

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Civil Revision No. S-29 of 2026

Date	Order with signature of Judge
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Before;

Mr. Justice Abdul Hamid Bhurgri.

Applicants : Amjad Ali & others, through Mr. Ghulam Muhammad Barejo, Advocate.

Respondents : Amanullah and others.

Date of Hearing : ***06.03.2026.***

Date of Order : ***06.03.2026.***

ORDER

Abdul Hamid Bhurgri, J.- The applicants, who were defendants in F.C Suit No.79 of 2025, have assailed the order dated 30.01.2026 passed by the learned IV-Additional District Judge, Larkana, in Civil Appeal No.48 of 2025 whereby the appeal filed by the present respondents was allowed and the order dated 23.05.2025 passed by the learned trial Court rejecting the plaint under Order VII Rule 11 CPC was set aside with a direction to the trial Court to decide the suit on merits.

2. Learned counsel for the applicants contended that the respondents/plaintiffs had instituted a suit for damages on account of alleged malicious prosecution which, according to him, was rightly rejected by the learned trial Court under Order VII Rule 11 CPC. It was argued that the respondents had no cause of action to institute the suit and had failed to place any material on record to substantiate the allegations of torture and mental agony. Learned counsel further contended that the learned appellate Court failed to properly appreciate the question of maintainability of the suit and passed the impugned order without addressing the legal objections raised by the applicants. He therefore prayed that the impugned order be set aside and the order passed by the learned trial Court be restored. He has relied upon case law reported in 1999 SCMR 700, PLD 2012 Lahore 279, PLD 2025 Sindh 251 and 2012 MLD 01.

3. I have considered the submissions made by learned counsel for the applicants and have carefully examined the material available on record including the orders passed by the learned trial Court as well as the learned appellate Court. The record reflects that FIR No.31/2024 for offences punishable under Sections 324, 506-II, 337-H(2), 109, 148 and 149 PPC was registered at Police Station Hyderi against the respondents/plaintiffs. The respondents were subsequently acquitted by the learned V-Additional Sessions Judge, Larkana, vide judgment dated 20.01.2025 passed in Sessions Case No.210 of 2024. Thereafter, the respondents instituted the present suit seeking damages on account of alleged malicious prosecution against the complainant, witnesses and the Investigating Officer.

4. The learned trial Court rejected the plaint under Order VII Rule 11 CPC mainly on the ground that the acquittal of the plaintiffs was based on benefit of doubt and there was no declaration by any competent forum that the criminal proceedings were malicious or false. A careful examination of the impugned order of the learned trial Court reveals that the learned trial Judge entered into the merits of the controversy and assessed the evidentiary worth of the claim at a stage where only the averments contained in the plaint were required to be examined. It is a settled principle of law that while considering rejection of plaint under Order VII Rule 11 CPC, the Court is required to examine the averments contained in the plaint alone and must assume the same to be correct for the limited purpose of determining whether the plaint discloses a cause of action or is barred by law. At such stage, neither the defence of the defendants nor the probable success or failure of the claim can be examined, as disputed questions of fact are to be adjudicated only after recording of evidence.

5. In the present case, the respondents/plaintiffs have pleaded that they were falsely implicated in the criminal case and were subjected

to malicious prosecution which ultimately resulted in their acquittal by the competent criminal Court. Whether the prosecution was initiated without reasonable and probable cause, whether it was actuated by malice and whether the plaintiffs suffered damages on account of such prosecution are essentially questions of fact which require determination after recording of evidence.

6. The learned trial Court, instead of confining itself to the parameters of Order VII Rule 11 CPC, ventured into adjudication of disputed factual questions relating to malice and absence of reasonable cause. Such determination at the threshold stage was not legally sustainable. The learned appellate Court, while allowing the appeal, rightly observed that the issues raised in the suit require proper adjudication after recording of evidence and therefore the plaint could not have been rejected at the preliminary stage.

7. Rejection of plaint being a drastic power must be exercised with caution and only in cases where the plaint clearly falls within the parameters prescribed under Order VII Rule 11 CPC. In the present case, the plaint cannot be said to be barred by any law nor can it be concluded at this stage that it does not disclose any cause of action.

8. It is well settled that the revisional jurisdiction of this Court under Section 115 CPC is limited in scope and can only be exercised where the subordinate Court has acted without jurisdiction, failed to exercise jurisdiction vested in it by law, or has acted in the exercise of its jurisdiction with material irregularity. This Court does not sit as a Court of appeal to reappraise the facts or substitute its own view where the order impugned does not suffer from any jurisdictional defect or patent illegality. In the present case, the learned appellate Court has exercised its jurisdiction in accordance with law and no material irregularity or jurisdictional defect has been pointed out which may warrant interference by this Court in revisional jurisdiction.

9. It may further be observed that the observations made herein are confined solely to the question whether the plaint was liable to be rejected at the threshold under Order VII Rule 11 CPC. The merits of the allegations raised in the suit, including the question whether the respondents/plaintiffs are ultimately able to establish the ingredients of malicious prosecution, shall be determined by the learned trial Court strictly on the basis of evidence produced by the parties. Nothing contained in this order shall be construed as an expression on the merits of the controversy.

10. Consequently, this Civil Revision Application is dismissed in *limine* along with all pending applications. The learned trial Court is directed to proceed with the suit and decide the same expeditiously in accordance with law.

11. Learned counsel for the applicants has relied upon certain case laws in support of his contentions. However, the same are distinguishable from the facts and circumstances of the present case. In the present case, the controversy involves disputed questions of fact which cannot be determined without recording evidence; therefore the principles laid down in the cited authorities are not attracted to the facts of the present case.

Irshad Ali M/Steno

JUDGE