

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

**Second Appeal No.91 of 2020
(Ejaz Farooq Vs. Muhammad Aslam)**

Date	Order with Signature of Judge
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Fresh case

1. For order on CMA No.4066/2020.
2. For order on CMA No.4067/2020.
3. For hearing of main case.

22.01.2026

Mr. Usman Farooq, Advocate for the appellant.

Jawad Akbar Sarwana, J. Appellant / plaintiff-Ejaz Farooq had filed Civil Suit No.68 of 2017 before the Senior Civil Judge, Karachi, South, for damages on account of malicious prosecution, mental torture, damages and good will. The learned trial Court after hearing the matter dismissed the suit vide judgment dated 25.09.2019 holding as follows:

“- - -, since the plaintiff was acquitted under the shadow of doubt and trial Court did not declare that the said FIR was lodged on false allegations, therefore this contention of plaintiff that he paid huge amount for his defence in false case is also un-called for.- - -”

2. Thereafter the appellant / plaintiff preferred Civil Appeal No.412 of 2019 before the IIIrd Additional District Judge, Karachi, South, on 28.11.2019. Admittedly, the said appeal was barred by limitation and hence the appellant filed an application for condonation of delay. He contended that he was so much affected by his illness / diarrhea that he could not conduct his outdoor activities, and the appeal could not be filed within time. The IIIrd Additional District Judge dismissed the appeal vide order dated 07.12.2019.

3. The counsel for the appellant / plaintiff contends that the appellant / plaintiff is aggrieved by the impugned order dated 07.12.2019 passed by the IIIrd Additional District Judge dismissing the said appeal. Counsel relied on the

Divisional Bench's judgment of this Court in **2005 MLD 60**, contending that in cases of malicious prosecution the requirement that the criminal complaint ought to have been disposed of with clear observation that it was initiated on false grounds was not a valid argument and that instead malicious prosecution standard was simply on the strength of evidence and based on the outcome of an acquittal. Additionally, counsel relied on the single Bench's judgment of this Court reported in the case of **Federation of Pakistan vs. ASPI, PLD 1960 (W.P.) Karachi 562** that where a case was made out and sufficient cause was shown the bar of limitation could be condoned.

4. Heard the counsel and perused the record.

5. It is now well accepted that in a case of malicious prosecution, the plaintiff must show that the criminal action taken against him was decided in his favour and reasons such as clear judicial observation and / or determination in that judgment that the FIR was found fake or it was lodged with malice is not mandatory and will have no effect to the outcome on the subsequent claim of the plaintiff based on tort of malicious prosecution [PLD 2016 S.C. 478, PLD 2006 S.C. 432 and PLD 1963 (W.P.) Karachi 155].

6. Under the Limitation Act, a time bar accrues a vested right and such right has accrued to the respondent / defendant. Whereas even if the right on merits may be available to the appellant / plaintiff as found by me in paragraph-5 above, the remedy is lost once the bar of limitation is triggered. In the circumstances, the appellant / plaintiff has not been able to make out a case to explain and provide sufficient cause for each and every day of delay in filing the appeal, therefore, the remedy is not available. The appellant / plaintiff's appeal against the trial Court's judgment is found to be time barred. For this reason, this Second Appeal is dismissed alongwith listed applications with no order as to costs.

Asif

JUDGE