

# THE HIGH COURT OF SINDH, KARACHI

## Suit No. 346 of 2016

[Dr. Ayaz Hussain Khaskheli & others versus Ms. Shahila Perveen]

Plaintiffs : Nemo.  
Defendant : Ms. Shahila Perveen in person.  
Date of hearing : 14-01-2020  
Date of order : 17-02-2020

### **ORDER**

**Adnan Iqbal Chaudhry J.** - This order decides CMA No.4242/2016 and CMA No.1859/2017 by which the Defendant prays for rejection of plaint under Order VII Rule 11 CPC. At the hearing, counsel for the Plaintiffs was absent, but for the reason recorded in the order dated 14-01-2020, the matter heard and reserved for orders.

2. The parties are employees of the Pakistan International Airline (PIA). The Plaintiffs 1 and 2 are Medical Officers in Medical Centers of PIA at Karachi and the Plaintiff No.3 is a Matron at the PIA Girls Hostel. The Defendant is an air-hostess in PIA. The Plaintiffs allege that the Defendant is by habit a trouble maker. The Plaintiffs 1 and 2 allege that the Defendant does not maintain discipline while consulting doctors at the Medical Center; she walks into the doctor's cabin without permission and demands to be seen out-of turn; and she demands prescriptions for medicines not prescribed to her. The Plaintiff No.3 alleges that the Defendant brings her child to the airhostess hostel which is in violation of rules made to ensure that the sleep of the flying crew is not disturbed. The Plaintiffs allege that whenever the wrong demands/actions of the Defendant are resisted, she resorts to filing false and frivolous complaints against the resisting employees; that in one such instance the Defendant filed a complaint before the Women Protection Cell of PIA alleging that she

had been harassed by the Plaintiff No.1; that such complaint was found baseless by the Women Protection Cell and rejected; thereafter the Defendant filed a complaint against all three Plaintiffs at Islamabad before the Federal Ombudsman for Protection against Harassment of Women at the Workplace, who issued notice to the Plaintiffs for their appearance; then, at the request of the Defendant, that complaint was transferred to Karachi to the Provincial Ombudsman for Protection against Harassment of Women at the Workplace, who again issued notice to the Plaintiffs for their appearance. It is in these set of facts that the Plaintiffs pray as follows:

- “a) order her to pay Rs.20,000,000/- (Rupees Twenty Million) to each Plaintiff towards compensation and damages and also apologize from each Plaintiff for moving false and frivolous application against them.*
- b) to grant interim-injunction during pending of the suit restraining the Defendant from filing false and frivolous applications against the plaintiffs to authorities.*
- c) ad-interim injunction .....*
- d) cost of the suit.*
- e) any other relief .....*”

3. The Defendant, who appeared in person, submitted that the plaint ought to be rejected on the same grounds as in Suit No. 58/2016 which was a similar suit filed against her by another PIA doctor. The order dated 08-08-2016 passed in Suit No. 58/2016 (reported as *Dr. Abdul Qadir Akhund v. Shahila Perveen*, 2017 MLD 666) shows that the plaint of that suit was rejected on the ground that it was in substance a suit for malicious prosecution the cause for which had not arisen as the complaint made by the Defendant to the Ombudsman against the plaintiff of that suit, had yet to be decided. It was also observed that a suit for malicious prosecution can lie against a civil prosecution.

Without being influenced by the order passed in Suit No.58/2016 as an appeal therefrom is pending, the contention of the Defendant is essentially that the plaint of this suit is to be rejected on the ground that the Plaintiffs did not have a cause of action for bringing this suit.

4. Para 18 of the plaint of this suit reads:

*“18. The cause of action had accrued to the Plaintiffs on 15.10.2015 and it is continuing one”.*

The cause of action referred to in para 18 of the plaint is the date when the Plaintiffs received notice dated 15-10-2015 from the Federal Ombudsman for Protection against Harassment of Women at the Workplace, asking the Plaintiffs to appear before the Federal Ombudsman at Islamabad to respond to the Defendant’s complaint; which complaint was subsequently transferred to Karachi and taken up by the Provincial Ombudsman for Protection against Harassment of Women at the Workplace. Thus, the bundle of facts summarized in para 2 above, which constitute the cause of action for this suit, manifest that what the Plaintiffs essentially allege is that the Defendant has committed the tort of malicious prosecution by filing a false and frivolous complaint against the Plaintiffs before the Ombudsmen. Traditionally, a suit for malicious prosecution is a remedy against a malicious criminal prosecution. However, in *Willers v. Joyce* (also reported at 2016 SCMR 1841), the Supreme Court of the United Kingdom has held that a claim in malicious prosecution can also be brought in relation to civil proceedings. But then, that aspect and the further point whether the remedy against malicious prosecution is available against quasi-judicial proceedings taken by an Ombudsman, can be considered only when the cause of action for such a suit otherwise arises.

5. It is settled law that the cause of action for a suit for malicious prosecution arises only on the determination of the prosecution in favor of the plaintiff. Admittedly, when this suit was filed on 08-02-2016, the Defendant’s complaint against the Plaintiffs pending before the Provincial Ombudsman had yet to be decided, and the cause of action for a suit for malicious prosecution, viz. the culmination of the complaint in favour of the Plaintiffs, had not arisen. Even assuming that the said complaint has subsequently been decided in favor of the Plaintiffs, that decision is not the cause of

action of this suit. Therefore, I agree with the Defendant that the Plaintiffs did not have a cause of action to institute this suit. Resultantly, CMA No.4242/2016 and CMA No.1859/2017 are allowed and the plaint is rejected. By reason hereof, the other miscellaneous applications have become infructuous and are accordingly dismissed.

**JUDGE**

Karachi:

Dated: 17-02-2020