

Judgment sheet

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present**

**Mr. Justice Muhammad Jaffer Raza**

**Suit No. 118 of 1987**

Anwar Majid ..... Plaintiff.

Versus

Emirates Bank International PJSC  
(Formerly Union Bank of Middle East Ltd) & others ..... Defendants.

**Suit No. 119 of 1987**

Anwar Majid ..... Plaintiff.

Versus

Emirates Bank International PJSC  
(Formerly Union Bank of Middle East Ltd) & others ..... Defendants.

**Suit No. 593 of 1987**

Anwar Majid ..... Plaintiff.

Versus

Emirates Bank International PJSC  
(Formerly Union Bank of Middle East Ltd) & others ..... Defendants.

**Suit No. 592 of 1987**

Anwar Majid ..... Plaintiff.

Versus

Emirates Bank International PJSC  
(Formerly Union Bank of Middle East Ltd) & others ..... Defendants.

M/s Omar Soomro and Maria Khan, Advocates for the Plaintiff  
M/s Hassan Ali and Syed Zain-ul-Abdeen, Advocates for Defendants 1 & 2.

Dates of Hearing: 14.02.2025 and 21.02.2025

Date of announcement: 21.02.2025

## J U D G M E N T

**MUHAMMAD JAFFER RAZA – J:** The tort of Malicious Prosecution in the words of Justice G.P. Singh<sup>1</sup> *“balances two competing principles, namely the freedom that every person should have in bringing criminals to justice and the need for restraining false accusations against innocent persons. The foundation of the action lies in abuse of the process of the Court by wrongfully setting the law in motion and it is designed to discourage the perversion of the machinery of justice for an improper purpose.”*

2. It is this intricate balance on which the aforementioned four suits shall be adjudicated through this common judgment. Given the complex nature of the Suits, it shall be convenient for the judgment to be structured as follows: -

- A. Common facts in all four suits.**
- B. Facts in each specific case and nature of the criminal case.**
- C. Test for malicious prosecution and relevant judgments.**
- D. Issues and finding thereon.**
- E. Conclusion.**

### **COMMON FACTS IN ALL FOUR SUITS**

3. The Plaintiff filed the above-mentioned suits to recover damages for malicious prosecution against him by his former employer, the Defendant No.1. It is contended by the Plaintiff that the Defendant Bank maliciously filed four direct criminal complaints against the Plaintiff in The Special Courts of Sindh (Banks) (**“Criminal Court”**) at Karachi without any reasonable or probable cause. According to the Plaintiff, the manner in which the complaints were filed demonstrated the malafide intent of the Defendants causing irreparable damage to the otherwise pristine reputation of the Plaintiff.

4. It is admitted between the parties that on 01.04.1978, the Plaintiff was appointed as the General Manager (Planning & Development) in the Head Office of Dubai Bank Ltd. and subsequently was also appointed as the General Manager Designate for Pakistan. Through a merger on or about 05.04.1985 the entire

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<sup>1</sup> The Law of Torts, Ratanlal & Dhirajlal, 23<sup>rd</sup> edition, 2002. Page 285.

control of Dubai Bank Ltd. was taken over by the Union Bank of the Middle East Ltd. With this change, the Plaintiff's position as the Executive in Pakistan was relegated to that of a subordinate to the Defendant No.9. The Plaintiff protested this unilateral and adverse change in his position through various letters.

5. It is the case of the Plaintiff, that in an attempt to avoid the payment of the rightful dues owed by the Bank to the Plaintiff, it began a campaign to defame and tarnish his reputation. Various modes and methods were adopted for this purpose however the same are not germane to the issue at hand. What is relevant is that the Plaintiff was informed about the criminal proceedings instituted by the Defendants against him on 01.01.1986 through a letter from the Defendants advocate. All four complaints were filed before the Criminal Court under Offences in Respect of Banks (Special Courts) Ordinance, 1984 (**“Ordinance”**). Without delineating into the merits of these complaints at this juncture, it is pertinent to highlight the contention of the Plaintiff in reference to Section 5 of the Ordinance. The Plaintiff contends that the proceedings were instituted against the Plaintiff under the Ordinance as the legislation required furnishing of bail surety of an amount not amounting to less than twice the amount specified with respect to the offense alleged.

### **FACTS IN EACH SPECIFIC CASE AND NATURE OF THE CRIMINAL CASE.**

#### **i. Suit No. 118 of 1987**

Complaint No.4/1986 dated 26.12.1985 was filed by the Defendant No. 1 through Defendant No.11 against the Plaintiff under Section 5 of the Ordinance for offences under Section 408 and 477-A P.P.C. The criminal complaint alleged that the Plaintiff being the General Manager of Union Bank, misappropriated a painting owned by the Bank by getting it incorrectly evaluated and then purchasing it when it was an asset of the

Bank. No charge was framed, and the complaint was disposed of vide order dated 13.01.1986. The Criminal Court dismissed the Complaint, without issuing warrants and/or summons, on the basis that the General Manager has a right to dispose of the Bank's tangible assets and there was nothing on record to show that he sold it for less than the market price. No further Appeal was filed by the Defendants against the Acquittal order of the Special Court, even though no opportunity was given to the Defendants to present and prove their claim. The entire process outlined above culminated in a period of 18 days. In light of the above facts the Plaintiff filed the instant suit for recovery of Rs.2,500,000/- as damages for malicious prosecution.

**ii. Suit No. 119 of 1987**

Complaint No.3/1986 dated 26.12.1985 was filed by the Defendant No. 1 through Defendant No. 11 under Section 5 of the Ordinance for offences under Section 408 and 477-A P.P.C. The Defendants claimed that the Plaintiff being General Manager of Union Bank, at the request of Messrs Galladari Cement (Gulf) Ltd., issued a guarantee for Rs.7,500,000/- in favor of Bankers Equity Ltd. The guarantee was secured by Foreign Currency Deposit held by the Bank in the name of A.R.E Galladari and brothers. The criminal complaint alleged that the Plaintiff instructed the branch manager of the Bank to transfer USD 1,540,000.00 to New York from the aforesaid Foreign Currency account of A.R.E Galladari & Brothers without the depositor's instructing the transfer or providing any alternate surety. No charge was framed, and the Plaintiff was acquitted under Section 265-K Cr.P.C vide order dated 01.02.1986. The Criminal Court held that at the time the guarantee was accepted, SBP did not allow for security to be accepted in any foreign exchange at the requests of the

owner, therefore it did not constitute an offence. The entire process outlined above culminated in a period of approximately 1 month.

Constitutional Petition No. D-957 of 1986 was preferred by the Defendants in the High Court of Sindh to challenge the above Order. The Hon'ble High Court dismissed the Petition vide judgment dated 21.06.1988, on the grounds of laches/delay caused by the Defendants in filing such Petition. Alternatively, on merits, the Hon'ble Court was of the view that 1.5 million was not the guarantee, and the said amount was released on the instructions of Mr. Galladhari who was the Deputy Chairman of the Bank, and the decision of the Criminal Court was upheld. The Plaintiff filed the instant suit for recovery of Rs.15,000,000/- as damages for malicious prosecution.

**iii. Suit No. 593 of 1987**

Complaint No.2/1986 dated 26.12.1985 was also filed by the Defendant No. 1 through Defendant No.11 against the Plaintiff under Section 5(1) of the Ordinance for the offences under Section 408 and 477-A P.P.C before the Criminal Courts. The Defendants claimed that the Plaintiff being General Manager of Union Bank, in pursuance of loan facility from the Defendant No. 1 in the year 1981 deposited property documents as security which were later fraudulently withdrawn by the Plaintiff and hence, misappropriated the loan amount as well as the valuable security documents of the Defendant No. 1. The Criminal Court vide Order dated 01.01.1986 directed for registration of case under Section 420 P.P.C **only** and issued bailable warrants of the Plaintiff for the amount of PKR 1,450,000/-. The Plaintiff was later acquitted by the Special Court on account of '*benefit of doubt*' vide Judgment dated 31.05.1986. The Criminal Court held that the Plaintiff did not intend to defraud the Bank and had taken actions on valid and reasonable grounds. It was further held that the

Plaintiff had offered to settle his loan amount against the Defendant's dues owed to him, which was not accepted and even the pay order deposited by the Plaintiff was not received by the Bank. The entire process outlined above, culminated in a period of approximately 5 months.

Constitutional Petition No. D-958 of 1986 was filed by the Defendants in the High Court of Sindh to impugn the Order dated 31.05.1986. The Hon'ble High Court dismissed the Petition vide judgment dated 21.06.1988, on grounds of laches/delay caused by the Defendants in filing such Petition. The Plaintiff filed the instant for recovery of Rs.25,000,000/- as damages for malicious prosecution.

iv. **Suit No. 592 of 1987**

Complaint No. 1 of 1986 was filed by the Defendants on 26.12.1985 before the Criminal Court through Defendant No.11 under Section 5 of the Ordinance for offences under Section 408 and 477-A P.P.C. On 01.02.1986 charge was framed against the Plaintiff. The Defendants' claim in the Complaint was that on 21.05.1984 the State Bank of Pakistan ("**SBP**") issued circular in which it was observed by the SBP that Banks are holding substantial stock of Prize bonds which is against the spirit of the prize bond scheme. Therefore, SBP decided that commercial banks will not be awarded any prizes against the prize bonds held by them and gave discretion to the banks to surrender all unsold Prize bonds to the SBP. The complaint alleged that instead of surrendering the prize bonds on the instructions of SBP or to sell the left-over stock immediately, the Plaintiff purchased more Prize bonds on 31.05.1984 for Rs. 99,800,000/- and hence, as a result thereof, the prize bonds were announced, the Defendant bank suffered a loss at the hands of the Plaintiff.

Bailable warrants in the sum of PKR 2,500,000/- were issued against the Plaintiff. However, the Plaintiff was later acquitted by the Criminal Court

vide Judgment dated 10.05.1986. The entire process outlined above concluded in a period of approximately 4.5 months.

The Defendant Bank challenged the same before the High Court of Sindh at Karachi through CP No. D-956 of 1986. The Hon'ble High Court dismissed the Petition vide judgment dated 21.06.1988, on the grounds of laches/delay caused by the Defendants in filing such Petition. The Plaintiff has filed Suit No.592/1987 for recovery of Rs.200,000,000/- as damages for malicious prosecution.

### **TEST FOR MALICIOUS PROSECUTION AND RELEVANT JUDGMENTS.**

6. Prior to adjudicating on the issues settled by this Court, this judgment shall lay down the ingredients of the tort of malicious prosecution and apply the test settled to the facts of the respective cases. There is no dearth of judgments on the subject in the jurisdiction of Pakistan, United Kingdom and India. The most germane ones are cited hereinbelow and the relevant excerpts of selected judgements shall be reproduced to avoid repetition.

#### **a) *Niaz and Others versus Abdul Sattar and others*<sup>2</sup>**

*"3. We have given our due consideration to the contention of learned counsel of the petitioner and perused the record. It is better and appropriate to reproduce the basic elements on the basis of which suit for recovery for malicious prosecution could be accepted or rejected:--*

*(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 a 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.*

*8. 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*

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

*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. H” (Emphasis added)*

***b) Abdul Khameed versus Muhammad Shabbir and another<sup>3</sup>***

- “14. The rationale for conferring equitable jurisdiction upon courts is rooted in the maxim "Ubi jus, ibi remedium" (where there is a right, there is a remedy). As is evident from the principles settled in relation to malicious prosecution, damages are imposed on the one who abuses the process of law and to produce consequences for another and settle past scores. Subjecting a person to malicious prosecution can interfere with the right to liberty guaranteed under Article 9, the right to dignity under Article 14 and the right to be treated in accordance with law guaranteed under Article 4 of the Constitution. Such prosecution inflicts financial hardship, litigation cost, mental anguish as well as loss of reputation on the person who is on its receiving ends having been falsely implicated in a matter.*
- 15. In any just society such loss cannot be allowed to lie where it falls. A person who is the immediate cause of inflicting such loss and hardship on a fellow citizen ought to be held accountable for his actions. While the plaintiffs in a suit for malicious prosecution cannot recover on the basis of humiliation suffered at the hands of police or prison authorities or inmates, but he has a right to be compensated by the person whose false accusation resulted in him being incarcerated and made him suffer the debasing experience that comes along. The judgments mentioned above have held that even where no damages are quantified by the plaintiff a court has discretionary jurisdiction to grant damages for loss of liberty, dignity and mental anguish that is reasonably proportionate to what the plaintiff can be presumed to have suffered.*
- 16. There can be no objective standards for estimating such injuries but an inference can be drawn that someone who has been subjected to malicious prosecution has suffered loss of time, litigation expenses, mental suffering due to being subjected to legal challenge that can produce penal consequences for him and in the case of being arrested and put behind bars, loss of his right to liberty and dignity and consequent reputational harm. The superior courts have upheld imposition of damages in case of malicious prosecution on the basis the rule of thumb which aims to quantify damages such that they are reasonably proportionate to the loss suffered.*
- 17. The loss of a person's liberty and dignity cannot be measured in money terms. But our Constitution - in fact all human rights charters - guarantee such rights. The Constitution has established the judiciary and mandated it to act as a guardian of fundamental rights. And it is an obligation of the courts to ensure that irrespective of a person's station in the society and*

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<sup>3</sup> PLD 2021 Islamabad 405



*prevalent social and economic inequality, the principle of legal equality between citizens is upheld and no one is allowed to wield the law as a weapon to settle scores with another by abusing legal processes. The courts of law therefore cannot be nonchalant when seized of a matter involving malicious prosecution of one citizen at the hands of another.*

*20. In view of the principles and case law cited above the following can be concluded:*

*(1). In order to establish a case of malicious prosecution the following four elements need to be established.*

*(a) a plaintiff has been prosecuted by the defendant despite the absence of reasonable and probable cause for such prosecution;*

*(b) the defendant acted maliciously and not to further the ends of justice;*

*(c) the prosecution ended in favour of the plaintiff; and*

*(d) it caused damage to the plaintiff.*

*(2). It is not sufficient to establish malice alone, but malice must be accompanied by the absence of reasonable and probable cause to trigger the process of law.*

*(3). Even when the prosecution is not entirely mala fide at the time of its initiation, its continuation after a disclosure that facts upon which it was based are not true may give rise a claim for damages for malicious prosecution.*

*(4). The last element in a claim for malicious prosecution i.e. damages suffered, need not be specifically proved or quantified in the event that the claim includes damages for loss of liberty, dignity, reputation and mental anguish and can be awarded by the court in its discretion in view of the circumstances of the case, starting from a reasonable baseline given that rights to liberty and dignity are inalienable rights and can only be interfered with in accordance with law.*

*(5). The courts are under an obligation to ensure that lack of social or economic equality in the society does not culminate into legal inequality. Granting of damages for malicious prosecution is a means to hold to account a person who abuses the process of law against another and to offer recompense to the person on the receiving end of such abuse. Even though restitution is not possible in a claim involving loss of liberty and dignity, the court must aim to award damages that are reasonably proportionate to the harm inflicted.” (Emphasis added)*

**c) Muhammad Yousaf versus Abdul Qayyum<sup>4</sup>**

*“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,*

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<sup>4</sup> PLD 2016 Supreme Court 478

*the circumstances of any given case may be sufficient to show that the lodging of the criminal case was malicious.”*

**d) Abdur Rashid versus The State Bank of Pakistan<sup>5</sup>**

*“7. The term ‘malice’, in a prosecution of the nature which is before me, has been held not to be spite or hatred against an individual but of ‘malus animus’ and as denoting the working of improper and indirect motives. The proper motive for a prosecution is the desire to secure the ends of justice. It should, therefore, be shown that the prosecutor was not actuated by this desire but by his personal feelings.*

*8. As regards reasonable and probable cause, the classic definition is that given by Hawkins, J. in Hicks v. Faulkner ((1881) 8 Q B D 167) that it is, “an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.” This definition was approved by Lord Atkin in his speech in Herniman v. Smith. But in a later decision of the House of Lords, Glinski v. McIver ((1962) A C 726) Lord Devlin defined reasonable and probable cause to mean that there must be a cause (i.e. sufficient grounds) for thinking that the plaintiff was probably guilty of the crime imputed. Diplock, L. J. followed this definition in Dallison v. Caffery ((1965) 1 Q B 348). It is not necessary that the prosecutor should have the belief that evidence E is sufficient to secure the conviction. The requirement of law would be satisfied if the prosecutor has prima facie evidence pointing out towards the plaintiff's guilt Dawson v. Vasandau ((1863) 11 W R 516). In an Australian case Commonwealth Life Assurance Society Ltd. v. Brain ((1935) 53 C L R 343) Dixon, J. observed that it is enough that the prosecutor believes that the probability of the accused's guilt is such that upon general grounds of justice a charge against him should be brought. It is not necessary that the prosecutor should enter into an examination of the strength of the evidence for the defence. He is concerned only with the question whether there is a fit case to be tried-See Tempest v. Snowden; Glinski v. McIver; Dallison v. Caffery. The rule may be summed up, according to Lord Devlin, Glinski v. McIver in this way: “Did the Prosecutor actually believe and did he reasonably believe that he had cause for prosecution”?” (Emphasis added)*

**e) United Bank Limited versus Raj Ghulam Hussain<sup>6</sup>**

*“11. However, there is no finding that the appellant was actuated by any malice against respondent No. 1 for lodging the report.*

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<sup>5</sup> PLD 1970 Karachi 344

<sup>6</sup> 1999 SCMR 734

*Further, there is also no averment in the plaint that the report was lodged without any reasonable or probable cause. Indeed, in the absence of any averment no amount of evidence could be looked into. Still in the absence of any pleadings, no evidence was produced on behalf of respondent No. 1 in this regard.*

*There is no positive finding by the Courts below that any of the defendants in the suit bore malice against respondent No.1 or that the prosecution of respondent No. 1 was actuated on account of malice on their part. It is an admitted position in the case that as a result of audit of the Attock City Branch of the Bank, it was discovered that a sum of Rs.1 lac was withdrawn by the Attock City Branch through a cheque of that Branch from the National Bank of Pakistan which was not accounted for in the books of account of Attock Branch. The disputed cheque purportedly bore the signatures of respondent No.1 and another employee of the Branch, Muhammad Ayub. Respondent No.1, being the Manager of the Attock City Branch of the bank at the relevant time was not only responsible for its overall working but also owed an explanation to the management for the withdrawal of huge amount of Rs.1 lac and its embezzlement by the branch which was working under his exclusive charge as its Manager. Respondent No.1 except for denying his signatures on the cheque offered no other explanation for the encashment of cheque and embezzlement of the amount. Respondent No.1 did not plead that the cheque was stolen or misplaced from his branch of the bank. The fact that F.I.A. Authorities acting on the basis of the F. I. R. lodged against respondent No. 1 arrested him in the case, supported the contention of appellants that the F.I.R. was lodged not without reasonable and probable cause. In these circumstances, lodging of the F.I.R. by the appellants/ bank alleging embezzlement of the amount, against respondent No.1 and another employee of the bank, whose signatures prima facie appeared on the disputed cheque, could not be described as without reasonable and probable cause. The learned counsel for respondent No. 1 very heavily relied on the discharge order dated 28-5-1981 in the criminal case, in support of the contention that the prosecution lodged against respondent No.1 was malicious. We have already reproduced the report of F.I.A. submitted to Special Judge, Central, in the case and the orders of the Court passed thereon. In any case, the fact that respondent No. 1 was discharged in the case by the Court without being challaned in the case, only proved that the prosecution terminated in his favour. This fact, however, was not sufficient to prove either malice on the part of appellants or absence of a reasonable or probable cause for the prosecution of respondent No. 1. Apart from it, the copy of challan produced in evidence shows that respondent No. 1 was not sent up to stand trial in the case before the Court and as such it cannot be said that respondent No. 1 was prosecuted in the case. Respondent No. 1 having failed to establish the essential ingredients, namely, malice on the part of appellants and absence of reasonable and probable cause for initiating his prosecution, was*

*not entitled to any damages on account of malicious prosecution in the case.*

**f) *Sadaruz Zaman versus The State*<sup>7</sup>**

*“As is apparent from the prosecution case the allegation against the 2 acquitted accused was of general type. They were accordingly acquitted on the extension of benefit of doubt. That does not mean that they were falsely implicated. The extension of benefit of doubt would not exclude the possibility that they or any one of them might also have been involved in the matter.”*

**g) *Messers Mehran Electronics Company versus National Bank of Pakistan*<sup>8</sup>**

**h) *Muhammad Akram versus Mst. Farman BI*<sup>9</sup>**

**i) *Allah Rakhio versus Muhammad Usman & Others*<sup>10</sup>**

**j) *Azizullah versus Jawaid A. Bajwa and 3 others*<sup>11</sup>**

**k) *Abdul Majeed Khan versus Tawseen Abdul Haleem and others*<sup>12</sup>**

**l) *Abdul Rauf versus Abdul Razzak*<sup>13</sup>**

**ISSUES AND FINDING THEREON.**

7. In Suit Nos.118/1987 and 119/1987 parties filed consent issues and vide order dated 18.09.1988 the same were adopted. Subsequently vide order dated 12.03.1989 passed in Suit No.118/1987 this Court passed the following order:-

*“Mr. Sharaf Faridi Advocate states that in this case the issues have already been framed, but it is connected with the other suit No.592/87 and 593/87. Let this matter be fixed for regular hearing along with the connected matters after they ripe for hearing.”*

8. Thereafter, on 12.03.1989 the Defendants filed the proposed issues in suit No.592/1987 and the same were adopted on 19.08.1989. The issues are as follows: -

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<sup>7</sup> 1990 SCMR 1277

<sup>8</sup> 2017 CLD 1642

<sup>9</sup> PLD 1990 Supreme Court 28

<sup>10</sup> 2020 CLC 1331

<sup>11</sup> 2005 SCMR 1950

<sup>12</sup> PLD 2012 Supreme Court 80

<sup>13</sup> PLD 1994 Supreme Court 476

1. Whether the accusations made in the complaint were false?
2. Whether there was lack of reasonable and probable care in filing the complaint in question?
3. Whether the Defendants anxiously or otherwise desired spreading false accusations against the plaintiff in a very wide circle?
4. Whether the complaint was filed maliciously and/or with ulterior motives?
5. Whether defendants No.3 to 11 and/or each and every one of them knew all the facts yet maliciously and with ulterior motives authorized the filing of the totally false complaint?
6. Whether the institution of criminal proceedings was malicious prosecution instituted solely to harass and defame the plaintiff and to cause agony to the plaintiff mentally and physically?
7. Whether there was dishonest intention on the part of the defendants to have the plaintiff detained in Jail and to ruin his reputation?
8. Whether the suit is misconceived, malafide, not maintainable, frivolous and/or vexatious and if so, what is the effect?
9. Whether the plaintiff has suffered damages as a result of the malicious prosecution initiated by the defendants? If so, of what amount?
10. Whether the averments made in para 1 to 7 of the plaint are correct and if so, what in the effect?
11. Which of the defendants are fable for the alleged losses, if any?
12. What should the decree be?

9. The Plaintiff Anwer Majid examined himself in suit No.118/1987 and produced the documents as follows:

Sr. No.	Document	Exhibit/Annexure

1	Examination-in-chief and cross examination	--
2	Photocopy of the plaint in suit No.118/1987	P
3	Letter dated 06.04.1985 addressed to Mr. P.E. Townsend, Acting General Manager, Dubai Bank Limited	P/1
4	Letter dated 06.04.1985 addressed to the General Manager Union Bank of the Middle East Limited Dubai	P/2
5	Letter dated 07.05.1985 addressed to Mr. P.E. Townsend, Acting General Manager, Dubai Bank Limited and final settlement	P/3
6	Letter dated 20.05.1987 issued by Union Bank of the Middle East Limited to the Plaintiff	P/4
7	Direct Complaint No.4/1986	P/5
8	Evidence of witness Muhammad Sadiq in Direct Complaint No.4/1986	P/6
9	Dismissal Order of Direct Complaint No.4/1986 passed by the Presiding Officer of Special Court (Offences in Banks) Karachi	P/7
10	Notice to Union Bank of Middle East Limited dated 24.07.1986	P/8
11	Intimation letter dated 01.01.1987	P/9
12	Outgoing Telex dated 04.01.1987	P/10
13	Incoming Telex dated 08.01.1987	P/11
14	Affidavit-in-evidence of the Plaintiff in Suit No.118/1987	P/12
15	Judgment dated 08.07.1988 of High Court of Chancery Division (London) in case No.3087/1986	P/13
16	Statement of profit and loss on sale of fixed assets (sale of painting)	P/14
17	Debit voucher dated 20.04.1985	P/15

10. The Plaintiff Anwer Majid also examined himself in suit No.119/1987

and produced the documents as follows:

Sr. No.	Document	Exhibit/Annexure
1	Examination-in-Chief and cross examination	--
2	Photocopy of the plaint in suit No.119/1987	P
3	Letter dated 06.04.1985 addressed to Mr. P.E. Townsend, Acting General Manager, Dubai Bank Limited	P/1
4	Letter dated 06.04.1985 addressed to the General Manager Union Bank of the Middle East Limited Dubai	P/2

5	Letter dated 07.05.1985 addressed to Mr. P.E. Townsend, Acting General Manager, Dubai Bank Limited and final settlement	P/3
6	Letter dated 20.05.1987 issued by Union Bank of the Middle East Limited to the Plaintiff	P/4
7	Direct Complaint No.3/1986	P/5
8	Letter dated 06.02.1985	P/6
9	Letter dated 17.07.1984	P/7
10	Evidence of witness Muhammad Sadiq in Direct Complaint No.3/1986	P/8
11	Order dated 13.01.1986 in Direct Complaint No.3/1986 passed by the Presiding Officer of Special Court (Offences in Banks) Karachi	P/9
12	Order dated 01.02.1986	P/10
13	Minutes of meeting held on 22.04.1985	P/11
14	Incoming Telex dated 14.03.1985	P/12
15	Release of deposits letter dated 14.03.1985	P/13
16	Notice to Union Bank of Middle East Limited dated 24.07.1986	P/14
17	Affidavit-in-evidence	P/15
18	Judgment dated 08.07.1988 of High Court of Chancery Division (London) in case No.3087/1986	P/16
19	Judgment in C.P. D-957/1986 dated 21.06.1988	P/17

11. The Plaintiff Anwer Majid examined himself in suit No.592/1987 and 593/1987 and produced the documents as follows:

Sr. No.	Document	Exhibit/Annexure
1	Examination-in-chief and cross examination	--
2	Photocopy of the plaint in suit No.118/1987	P
3	Letter dated 06.04.1985 addressed to Mr. P.E. Townsend, Acting General Manager, Dubai Bank Limited	P/1
4	Letter dated 06.04.1985 addressed to the General Manager Union Bank of the Middle East Limited Dubai	P/2
5	Letter dated 07.05.1985 addressed to Mr. P.E. Townsend, Acting General Manager, Dubai Bank Limited and final settlement	P/3
6	Letter dated 20.05.1987 issued by Union Bank of the Middle East Limited to the Plaintiff	P/4
7	Direct Complaint No.4/1986	P/5

8	Evidence of witness Muhammad Sadiq in Direct Complaint No.4/1986	P/6
9	Dismissal Order of Direct Complaint No.4/1986 passed by the Presiding Officer of Special Court (Offences in Banks) Karachi	P/7
10	Notice to Union Bank of Middle East Limited dated 24.07.1986	P/8
11	Intimation letter dated 01.01.1987	P/9
12	Outgoing Telex dated 04.01.1987	P/10
13	Incoming Telex dated 08.01.1987	P/11
14	Affidavit-in-evidence of the Plaintiff in Suit No.118/1987	P/12
15	Judgment dated 08.07.1988 of High Court of Chancery Division (London) in case No.3087/1986	P/13
16	Judgment dated 21.06.1988 passed in C.P. No.D-956 of 1986 (suit No.592/1987) and C.P. No.D-958 of 1986 (suit No.593/1987)	P/14

12. P.W. 2 Ghufraan Ahmed, the Branch Manager of the Bank examined himself in all the four suits bearing Nos.118/1987, 119/1987, 592/1987 and 593/1987 and produced the documents as follows:

Sr. No.	Document	Exhibit/Annexure
1	Examination-in-Chief & cross-examination	-
2	Affidavit-in-evidence	-
3	Letter dated 25.10.1987	A
4	Reply dated 30.10.1987	B
5	Letter dated 22.01.1987	C
6	Statement	D
7	Letter dated 07.09.1987	E
8	Letter dated 08.10.1987	F
9	Testimony of witness before High Court of London Chancery dated 12.05.1988 in case No.3067/1986	G

13. P.W. 3 Muhammad Sadiq, complainant of the Direct Complaints and was Branch Manager of the Defendant Bank examined himself in all the four



suits bearing Nos.118/1987, 119/1987, 592/1987 and 593/1987 and produced the documents as follows:

Sr. No.	Document	Exhibit/Annexure
1	Examination-in-Chief & cross-examination	-

14. P.W. 4 Sara Bakhtiar, she was working in the Head Office of Defendant Bank in Karachi examined herself in all the four suits bearing Nos.118/1987, 119/1987, 592/1987 and 593/1987 and produced the documents as follows:

Sr. No.	Document	Exhibit/Annexure
1	Examination-in-Chief & cross-examination	-

15. Defendants filed affidavit-in-evidence of DW1 Suresh Kumar, the General Manager of Defendant Bank who examined himself in all the four suits bearing Nos.118/1987, 119/1987, 592/1987 and 593/1987 and produced the documents as follows:

Sr. No.	Document	Exhibit/Annexure
1	Examination-in-Chief & cross-examination	DW-1
2	Affidavit-in-evidence	DW-1/1
3	Copy of UBME Memorandum dated 03.04.1985 addressed to all staff	DW-1/2
4	Copy of letter dated 03.04.1985, from UBME to Anwer Majid/Plaintiff	DW-1/3
5	Letter dated 07.05.1985 from Plaintiff to P.E. Townsend	DW-1/4
6	Report dated 20.04.1985 from Peat, Marwick, Mitchell & Co.	DW-1/5
7	Copy of report to the Board of Defendants by J.W. Monaghan	DW-1/6
8	Copy of Internal Memorandum by Dib Mitra	DW-1/7
9	Copy of Memorandum dated 05.06.1985	DW-1/8
10	Copy of letter dated 21.05.1984	DW-1/9

11	Letter dated 06.04.1985 from the Plaintiff to UBME	DW-1/10
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16. D.W. 2 Hesham Al Sayed, he was the Secretary of the Board of Directors of Union Bank, Middle East Limited, Dubai, examined himself in all the four suits bearing Nos.118/1987, 119/1987, 592/1987 and 593/1987 and produced the documents as follows:

Sr. No.	Document	Exhibit/Annexure
1	Examination-in-Chief & cross-examination	DW-2
2	Affidavit-in-evidence	DW-2/1
3	Board Resolution dated 18.05.1985	DW-2/2
4	Memorandum dated 05.06.1985	DW-2/3
5	Board Resolution dated 16.11.1985	DW-2/4
6	Board Resolution dated 01.03.1986	DW-2/5
7	Board Resolution dated 19.05.1987	DW-2/6
8	Board Resolution dated 08.06.1987	DW-2/7

17. D.W. 3 Anis Al Jallaf, he was the Managing Director and Chief Executive Officer of Emirates Bank International (formerly known as Union Bank of the Middle East Limited), examined himself in all the four suits bearing Nos.118/1987, 119/1987, 592/1987 and 593/1987 and produced the documents as follows:

Sr. No.	Document	Exhibit/Annexure
1	Examination-in-Chief & cross-examination	DW-3
2	Affidavit-in-evidence	DW-3/1

18. D.W. 4 Hussain Lawai, was working as General Manager of Union Bank of the Middle East Limited in Karachi, examined himself in all the four

suits bearing Nos.118/1987, 119/1987, 592/1987 and 593/1987 and produced the documents as follows:

Sr. No.	Document	Exhibit/Annexure
1	Examination-in-Chief & cross-examination	DW-4
2	Affidavit-in-evidence	DW-4/1
3	Copy of the minutes of meeting of the Board of Directors of the bank held on 16.11.1985	DW-4/2
4.	Criminal Complaint No.1/1986 a/w examination-in-chief of Muhammad Siddique, order dated 13.01.1986 and evidence of Muhammad Siddique.	DW-4/3
5	Criminal Complaint No.2/1986 a/w examination-in-chief of Muhammad Siddique, order dated 13.01.1986, charge dated 01.02.1986 and evidence of Muhammad Siddique.	DW-4/4
6	Criminal Complaint No.3/1986 a/w examination-in-chief of Muhammad Siddique, orders dated 13.01.1986 and 01.02.1986.	DW-4/5
7	Criminal Complaint No.4/1986 a/w examination-in-chief of Muhammad Siddique, and dismissal order of Criminal Complaint No.4/1986.	DW-4/6

19. My findings on the above issues are as under: -

**SUIT NO. 118 OF 1987**

**FINDINGS**

ISSUE NO.1.....	Answered accordingly
ISSUE NO.2.....	Negative
ISSUE NO.3.....	Negative
ISSUE NO.4.....	Negative
ISSUE NO.5.....	Negative
ISSUE NO.6.....	Negative
ISSUE NO.7.....	Negative
ISSUE NO.8.....	Affirmative
ISSUE NO.9.....	Negative
ISSUE NO.10.....	Negative
ISSUE NO.11.....	Negative
ISSUE NO.12 .....	Suit is dismissed with no order as to cost.

## REASONS

### **Issues No.1 to 7**

20. Since the above issues are interconnected, at least for the purposes of the present suit, they shall be dealt with communally. It has already been noted above that the instant suit emanates from Direct Complaint No.4 of 1986 dated 26.12.1985. No charge was framed and the complaint was dismissed vide order dated 13.01.1986. The said order is reproduced below: -

*“From the statement of the complainant it seems accused at the most has acted contrary to directions of head office in disposing off printing in question after 3.04.1985 as such perform no schedule offence made out. Complaint dismissed.”*

21. As is evident from the perusal of the dismissal order reproduced above, the complaint was dismissed on the basis of the statement made by the Complainant who quite candidly conceded in his examination as under: -

*“Accused as a General Manager has a right to sale and disposed off banks tangible assets according to the market price, if such assets were not required by the bank. It was for the general manager to decide whether any particular asset was needed for the bank and or was for disposal.”*

22. What is noteworthy is that the complaint was dismissed at the outset soon after it was lodged. What is also pertinent is that no summons or warrants were issued to the Plaintiff and in this respect, it is held that there was no prosecution (in the strict sense) against the Plaintiff. The Plaintiff did not file a bail application and neither was he subjected to the protracted rigors of criminal prosecution. The candid admission of the Complainant, as reproduced above, is enough to thwart the plea that the complaint was malicious and it was the intent of the complainant to defame and harass the Plaintiff. Therefore, Issue No.1 is answered accordingly and remaining issues under this head are answered in the negative.

### **Issues No.8 to 12**

23. In light of what has been held above in relation to Issues No.1 to 7 it is held that the suit is maintainable, however, the same is misconceived and frivolous. It is evident that no damages were suffered as a result of the acts of the Defendants. For reasons identified hereinabove I am specifically refraining from using the term “*prosecution*” in the context of the instant suit. In view of the finding given in relation to Issues No. 1-7 it is inevitable that the present issues (except issue No.8 which is answered accordingly) are decided in the negative. The present suit is accordingly dismissed with no order as to cost.

**SUIT NO. 119 OF 1987**

**FINDINGS**

ISSUE NO.1.....	Answered accordingly
ISSUE NO.2.....	Negative
ISSUE NO.3.....	Negative
ISSUE NO.4.....	Negative
ISSUE NO.5.....	Negative
ISSUE NO.6.....	Negative
ISSUE NO.7.....	Negative
ISSUE NO.8.....	Answered accordingly
ISSUE NO.9.....	Negative
ISSUE NO.10.....	Negative
ISSUE NO.11.....	Negative
ISSUE NO.12 .....	Suit is dismissed with no order as to cost.

**REASONS**

**Issues No.1 to 7**

24. Since the above issues are interconnected, at least for the purposes of the present suit, they shall be dealt with communally. It has already been noted above that the instant suit emanates from Direct Complaint No.3 of 1986 dated 26.12.1985. Cognizance was taken by the Criminal Court vide order dated 13.01.1986 however no charge was framed. The said order is reproduced below: -

*“From the statement of Complainant and by copy of letter dated 17-07-84 of the Bank produced, it seems prima facie that foreign exchange amount in question were limited with guarantee as alleged in complaint and hence register case U/S 420 PPC and issue bailable warrants in the sum of Rs. 1,50,00,000 against the accused for 1-2-86 to satisfaction of the Nazir of the High Court.”*

25. Thereafter, the Plaintiff affected appearance before the Criminal Court and the learned Court on the same day acquitted him under Section 265-k CrPC vide order dated 01.02.86. Relevant excerpts of the said order are reproduced below: -

*“This case was kept for framing of charge U/S 420 PPC in accordance with the order of this Court dt.13.1.86.*

*I called upon the learned advocate for the complaint to show how this foreign exchange could have been accepted as surety for the guarantee in question without being converted into Pakistan Rupees. Mr. Hayat the learned counsel appearing for the complainant very rightly conceded that leglly, unless the amount was converted into Pakistan Rupees it could not have been accepted as security. I put the question to the leaned counsel for the complainant from the facts as admitted by complainant himself, that State Bank of Pakistan in December 85 only have issued circular authoriseing that security may be accepted in foreign exchange, by mutual consent. This shows that on 10<sup>th</sup> of July 84 when the guarentee in question was issued this foreign exchange could not have been accepted as security for the guarentee in question. And therefore accused by transferring the foreign exchange in question at the request of the owner, prima facie does not seem to have committed any offence and as such I am unable to frame any charge against accused as so scheduled offence made out and therefore in exercise of my powers U/S 265-K CrPC, I acquit the accused and discharge the bail bond executed by accused in this case.”*

26. It is evident that the Complaint was dismissed on the very first day the Plaintiff and his counsel affected appearance and no charge was framed against the Plaintiff. The Plaintiff in this regard did not suffer through the protracted rigors of a criminal trial. What is imperative to note here that the Plaintiff was acquitted based on the candid admission of the counsel for the Complainant, who truthfully conceded that no criminal case would be made out unless the amount was converted into Pakistan Rupees. Similar to suit 118/1987 the candid admission of the Complainant’s counsel, as reflected in the order above, is enough to frustrate the plea that the complaint was malicious and it was the

intent of the complainant to defame and harass the Plaintiff. Therefore, Issue No.1 is answered accordingly and remaining issues under this head are answered in the negative.

**Issues No.8 to 12**

27. In light of what has been held above in relation to Issues No.1 to 7 it is held that the suit is maintainable, however, the same is misconceived and frivolous. It is evident that no damages were suffered as a result of the acts of the Defendants. It will be unnecessary at this juncture to delineate as to whether the taking of cognizance by the Criminal Court can constitute a “trial” as no charge was framed against the Plaintiff. What is however clear, is that the Plaintiff only appeared before the Criminal Court once, and was immediately acquitted. In view of the finding given in relation to Issues No. 1-7 it is inevitable that the present issues (except issue No.8 which is answered accordingly) are decided in the negative. The present suit is accordingly dismissed with no order as to cost.

**SUIT NO. 593 OF 1987**

**FINDINGS**

ISSUE NO.1.....	Answered accordingly
ISSUE NO.2.....	Negative
ISSUE NO.3.....	Negative
ISSUE NO.4.....	Negative
ISSUE NO.5.....	Negative
ISSUE NO.6.....	Negative
ISSUE NO.7.....	Negative
ISSUE NO.8.....	Answered accordingly
ISSUE NO.9.....	Negative
ISSUE NO.10.....	Negative
ISSUE NO.11.....	Negative
ISSUE NO.12 .....	Suit is dismissed with no order as to cost.

## REASONS

### Issues No.1 to 7

28. Since the above issues are interconnected, at least for the purposes of the present suit, they shall be dealt with communally. It has already been noted above that the instant suit emanates from Direct Complaint No.2 of 1986 dated 26.12.1985. Cognizance was taken by the Criminal Court **only** under Section 420 PPC vide order dated 01.01.1986. The said order is reproduced below: -

*“From the statement of complainant it seems prima facie that accused by committing fraud on bank, obtained original document of titles of his property which were lying equitably mortgaged on 9.9.84, on pretext of completion of certain formalities with K.D.A, but has failed to return the said documents and/or repay the said loan and hence prima facie case of fraud is made out. Register case U/S 420 PPC and issue Bailable warrant for Rs.14,50,000/- for 1.2.86 to satisfaction of the Nazir of the High Court.” (Emphasis added)*

29. Thereafter charge was framed against the Plaintiff on 01.02.1986 and the Plaintiff pleaded “not guilty” to the said charge. Evidence of the respective parties was recorded in the trial and the Plaintiff was acquitted by the Criminal Court on account of “benefit of doubt” vide judgment dated 31.05.1986. Relevant excerpts of the judgement are reproduced below: -

*“It is clear from the statement of this PW that there was nothing available with the bank to raise presumption that accused had obtained documents in question by deceiving the bank and thus he cheated the bank in parting with the documents in question. On the contrary from the statement of this PW it seems that after accused had tendered his resignation as General Manager in May 1985, the bank for the first time took the question of return of these documents and filed this complaint by stating that the accused failed to reply to the correspondence in question which is belid by Ex.2/D. I do not find anything in the statement of this PW to show that the complainant bank was deceived and cheated in parting with the documents in question on the basis of Ex.2/3 specially in view of the fact that accused in his statement U/S 342 Cr.P.C in reply to question No.3 that the reason why he had not returned documents taken by him vide Ex.2/D till today was that the purpose for which these documents were taken in order to obtain register lease deed from the KDA has not been fulfilled as K.D.A has not executed Registered Lease Deed in favour of the accused in respect of the said plot. It may further be noted that accused in his statement U/S 342 Cr.P.C filed the written*



*statement by which he deposited a pay order for Rs.5,66,455/- in favour of the complainant's bank in respect of outstanding amount of the loan together with upto date interest due from him upto 30<sup>th</sup> April 1986, but PW.1 in his cross examination had already stated that the bank was not prepared to accept any such amount from the accused. All this clearly shows that complainants simply wants to harass the accused for the reasons best known to the complaint/ bank.*

*PW2 Ghufraan Ahmed in his cross admitted that documents were returned to the accused under his order and he waqs not aware whether for the purpose for which these documents were taken by the accused has been fulfilled. He admitted that accused was to return back the documents to the bank after completing the formalities of the K.D.A and acquiring full title to the plot in question. There is nothing in the statement of this PW also to suggest that accused fraudulently in order to deceive and cheat the complainant bank obtained possession of the documents and that he has failed to return the same in order to cheat and/or defraud the complainant bank. Explanation given by the accused in his statement U/S 342 Cr.P.C for delaying in return of the documents till today is plausible and as such cannot be ignored from consideration while deciding this case.*

*Therefore in view of my above observations and conclusions regarding the statements of PWs. etc. in my opinion complainant bank has failed to establish its case for cheating against the accused beyond reasonable doubt. In view of my above conclusion I dismiss the above complaint and acquit the accused by giving him benefit of doubt and discharge the bail bond executed by accused in this case.*” (Emphasis added)

30. Prior to delineating on the issues above, it will be imperative to understand the scheme coined by the legislature in cases of direct complaint under the Cr.P.C. Section 204 Cr.P.C requires the court taking cognizance to form an “*opinion*” if there is “*sufficient ground of proceeding*” with the complaint. The section is reproduced below: -

*“204. Issue of process: (1) If in the opinion of a [Court] taking cognizance of an offence there is sufficient ground of proceeding, and the case appears to be one in which, according to the fourth column of the Second Schedule, a summons should issue in the first instance, [it] shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, [it] may issue a warrant, or, if [Court] or if [it] thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such [Court] if as if it has no jurisdiction itself some other Court having jurisdiction.”* (Emphasis added)

31. The Honourable Supreme Court in the case of **Muhammad Rajar Versus The State through Prosecutor General Sindh and other**<sup>14</sup>

deliberated on the above-mentioned provision and held as under: -

*“12. The provisions of Sections 202, 203, and 204 of the Cr.P.C. require trial courts to conduct a thorough examination of the evidence supporting allegations made against individuals. In this context, the trial court must consider not only the factual basis for the accusations but also the underlying purpose of bringing those charges forward. This includes evaluating whether there is a legitimate objective behind the allegations or if they serve to unjustly target or harass the accused. Moreover, the trial court should assess the possibility of victimization, ensuring that individuals are not subjected to legal actions that could lead to unnecessary distress or humiliation.”* (Emphasis added)

32. It has already been noted above that the Criminal Court took cognizance of the direct complaint vide order dated 01.01.1986 and formed an *opinion* that *prima facie* a case is made out for fraud. The exercise of conducting thorough examination of the evidence was undertaken by the Criminal Court. Credence can be taken from the fact that the Criminal Court dismissed the other two complaints (subject matter of suit 118 and 199 of 1987) almost instantaneously after conducting a thorough examination of evidence. Moreover, the Criminal Court in its wisdom only took cognizance under Section 420 PPC and refrained from taking cognizance under other section/s invoked by the complainant/Defendant. This only reflects that the Criminal Court applied its mind to the complaint before it and based on the evidence presented, took cognizance and issued warrants. The record does not reflect that any appeal and/or revision was preferred against the said order and hence the same attained finality.

33. At this juncture it will be expedient to lay down the test for malicious prosecution which will be applied for the purposes of the present adjudication. The various tests (mostly similar) have been laid down by the superior courts and reproduced above. However, I believe that the test laid down in the case of **Abdul Khameed** (supra) is comprehensive and shall be

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<sup>14</sup> P L D 2025 Supreme Court 40

used for the purposes of present adjudication. The test and its application to the present suit is as follows: -

**(a) A plaintiff has been prosecuted by the defendant despite the absence of reasonable and probable cause for such prosecution.**

**(b) the defendant acted maliciously and not to further the ends of justice;**

**(c) the prosecution ended in favour of the plaintiff; and**

**(d) it caused damage to the plaintiff.**

34. It is apparent that the Plaintiff was prosecuted by the Defendant and the prosecution ended in the favour of the Plaintiff. No further deliberation in this regard is warranted.

35. At this juncture, for the purposes of the present lis, there are two questions which require adjudication: -

**i. Whether there was absence of reasonable and probable cause?**

**ii. Whether was the malice on part of the Defendant?**

36. The above questions are often confused as being synonymous, which as will be demonstrated, is not always the case. The first question is simply an objective test i.e. would an ordinary prudent man reach a conclusion that the person charged was probably guilty of the crime imputed. The second question is a subjective test regarding the state of mind of the complainant which can be inferred from circumstantial evidence. Malice focusses on the intent behind the prosecution and not the strength of the case. **For a claim to succeed for malicious prosecution it is not sufficient to establish malice. Malice must be accompanied by the absence of reasonable and probable cause. It is conceivable for the prosecution to be driven by malice and for the complainant to have a genuine belief that the prosecution is warranted. However, malice can be inferred in the opposite case i.e. from the absence of reasonable and probable.**

37. The Criminal Court in its judgment dated 31.05.1986 while acquitting the Plaintiff on the "*benefit of doubt*" observed that the complaint was filed to

“harass” the Plaintiff. However, the same is not synonymous with absence of reasonable and probable cause. The reasonable and probable cause for the purposes of the instant lis can be inferred from the order of cognizance dated 01.01.1986 in which it was observed by the Criminal Court that prima facie a case is made out for fraud. The Plaintiff was prosecuted on the basis of the said cognizance and was ultimately acquitted as the criminal burden of proof i.e. beyond reasonable doubt was not discharged by the Defendants. There was no finding of the Criminal Court that the complaint is vexatious and frivolous and the observation of the Criminal Court regarding the intent of the complainant, does not, on its own, advance the case of the Plaintiff. It is admitted between the parties that the Plaintiff did in fact withdraw the documents from the bank. The Defendants were unable to prove to a criminal standard the alleged intent to defraud the Bank i.e. *mens rea*. Applying the objective test, as laid down above, I hold that an ordinary prudent man would reach a conclusion that the Plaintiff was guilty of the crime imputed. Hence, there was no absence of reasonable and probable cause.

38. It is also relevant to note that the liberty of the Plaintiff was never compromised as the Plaintiff was not incarcerated. Moreover, the entire trial concluded in a period of approximately 5 months, which at least by present standards, cannot be classified as a protracted trial. Considering there was reasonable and probable cause I consider the issue regarding damages as redundant and the same does not require any deliberation. Hence, Issue No.1 is answered accordingly and the remaining issues are answered in the negative.

#### **Issues No.8 to 12**

39. In light of what has been held above in relation to Issues No.1 to 7 it is held that the suit is maintainable. However, it would be inapt to classify the instant suit as frivolous and vexatious. In view of the finding given in relation to Issues No. 1-7 it is inevitable that the present issues (except issue No.8 which is answered accordingly) are decided in the negative. The present suit is accordingly dismissed with no order as to cost.

**SUIT NO. 592 OF 1987**

**FINDINGS**

ISSUE NO.1.....	Affirmative
ISSUE NO.2.....	Affirmative
ISSUE NO.3.....	Affirmative
ISSUE NO.4.....	Affirmative
ISSUE NO.5.....	Affirmative
ISSUE NO.6.....	Affirmative
ISSUE NO.7.....	Affirmative
ISSUE NO.8.....	Negative
ISSUE NO.9.....	Affirmative
ISSUE NO.10.....	Affirmative
ISSUE NO.11.....	Affirmative
ISSUE NO.12 .....	Suit is decreed for a sum of Rs. 5,000,000 plus interest at the rate of 10% per annum from the date of the decree filing the suit till realization, against the Defendants jointly and severally.

**REASONS**

**Issues No.1 to 7.**

40. It has already been noted above that the Direct complaint No. 1 of 1986 was filed against the Plaintiff before the Criminal Court and cognizance was taken vide order dated 13.01.1986. The said order is reproduced below: -

*“From the statement of Complainant it prima facie seems that accused failed to return unsold prize bonds to State Bank and consequently Dubai Bank pay interest of Rs.1220493.15 unnecessarily which he had domain as employee of the Bank. Register case U/S 408 PPC and issue bailable warrats in the sum of Rs.25,00,000/- for 1-2-86 to satisfaction of Nazir of High Court.”*

41. Thereafter, charge was framed against the Plaintiff on 01.02.1986 to which the Plaintiff pleaded “not guilty.” At this juncture it will be beneficial to

reiterate the allegation against the Plaintiff. The said allegation pertained to a circular issued by the SBP dated 21.05.1984 in which it was observed by the regulator that banks are holding substantial stocks of prize bonds against the prize bond schemes. The regulator decided that commercial banks will not be awarded any prizes against the prize bonds held by them and gave discretion to the banks to surrender all unsold prize bonds to the regulator. It was alleged that the Plaintiff in contravention of the above-mentioned circular purchased additional prize bonds for Rs.99,800,000/- and caused loss to the bank. The Criminal Court vide judgment dated 10.05.1986 acquitted the Plaintiff. Relevant part of the judgment is reproduced below: -

*“In my opinion prosecution has failed to prove that any other document besides Ex.2/B 2/B-1 and 2/B-2 were available with the Dubai Bank Limited in respect of prize bonds in question or any other document pertaining to these prize bonds like records and numbers of the prize bonds were prepared after the purchase of the prize bonds in question. In this connection PW.2 Ghufraan Ahmed in his examination in chief has clearly stated that no list in respect of the prize bonds in question was prepared in the bank in view of government circular Ex.2/A as it was being done previously before the issuance of the circular Ex.2/A. In face of this categorical statement of PW.2 and in the face of the statement of PW.1 that he had not seen any list or records pertaining to these prize bonds or came to know about their existence from any member of the staff, the question of accused having destroyed any such record pertaining to the prize bonds in question does not arise and therefore in my opinion prosecution has failed to establish even this charge against the accused.”*

42. It is evident from the perusal of the said judgment that the prosecution witnesses had not seen any list or records pertaining to the prize bonds and the complaint, by its very nature, was based on *heresay*. Certain portions of the examination of PW.1 Namely Mohd. Sadiq is reproduced below to corroborate the finding above: -

*“I have never seen with my eyes any register in nay bank giving numbers of the prize bonds in which banks money is invested.... I am informed that these prize bonds were kept in bank premises in safe lock and key.... I do not know the procedure which was followed in the Dubai Bank in respect of Prize Bonds which won prizes during the course of investment.”* (Emphasis added)

43. Certain portions of the examination of PW.2 i.e. Ghufraan Ahmed are reproduced below exhibiting that the prosecution itself did not believe that the complaint was based on reasonable and probable cause: -

*I confirm that the decisions in respect of the purchase of Prize Bonds were taken by the General Manager in consultation with AGM and the undersigned...Accordingly, Prize Bonds for Rs.99.8 Million were purchased on 31.05.1984 with the strong feeling that the Government may withdraw the restriction of disallowing the Bank to enjoy the benefit of prizes. This speculative decision was also based on the temptation of our past lucrative experience during which we fetched a very high rate of TAX FREE return on our investment in Prize Bonds. While making the above decision, I recall, it was taken into consideration that the maximum loss to the Bank would be about 5 lacs as against a TAX FREE gain of over 25 lacs, should there be a change in the Govt.'s policy as stated above...No list is presently available with me as after shifting my office from ground floor to 1<sup>st</sup> floor. I destroyed the entire lot as it was no longer required. (Emphasis added)*

44. The same individual appeared in the instant suit as a witness and testified as under: -

*“During the tenure of my service with Union Bank of Middle East I appeared as witness in the case filed by the Bank against the plaintiff because I was told to do so. In a way I was compelled to give evidence by the Bank.....My evidence before Criminal Court was neutral and was based on truth. The Bank by their conduct and behavior penalized me for giving neutral evidence. Voluntarily states that so much so my Passport Visa and N.I.C. were withheld by them in Dubai and left me with no identity which is an very important in a country like U.A.E.....Voluntarily states that Mr. Ellison threatened me that because of your evidence in Criminal Court at Karachi the Bank has lost the case and they could not take action against the plaintiff which they wanted to take. After I came back to Karachi from Dubai the conduct and behaviour of the Bank was not proper. I was immediately suspended as already informed me by Mr. Ellison and then my salary was reduced during the period of suspension. I was made to sit in a corner when at work and I was made to feel frustrated.....It was a regular practice of Dubai Bank to purchase Prize Bonds. This was by way of investment as well as for resale purpose. No specific borrowing used to be made to purchase prize bonds. These were purchased from day to day liquidity of the Bank. When Prize Bonds held by the Bank as investment won any prize gave a scheme. The earning on prize bonds prizes in the past was double or triple of income from treasury bills which was at that time was 5%. The income from prize bond was comparatively a good and tax free income. During my tenure with the Bank we used to purchase Prize Bonds. The amount invested in the prize bonds were recorded in the accounts books as investment of the*

*Bank. Investment in prize bonds was in crores of rupees.....It was not a speculative decision to invest the Bank money in prize bonds after the circular dated 231<sup>st</sup> May 1984 because the principal amount was fully secured, but the prize was speculative. It is incorrect to suggest that the Bank had borrowed 99.8 Million from Inter Bank Call Market for such investment. Voluntarily state that no specific borrowing were made as in any case these funds would have remained tied up in the treasury bills... The bank sustained no loss in this transaction compared to the treasury bill rates.” (Emphasis added)*

45. Another employee working in the legal department of the Defendant Bank namely Sara Bakhtiar, appeared as a witness in the instant suit and testified as under: -

*“When the Union Bank took over the Dubai Bank they launched a campaign to destroy the Plaintiff professionally and personally with malafide intentions.”* (Emphasis added)

46. At this juncture it will be beneficial to apply the test as laid down in Paragraph number 33 above. It is apparent that the Plaintiff was prosecuted by the Defendant and the prosecution ended in the favour of the Plaintiff. No further deliberation in this regard is warranted. Therefore, this present adjudication pivots around reasonable and probable cause.

47. A crux of the allegation against the Plaintiff has already been highlighted above. I hold that in the facts of the instant case the Defendants had no reasonable and probable cause against the Plaintiff. An application of the objective test would reflect that an ordinary prudent person would not reach a conclusion that the Plaintiff in authorizing the purchase of prize bonds acted in a manner which can be classified as criminal. It has been testified by the prosecution witnesses that the bank had a regular practice to purchase prize bonds and no real loss was suffered as a result. The Defendant has also not led any evidence to suggest that a loss (in real terms) was a result of the Plaintiff's authorization to purchase the prize bonds. Even if the said “loss” is quantified, it is at best a poor investment decision and cannot be equated with criminal



liability. No evidence has been led that the regulator i.e. SBP took action against the bank for violation of the aforementioned circular.

48. It has already been held above in adjudication of Suit No.593/1987 that malice can be inferred from the absence of reasonable and probable cause. In the instant case, the admissions of the prosecution witnesses give credence to the fact that the prosecution was malafide. It has been admitted by the witnesses that the decision to purchase prize bonds was not taken unilaterally by the Plaintiff. However, it is only the Plaintiff who was prosecuted by the Defendants. Moreover, regular practice of the Defendant Bank to purchase prize bonds was apparent and the prosecution in this regard was purposefully yet needlessly triggered. The candid statements of the prosecution witnesses before the Criminal Court and the treatment of the same witnesses subsequent to the acquittal of the Plaintiff speaks volumes of the malafide intent on part of the Defendants. The testimony of the employee namely Sara Bakhtiar regarding the intent of the Defendants also buttresses the argument of the Plaintiff in respect of the malafide.

49. To further substantiate the finding above in reference to malafide and absence of reasonable and probable cause it is pertinent to mention that the Plaintiff filed an “Original Action” against the Defendant in The High Court of Justice Chancery Division, United Kingdom. Various claims were made in the said action including the one pertaining to prize bonds. It is pertinent to mention that the claim of the Plaintiff was allowed and the counter claim filed by the Defendant was dismissed. Relevant excerpts of the of the said judgment dated 08.07.1988 are reproduced below: -

*“The other matter of complaint against Mr. Majid relates to the acquisition by the Bank in Karachi, on 31<sup>st</sup> May 1984, of a substantial number of Pakistan Prize Bonds. This acquisition was authorized by Mr. Majid. All banks in Pakistan are required by law to hold a certain proportion of their assets in Government securities. Prize Bonds ranked as Government securities. The banks were paid by the Pakistan Government a commission on the volume of bonds they purchased. The commission was higher if new bonds were purchased than if old bonds –re-issued bonds – were purchased. Oddly however,*

*the purchasing bank could not know in advance of the purchase whether the subject-matter of the purchase would be new or old bonds, so it could not know in advance what the amount of the commission would be. The commission on new bonds was slightly in excess of the net interest recoverable from Treasury Bonds. The commission on old Prize Bonds was less than that net interest. The Karachi branch, under Mr. Majid, had from some time past been in the habit of purchasing Prize Bonds in bulk and holding them in the expectation of winning prizes. No complaint of this is made. The Pakistan authorities, in early 1984, issued a circular announcing that in the future banks holding Prize Bonds would not be eligible for prizes. Nonetheless, Mr. Majid authorized the purchase of a large amount of Prize Bonds on the 31<sup>st</sup> May 1984. He did so, he told me, as a speculation, believing from what he had been told by a senior civil servant, that there was a fair chance that the circular would be withdrawn and that banks' eligibility to win prizes would be restored. Even if it was not withdrawn, the commission on the purchase of the bonds would be earned, and the bonds could, after the draw for prizes, be cashed in for the same amount as had been paid for them.*

*It had been the practice, on purchase of Prize Bonds, to use bank staff to make a list of the identifying numbers of the purchased bonds. When new bonds were purchased this was easy – the bonds were numbered sequentially. When old bonds were purchased, the task was an arduous one and took some weeks. The numbers were haphazard. The bonds purchased on 31<sup>st</sup> May 1984 were old bonds. Mr. Majid decided that a list of the identifying numbers would be made unless the circular was withdrawn. The purpose of the list was to enable a check to be made, after the results of the draw for prizes had taken place, to ascertain which bonds had won prizes. If the bonds were not eligible for prizes then, thought Mr. Majid, there was no point in using up the time of the Bank's staff in preparing a list.*

*The Bank's complaint against Mr. Majid is twofold. First, it contends that the purchase should not have been made. Second, it contends that a list of the bonds should have been made. As to the first complaint, the purchase was undeniably speculative. The only certain profit lay in the commission. Whether there would be eligibility for prizes was uncertain, but there would be (and in the event there was) no capital loss. In early August 1984, shortly after the draw for prizes, and the circular not having been withdrawn, the bonds were encashed for the sum the Bank had paid for them.*

*To represent this purchase as misconduct warranting instant dismissal is in my view, unreasonable. Indeed, I do not think it was misconduct at all. It was a purchase in respect of which the Bank's capital was safe and some profit was bound to be earned. There was a remote chance of a high profit, a fair chance of good profit (if new bonds had been purchased) and a certainty of some profit. The Bank's complaint in this respect fails.*

*As to Mr. Majid's failure to cause a list of these Prize Bonds to be made, the Bank's criticism was based upon the possibility of someone extracting bonds and fraudulently presenting them for prizes after the draw had been made and upon the possibility, also, of the bonds being*

*stolen or destroyed and the Bank being unable to identify the bonds that had gone. These are the critical possibilities.*

*But evidence was given of the careful security arrangements attending the Prize Bonds in the custody of the Bank in Karachi. They were kept in the Bank's strong-room. A combination of dishonest senior employees with the custody of the relevant keys, might have produced a result in which they, or some minion of theirs, was able to purloin bonds, but that would be so whether or not a list had been made. The total number of Prize Bonds was known, even if their individual numbers were not known. In the circumstances, I was unable to understand how the absence of a list could prejudice the Bank's claim against its insurers in the event of loss by theft or fire.*

*There was a time in this action when many more allegations of misconduct against Mr. Majid were being made by the Bank. Some were pleaded but evaporated with the disclosure of evidence. Others were not pleaded or specified but were hinted at. In the event, all that was left was this matter of the Prize Bonds. I regard this as a dredging of the barrel, but the barrel is, in my judgment, empty. I think that the complaints regarding the Prize Bonds are worthless.*

*In my judgment, therefore, the Bank has failed to establish that at any material time Mr. Majid was guilty of misconduct for which the Bank could have subjected him to instant dismissal. (Emphasis added)*

50. It is specified that judgment passed by the court in the United Kingdom was subsequent to the acquittal order in favour of the Plaintiff and therefore the same is not relied upon to exhibit malafide and the absence of reasonable and probable cause. The finding in respect to the same has already been made in paragraphs number 47-49 above. The instant judgment is only cited to give credence to the finding given above, which is otherwise independent of the above judgment.

### **Issues No.8 to 12**

51. After satisfying the first three ingredients the instant adjudication will now address the question of damages. The Plaintiff in the instant suit (without specifying the nature) has sought damages to the tune of Rs.200,000,000/-. Whilst the loss of liberty and dignity cannot be compensated in monetary terms, granting damages in cases of malicious prosecution is means to hold the person accountable, who has triggered the legal machinery into motion and abused the process. The court in this regard is burdened with the duty to ensure that the damages are proportionate to the injury sustained by the person

wronged. In other words, the damage must also be the reasonable and probable result of the malicious prosecution, and not too remote.<sup>15</sup>

52. It is a settled principle of law that general damages are those which the law presumes to be a natural and probable consequence of the Defendant's act or omission. There can be no definitive yardstick for assessing damages and the exercise is largely, discretionary. It is what the court determines to be fair in the circumstances of each case and do not require strict proof. Reliance in this regard is placed on the case of **Abdul Majeed Khan versus Tawseen Abdul Haleem**<sup>16</sup> wherein it was held as under: -

*“3. At this stage, it is to be noted that there are two types of damages namely; 'special damages' and 'general damages'. The term 'general damages' refers to the special character, condition or circumstances which accrue from the immediate, direct and approximate result of the wrong complained of. Similarly, the term 'special damages' is defined as the actual but not necessarily the result of injury complained of. It follows as a natural and approximate consequence in a particular case, by reason of special circumstances or condition. It is settled that in an action for personal injuries, the general damages are governed by the rule of thumb whereas the special damages are required to be specifically pleaded and proved. In the case of British Transport Commission v. Gourley [(1956) AC 185] it has been held that special damages have to be specially pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. The general damages are those which the law implies even if not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future. The basic principle so far as loss of earnings and out-of-pocket expenses are concerned is that the injured person should be placed in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened.”*

53. It is held that the instant suit is not malafide, vexatious, or misconceived. The same is therefore maintainable under the law. Hence, issue No.8 is answered in the negative. In regards to the remaining issues (9 to 12) it is held that in the given facts and circumstances I consider the award of

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<sup>15</sup> The Law of Torts, Ratanlal & Dhirajlal, 23<sup>rd</sup> edition, 2002. Page 301.

<sup>16</sup> PLD 2012 Supreme Court 80

damages to the tune of 5,000,000/- in addition to interest at the rate of 10% per annum from the date of the decree till realization, as adequate compensation for the wrong committed against the Plaintiff.

53. I concur with the observation in **Muhammad Yousaf** (supra) that our societal norms dictate that lodging of a criminal case adversely affects the reputation of the accused and creates an unwanted public perception. The societal tendency to trigger false criminal cases can only be curbed by expeditiously adjudicating cases pertaining to malicious prosecution and holding the wrongdoer accountable for his/her acts. This to my mind is the only deterrent and an expeditious disposal, as mentioned above, will be pivotal in curbing the said tendency.

### **CONCLUSION**

54. The above are the reasons of short order dated 21.02.2025 whereby the suit No.592/1987 was partially decreed whereas the remaining suits bearing Nos.118/1987, 119/1987 and 593/1987 were dismissed with no order as to cost. Office to prepare decree in the above terms.<sup>17</sup>

Nadeem Qureshi “PA”

J U D G E

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<sup>17</sup> I would like to extend my appreciation to all the learned counsels for their valuable assistance, without which navigating the record would have been an arduous task.