooq

**J U D G M E N T**

Date of Hearing	<b>16.05.2024</b>
Appellant by:	In person
Respondent by:	Mr. Irfan Javed, Advocate along with the respondent

**Anwaar Hussain J:** This appeal is directed against judgment dated 29.10.2022, passed by the learned Civil Judge 1<sup>st</sup> Class, Lahore, by virtue of which suit of the petitioner for recovery of damages, on account of malicious prosecution to the tune of Rs.58,250,000/-, was dismissed.

2. By way of factual background, it has been noted that the appellant instituted a suit against the respondent with the averments that as general attorney of his sister, namely, Mst. Rukhsana Mumtaz, the appellant filed a suit for recovery of dowry articles and maintenance against the brother and father of the respondent in which the Judge Family Court, Lahore appointed Mr. Majid Ali Rana, Advocate as Local Commission for submission of his report about the condition of the dowry articles lying in the house of the defendants but on 21.06.2003 at about 04:00 PM, the respondent alongwith others instead of allowing the Local Commission to discharge his duties, as directed by the learned Judge Family Court, Lahore attacked the appellant and with the collusion of SHO, Police Station, Samanabad, Lahore got registered a false and frivolous FIR bearing No.148/2003 dated 21.06.2003 for offences under Section 452/148/149, 337A1, 337F3 of the Pakistan Penal Code, 1860, (“**the PPC**”) against the appellant in which arrest was affected and the appellant was finally acquitted on 02.03.2013 and on account of such protracted criminal litigation, the respondent is liable to pay damages, as claimed for, *inter alia*, on account of mental torture, financial and reputational loss to the appellant. The suit was contested and after framing the

issues and recording of evidence, the Trial Court dismissed the suit, *vide* impugned judgment dated 29.10.2022.

3. Appellant in person submits that the respondent was aggressor and the Trial Court erred in dismissing the suit merely on the ground that acquittal of the appellant was on the basis of benefit of doubt. Places reliance on the case reported as “*Muhammad Yousaf v. Abdul Qayyum*”<sup>1</sup> in support of his contention. He further avers that he was at the premises of the respondent pursuant to order of the Family Court and, therefore, the attack in itself was malicious and the appellant’s act to defend himself, which resulted into any injury to the respondent was protected under Section 78 of the PPC.

4. Conversely, learned counsel for the respondent has supported the impugned judgment and states that unless the acquittal is honourable and not on the basis of benefit of doubt, a plaintiff of suit for recovery of damages on account of malicious prosecution cannot succeed if existence of malice in such cases is missing and not proved.

5. Arguments heard. Record perused.

6. Following issues were framed by the Trial Court:

“ISSUES

1. Whether the plaintiff is entitled to recovery of damages for malicious prosecution to the tune of Rs.5,82,50,000/- on the grounds mentioned in the paint?OPP
2. Whether the suit is not maintainable in its present form?OPD
3. Whether the plaintiff has concealed the true facts of the case hence, the same is liable to be dismissed?OPD
4. Whether the plaintiff has filed this suit just to harass and blackmail the defendant?OPD
5. Whether the plaintiff has no cause of action or locus standi to file the present suit?OPD
6. Relief.”

Evidence was led and recorded. Issue No.1 was core issue and the Trial Court found that since the appellant was extended benefit of the doubt and was acquitted whereafter the suit was filed, therefore, the

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<sup>1</sup> (PLD 2016 SC 478)

appellant failed to prove that registration of criminal cases is without reasonable and probable cause. Operative part of the impugned judgment on issue No.1 reads as under:

“10. The plaintiff could not prove by cogent and confidence inspiring evidence that the defendant got registered the case against him with malicious intention and that there was absence of reasonable and probable cause for prosecution launched by the defendant against him. Even the plaintiff of this case was acquitted by the trial court by extending him benefit of doubt and the court did not declare that case was baseless. The plaintiff miserably failed to discharge the onus of this issue in his favour, so this issue is decided against the plaintiff.”

7. In a suit for recovery of damages on account of malicious prosecution, a plaintiff is obligated to establish following five elements as held in case reported as “*Niaz and others v. Abdul Sattar and others*”<sup>2</sup>:

- (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 an 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.

In so far as the present case is concerned, admittedly, the appellant was prosecuted by the respondent and the same ended up in favour of the former. Hence, the two of the essential ingredients for establishing malicious prosecution, referred at Serial No.(a) and (d) are not disputed. We are of the opinion that all prosecutions ending up in an acquittal cannot be stated to be malicious as there is no presumption in law of a prosecution ending in an acquittal being malicious<sup>3</sup>. Mere averment in a plaint of a suit for damages on account of malicious

<sup>2</sup> PLD 2006 Supreme Court 432

<sup>3</sup> “*Sannam Bharti v. D.T.C & ORs*” (2013 SCC Del 3104); “*Akbar Ali v. State*” (2014 SCC Del 1547)

prosecution that the plaintiff was prosecuted by or at the instance of the defendant in the suit and was acquitted would not formulate malicious prosecution. Hence, the nub of the matter is to determine whether, in the facts and circumstances of the case, it can be accepted that there was reasonable and probable cause with the respondent for the registration of criminal case against the appellant in which the latter has been acquitted, on account of benefit of doubt.

8. The term “malice” means the presence of some improper and wrongful motive - that is to say, an intent to use the legal process in question for some objective other than its legally appointed and appropriate purposes.<sup>4</sup> Malicious prosecution means to obtain a collateral advantage. It is rather, always dependent on the facts that whether such prosecution was based on malice or not. The act of a defendant is to be seen, that is to say, was it by spite or ill will or any indirect or improper motive. Malice can be presumed from the facts as they emerge from the evidence recorded during the trial. Mere absence of reasonable and probable cause does not justify, as a matter of law, the conclusion that the prosecution was malicious, though it is quite conceivable that the evidence which is sufficient to prove absence of reasonable and probable cause may also establish malice.<sup>5</sup> Moreover, malice alone would not be enough. The plaintiff in a suit for malicious prosecution must also establish absence of “reasonable and probable cause” and the onus to prove thereof is always on the person who asserts in affirmative -the appellant in the present case. The term “reasonable and probable cause” means that the prosecutor in a criminal case had an honest belief in the guilt of the accused, based on reasonable grounds<sup>6</sup>. If “the reasonable and probable cause” is established, question of malice becomes irrelevant<sup>7</sup>. The conditions precedent for filing the suit for malicious prosecutions are the aforesaid conditions, which should coexist before the defendant in such suit for malicious prosecution can be burdened with liability.

<sup>4</sup> See **Salmond on Torts, 12th Edition (595)**

<sup>5</sup> “*Nityananda Mandhata v. Binayak Sahu and another*” (AIR 1955 Orissa 129)

<sup>6</sup> “*Hicks v. Faulkner*” [(1878) 8 QBD 167]

<sup>7</sup> “*Tempest v. Snowden*” [(1952) 1 K.B. 130]

9. 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 and there cannot be any universally accepted phenomenon that in case the criminal prosecution fails, then the accused would be automatically entitled for recovery of damages as otherwise in all those cases where the prosecution fails, it would give rise to damages in favour of an accused. Therefore, the nature of acquittal has to be kept in view as well. Meaning thereby that whether the acquittal was by way of giving a benefit of doubt or it was based on weakness of evidence or whether it was an acquittal on merits. As to what precisely is meant by “acquittal on merits” in strict sense, is not quite clear. An acquittal on the ground of extreme weakness of the prosecution evidence can also be treated as an acquittal on merits. But it is indeed true that an acquittal by way of giving benefit of doubt is an acquittal which is not on merits. The present is a case where benefit of doubt was given to the appellant, in the criminal case registered against him by the respondent while making a clear observation that both sides appeared to be at fault. Operative part of the judgment in criminal case, dated 02.03.2013 passed by Judicial Magistrate Section-30, Model Town, Lahore reads as under:

“15. Therefore, there is doubt about the role of each accused. Hence, by giving benefit of doubt, accused Sh. Tariq Mehmood is hereby acquitted from the charge. He is on bail. His sureties are re-called. Accused Sohail Ahmad is court absconder. Evidence U/S 512 Cr.P.C has already been recorded against accused Sohail Ahmad. Till his arrest, case file be consigned to record room.”

10. Keeping in view the above exposition *qua* essential ingredients for obtaining decree in case of suit for malicious prosecution, we are of the opinion that reliance placed by the appellant on case of Muhammad Yousaf *supra* is misplaced. In fact, the respondent side has also relied on the said judgment. In the said case, the Hon’ble Supreme Court while examining the concept of malicious prosecution and registration of a false FIR observed as under:

“9. This has meant that the plaintiff has had to establish, inter alia, malice as well as absence of reasonable and probable cause to succeed in a claim for malicious prosecution. Mere absence of reasonable and probable cause' has not been held to be sufficient to establish malice, although it can be used as evidence for establishing malice. Malice is a state of mind and can be inferred from the circumstantial evidence. We can take judicial notice of our societal norms which appears to be at variance on norms of English society. The mere lodging of an FIR creates a public perception adverse to the reputation of the accused. Where the FIR is proved either to be false or to have been lodged without reasonable and probable cause, the circumstances of any given case may be sufficient to show that the lodging of the criminal case was malicious. For instance, in certain cases a prior enmity or a family dispute or differences between the families of two spouses can lead to the lodging of a criminal case and initiation of a prosecution based on allegations of a factual nature which are motivated by the aforesaid circumstances rather than a truthful assertion of fact to bring an accused to book through the criminal legal process. In the present case, the falsity of the allegation made against the respondent/plaintiff is established from the fact that the only basis stated by him for lodging the FIR was some information received by him from a person named Sadiq, after the FIR had been registered. Since the said Sadiq was not summoned and produced as a witness by the petitioner/defendant the element of malice on the part of the petitioner can be inferred.

(Emphasis supplied)

Unlike the case of Muhammad Yousaf supra, in the instant case the FIR was registered by the respondent in respect of an actual occurrence which the appellant admits *albeit* that the respondent was the attacker/aggressor and the injuries caused to the respondent was result of the self defence and for this reasons reliance is placed by the appellant on Sections 78 and 79 of the PPC. The appellant averred that the presence of the appellant at the residence of the respondent was in furtherance of an order of the Family Court for inspection of dowry articles belonging to the sister of the appellant, at the house of

the respondent, who was real brother of ex-brother in law of the appellant and the Family Court concerned, where the suit of the sister of the appellant was pending, appointed a Local Commission namely, Mr. Majid Ali Rana, Advocate to examine the said dowry articles and when the appellant reached the house of the respondent, the latter attacked that resulted into injuries. Even if the said averments are accepted, it depicts that the occurrence was not fabricated, illusionary, fictitious on account of any hearsay and, certainly, constitutes reasonable and probable cause for the prosecution and it is only on account of weak evidence, the benefit of doubt was given to the appellant. Moreover, only affidavit of said Local Commission was brought on record and he was not produced as witness and appellant's application was dismissed in this regard, *vide* order dated 10.01.2007. Said order was not challenged. Even otherwise, in his statement brought on record, it has been acknowledged by Local Commission that occurrence did take place. Meaning thereby that the FIR was registered for a reasonable and probable cause and not on mere assumptions. Moreover, Local Commission acted in furtherance of order of the Family Court, Lahore and nothing has been brought on record to establish that said Family Court took any action against the delinquents.

11. At this juncture, it would be imperative to examine the concept of "the benefit of the doubt". It is a principle that allows for the possibility that someone or something may not be innocent or truthful, even if there is not enough evidence to prove it. It is often used in situations where there is uncertainty or doubt about someone's actions or intentions. Acquittal on extension of the benefit of the doubt does not mean that the accused were falsely implicated and possibility would not be excluded that the accused might also have been involved in the matter but for want of evidence beyond doubt was not led by the prosecution so as to effect conviction.<sup>8</sup>

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<sup>8</sup> Sadaruz Zaman v. The State (1990 SCMR 1277); "Feroze Khan v. Fateh Khan and 2 others (1991 SCMR 2220)).

12. In view of the preceding discussion, we are of the view that the Trial Court has correctly appreciated the evidence on record as also the applicable law. The present appeal has no merits and hence, the same is **dismissed**. No order as to costs.

**(ABID AZIZ SHEIKH)**  
JUDGE

**(ANWAAR HUSSAIN)**  
JUDGE

*Approved for reporting*

*Judge*

A.B\*\*